

**COLLATERAL CONSEQUENCES OF
JUVENILE DELINQUENCY PROCEEDINGS:
A GUIDE FOR JUVENILE
COURT PROFESSIONALS**



Wisconsin Office of the State Public Defender
J-RATE Juvenile Rural Access to Training and Expertise Project

COLLATERAL CONSEQUENCES OF JUVENILE DELINQUENCY PROCEEDINGS: A GUIDE FOR JUVENILE COURT PROFESSIONALS

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INTRODUCTION

A. What is a Collateral Consequence?

Wis. Stat. § 938.34 describes the dispositions that may be imposed as a direct consequence of a delinquency adjudication. But there are other significant and long-lasting consequences of a delinquency proceeding that are not so clearly described in an easily accessible statute. These are the “collateral consequences” of delinquency proceedings: The civil penalties or regulatory restrictions that result from court involvement and have a significant and long-lasting effect on the youth’s life after the court-ordered disposition is complete and the case is closed.¹

Collateral consequences may include suspension or expulsion from school, barriers to employment, exclusion from the military, loss of hunting and fishing privileges, exclusion from public housing, an inability to obtain citizenship, and barriers to becoming a foster parent or adopting a child. The purpose of this guide is to inform juvenile court professionals about these diverse consequences.

And, in the interests of practicality, this guide will also describe unanticipated or less well-known consequences, such as the cost of getting a driver license reinstated or financial costs to parents.

It also includes a primer on records kept by social service agencies, law enforcement, and the State Department of Justice, as well as the juvenile court. Understanding where juvenile delinquency records are kept and with whom they are shared is key to understanding collateral consequences. The guide also describes the process for removing fingerprint records and firearm restrictions, expunging juvenile court records, and removing DNA records.

However, this guide only provides the basics. Individual cases will require further investigation and research. For example, the guide describes the laws regarding school expulsion, but professionals will need to research the specific rules in the youth’s school

district. If the question is sex offender registration, it may be necessary to investigate residency restrictions in the youth’s home town. If a youth does not have legal status, an immigration lawyer must be consulted for specific advice. This guide is not legal advice; it is the responsibility of each juvenile justice professional to check statutes, caselaw, local practices, and consult other attorneys and other resources, as they apply to each case. The guide is current as of April 2022, so professionals will need to check carefully for subsequent authority.

B. The Language of the Juvenile Court

The foundational principle of juvenile courts is that wayward children can and should be rehabilitated, not punished. Therefore “the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.” *In re Gault*, 387 U.S. 1, 32 (1967) quoting *In re Gault*, 407 P. 2d 760, 767 (1965). To that end juvenile court language is purposefully unlike the language used in criminal court:

- A child who is “adjudicated delinquent,” is not “convicted” of a crime. Wis. Stat. § 938.35(1).
- A child subject to juvenile court jurisdiction is “taken into custody,” not arrested. Wis. Stat. § 938.19(3).
- If the child is held in a locked setting, it is a “juvenile detention facility,” not a jail. Wis. Stat. §§ 938.02(10r), 938.208.
- A child who is adjudicated delinquent may be sent to a “juvenile correctional facility,” not prison. Wis. Stat. § 938.02(10p).
- A placement in corrections is not “incarceration,” but is instead accomplished through a “transfer of custody” to the Department of Corrections. Wis. Stat. §§ 938.34(4), 938.34(4m).

¹ Radice, Joy, The Juvenile Record Myth (January 1, 2018). Georgetown Law Journal, Vol. 106, No. 2, 2018, University of Tennessee Legal Studies Research Paper No. 348, Available at SSRN: < <https://ssrn.com/abstract=3132173> >

- The court's dispositional order is a "disposition," not a sentence. Wis. Stat. § 938.355.



NOTE: *A child and parent should be advised that these language differences are important when they complete applications that ask about criminal history in the future. Many applications ask about "convictions," but not "adjudications," so the answer to a "prior convictions" question is "no." Youth with only juvenile court histories can answer "no" to a question whether they have been arrested or have been in jail or prison. If the application asks for "adjudication," or "detention" or "correctional institution," however, the answer is "yes."*

Wis. Stat. § 938.35(1) reflects the rehabilitative purpose of the juvenile court, stating that an adjudication of delinquency "does not impose any civil disabilities ordinarily resulting from the conviction of a crime and does not operate to disqualify the juvenile in any civil service application or appointment." Unfortunately, as the Supreme Court noted in *Gault*, this "claim of secrecy... is more rhetoric than reality" *Id.*

C. Public Access to Juvenile Court Hearings

In keeping with juvenile court philosophy, the general rule is that juvenile court hearings are closed to the general public. Wis. Stat. § 938.299(1)(a). However, there are three exceptions to the rule. Juvenile court hearings are open to the public if: 1) Wis. Stat. § 938.299(1)(a): The child through counsel demands a public hearing, or 2) Wis. Stat. § 938.299(1)(ar): The petition alleges that the child committed a felony, and the child has been previously adjudicated delinquent, or 3) Wis. Stat. § 938.299(1)(ar): The petition alleges that the child violated a statute classified as a serious juvenile offense in Wis. Stat. § 938.34(4h)(a).²

If the hearing is open to the public, information learned at the hearing can be openly disclosed. Wis. Stat. § 938.299(1)(av).

All other juvenile court hearings are closed, and people who attend may be held in contempt of court if they divulge identifying information about the child or the family involved, with some narrow exceptions. Wis. Stat. § 938.299(1)(b).

In addition to the parties, their attorneys and witnesses, the court can admit anyone the court finds has "a proper interest in the work of the court," including other lawyers, researchers, and in some instances foster parents or legal custodians. Wis. Stat. § 938.299(1)(a),(1)(ag).

The court can admit news media representatives to closed hearings, but only for "the purpose of reporting the news without revealing the identity of the juvenile involved." Wis. Stat. § 938.299(1)(a).

Victims and their representatives have a right to attend closed hearings "based upon the act or alleged act," but not portions that deal with "sensitive personal matters of the juvenile or family". Victims are also bound by confidentiality requirements, except that they may start a civil action based on the alleged crime. Wis. Stat. § 938.299(1)(am),(b).



NOTE: *This section refers only to Chapter 938 hearings in the juvenile court. If a child is charged in adult criminal court, or if the case is waived to adult criminal court, the hearings are open to the public, as all adult criminal court procedures apply.*

² The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of s. 940.02 or 940.05.

CHAPTER 1

ACCESS TO RECORDS

A. Juvenile Court Records

The general rule is that juvenile court records are confidential, not open to inspection or disclosure to the public. They must be kept separate from other court files. Wis. Stat. § 938.396(2). However, there are two exceptions which allow records to be released directly to the public, and a significant number of exceptions which allow court records to be released to agencies, other courts, or persons, with direction that the receiving agency or person keep the information confidential.

There are two instances in which court records are publicly available:

Serious Juvenile Offenders: If the delinquency petition alleges commission of a “serious juvenile offender program” offense under Wis. Stat. § 938.34(4h),³ the juvenile court records are publicly available upon request, excluding physical, psychological, mental or developmental examinations and court reports or other sensitive personal information, and the requester can disclose the information to anyone. Wis. Stat. § 938.396(2g)(k). See Juvenile Court Form JD-1738A §3.⁴

Repeat Felony Offenders: If the delinquency petition alleges a felony-level offense, and the juvenile has a previous delinquency adjudication, the court records are publicly available upon request, excluding physical,

psychological, mental or developmental examinations and court reports, or other sensitive personal information and the requester can disclose the information to anyone. Wis. Stat. § 938.396(2g)(L). See Juvenile Court Form JD-1738A.⁵

The juvenile court may disclose otherwise confidential records in the following circumstances. Most of these circumstances begin with a requirement that the receiving agency or person keep them confidential. However, there are many ways in which those records can eventually become public. Understanding how juvenile court records may become public is key to advising children about significant, long-lasting collateral consequences of juvenile court involvement.

Schools: Just the filing of a delinquency petition or a Wis. Stat. § 938.13(12) petition alleging a felony if committed by an adult, triggers the juvenile court clerk’s affirmative obligation to notify the child’s school district. The clerk must again notify the school district of any disposition or case closing without a delinquency adjudication. Wis. Stat. § 938.396(2g)(m).

Criminal Background Checks: The clerk must notify the Department of Justice (DOJ) of the adjudication, when a child is adjudged delinquent for committing a serious crime as defined in Wis. Stat. §§ 48.685(1)(c)⁶ or 48.686(1)(c).⁷ DOJ may disclose that information for background checks under Wis. Stat. §§ 48.685(2) or 48.686(2) pursuant to Wis. Stat. § 938.396(2g)(o).

Firearms Restrictions: The clerk must notify the DOJ whenever a child is adjudicated delinquent for a

³ *Id.*

⁴ Request to Inspect Juvenile Court Records, State of Wisconsin, Circuit Court, JD-1738A, Rev. Date 03/2020, <<https://www.wicourts.gov/formdisplay/JD-1738A.pdf?formNumber=JD-1738A&formType=Form&formatId=2&language=en>>

⁵ *Id.*

⁶ “Serious crime” means any of the following: 1) A violation of s. 940.19 (3), 1999 stats; 2) A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21, 948.215, 948.30, or 948.53; 3) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

⁷ “Serious crime” means any of the following: 1) A violation of s. 940.12, 940.22 (2) or (3), 940.285 (2), 940.29, 940.295, or 942.09 (2); 2) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies; 3) An offense under ch. 948 that is a felony, other than a violation of s. 948.22 (2); 4) A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person. 5. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.02, 943.03, 943.04, 943.10 (2), 943.32 (2), 948.081, 948.21, 948.215, or 948.53 (2) (b) 1.

felony-level crime. DOJ uses that information for firearms checks. Wis. Stats. § 938.396(2g)(n).

Law Enforcement and Arson Investigators: Upon request, a law enforcement agency can review both paper court records and electronic court records for the purpose of investigating criminal or delinquent activity. Fire investigators can also inspect court records regarding specific criminal arson investigations. Wis. Stat. § 938.396(2g)(c),(j). See court form JD-1738A.⁸

The Department of Corrections (DOC), the Department of Children and Families (DCF), and County Departments of Social Services (DSS): These agencies may obtain juvenile court electronic records, with the requirement that they be kept confidential, and that they be used only for the purposes of providing investigative, intake and dispositional services. Wis. Stat. § 938.396(2m)(b)1.(c)1r. Also, when the court places a child in a correctional facility or secured residential care center, the court must immediately notify the appropriate department, and transfer the court report “and all other pertinent data” about the child. Wis. Stat. § 938.49(2)(a).

Criminal Courts: Upon request, paper delinquency records can be reviewed or inspected by criminal courts, district attorneys, defense attorneys and Presentence Investigation Report (PSI) writers. Wis. Stat. § 938.396(2g)(d),(dm),(dr). The records can only be used for purposes of setting bail, witness impeachment, and preparing the PSI. Wis. Stat. § 938.35(1)(a)(cm). If they are used in open court, of course, any previously confidential delinquency adjudication becomes part of a public record. See court form JD-1738A.⁹ Electronic records are also available to district attorneys and defense attorneys in criminal court, with the requirement that they maintain confidentiality and use them only for

performing “official duties.” Wis. Stat. § 938.396(2m)(b),(c)(1m).

Municipal, Family and Other Courts: Upon request, paper delinquency records can be inspected by courts and attorneys for purposes of witness impeachment. Wis. Stat. §§ 938.396(2g)(d), 938.35(1)(cm). They are available for family court hearings when child custody or paternity is at issue. Wis. Stat. §§ 938.396(2g)(g),(h), 938.35(1)(c). They are available to other delinquency courts and municipal courts exercising jurisdiction under Wis. Stat. §§ 938.17(2), 938.396(2g)(gm), 938.35(1)(b). See Juvenile Court Form JD-1738A.¹⁰

Electronic juvenile court records are also available to other juvenile courts and municipal courts exercising jurisdiction over children, with the requirement that the receiving court keep the records confidential and use the information only for the purpose of conducting or preparing for a proceeding in that court. Wis. Stat. § 938.396(2m)(b),(c). Those electronic records are also available to prosecuting attorneys and attorneys or guardians ad litem for litigants in those cases, again with the requirement of maintaining confidentiality and using them for the “purpose of performing his or her official duties” related to a proceeding. Wis. Stat. § 938.396(2m)(b),(c).

Victim-Witness Coordinator and Victim’s Insurer:

Upon request, the victim-witness coordinator can review records, and can give the name and address of the child and their parents to the victim of a crime. The victim-witness coordinator can also use the information to enforce the rights and services for victims under Chapter 950. If the insurer of a victim requests, the court is authorized to disclose the amount of restitution ordered to the victim. Wis. Stat. § 938.396(2g)(f),(fm). See Juvenile Court Form JD-1738A.¹¹

⁸ See footnote 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Sex Offender Registrants: Wis. Stat. § 938.396(2g)(em) provides that upon request, DOC can obtain court records “for the purpose of obtaining information concerning a juvenile who is required to register under s. 301.45.” See Juvenile Court Form JD-1738A.¹² DOC is not generally authorized to release that information to the public, but there are circumstances in which it may become public. Also, if the child becomes the subject of a public Chapter 980 (Sexually Violent Person Commitments), delinquency records are available for those proceedings. Wis. Stat. § 938.35(1)(e).

On Request of, or With Written Permission of a Child or Parent: When a child age 14 or older, or the child’s parent requests release of records, the court must grant the request unless it finds that inspection of the records by the named person would result in “imminent danger to anyone.” Wis. Stat. § 938.396(2g)(ag). See Juvenile Court form JD-1739A.¹³



NOTE: In some instances, potential employers or landlords may require that an applicant provide this release.

Parties to Juvenile Court Proceeding: Parties to a juvenile court proceeding have access to relevant records pursuant to discovery rules at Wis. Stat. § 938.293.

B. Law Enforcement Records

The general rule is that law enforcement records about children “may not be open to inspection or their contents disclosed.” Wis. Stat. § 938.396(1). However, there is one circumstance under which law enforcement officials can disclose otherwise confidential information directly to the public, and a wide variety of ways in which they can exchange or disclose information to other entities and persons.

A police chief or sheriff can make juvenile sex offender information available to the public “if, in the opinion of the police chief or sheriff, providing that

information is necessary to protect the public.” Wis. Stat. § 301.46(2)(e).

Law enforcement may exchange information with other law enforcement agencies, social welfare agencies, and schools, as follows:

Other Law Enforcement Agencies: Law enforcement may exchange information with the other law enforcement agencies. Wis. Stat. § 938.396(1)(b)3. Those exchanges may occur directly between agencies, or through the DOJ. The DOJ maintains the “Centralized Criminal History” (CCH) database, which includes fingerprints, identifying data, and arrest records about children that are submitted by local law enforcement agencies around the state. Any authorized law enforcement officer in Wisconsin can access that data for law enforcement purposes. Law enforcement access is through Transaction Information for the Management of Enforcement (TIME).



NOTE: According to the DOJ, it does not send juvenile records to the national FBI database.

Social Welfare Agencies: Law enforcement may exchange information with a social welfare agency, with the requirement that the social welfare agency keep the information confidential as required by Wis. Stat. §§ 48.78(2)(b), 938.78(2)(b), 938.396(1)(b)4. An “agency” is defined at Wis. Stat. § 938.78(1) as “the department of children and families, the department of corrections, a county department, or a licensed child welfare agency.” A “county department” is defined at Wis. Stat. § 938.02(2g) as a county human services or social services department.

Schools: Law enforcement may exchange information with the public, private or tribal school attended by the child, with the requirement that the school keep the information confidential under Wis. Stat. § 118.125. Wis. Stat. § 938.396(1)(b)2, 2m. Specific statutory authorization is given for law enforcement to provide information to schools about:

¹² *Id.*

¹³ Request and Authorization to Open Juvenile Court Records for Inspection, State of Wisconsin, Circuit Court, JD-1739A, Rev. Date 03/2020, <<https://www.wicourts.gov/formdisplay/JD-1739A.pdf?formNumber=JD-1739A&formType=Form&formatId=2&language=en>>

- The child's use, possession or distribution of alcohol or controlled substances.
- The child's illegal possession of a dangerous weapon.
- The child being taken into custody for a law violation.
- The child's adjudication for delinquency.

Schools, in return, are obligated to turn over records to law enforcement agencies, and if the records are "pupil records" protected by Wis. Stat. § 118.125, a court may order the school to turn them over to a law enforcement agency or fire investigator for the purpose of investigating a crime. Wis. Stat. § 938.396(1)(d).



NOTE: *To facilitate these exchanges, a law enforcement agency may enter into an "interagency agreement" with the applicable schools, social welfare agency or other law enforcement agencies "for the routine disclosure of information" authorized by the above statutes. Wis. Stat. § 938.396(1)(c)4.*

Law enforcement may disclose juvenile records in a wide variety of circumstances. Many of these parallel the provisions governing court records:

- To the news media, for purposes of reporting news without revealing the identity of the child involved. Wis. Stat. § 938.396(1)(b)1.
- To the child who is the subject of the records, if age 14 or over, or to a parent, or to a person with written permission from the child or parent. Wis. Stat. § 938.396(1)(c)1,2.
- To victims, victim-witness coordinators, and victim insurance companies in order to enforce victim rights or obtain restitution information, including the name of the child and parents. Victims and insurance companies have to keep the information confidential, except as necessary to obtain compensation for losses. Wis. Stat. § 938.396(1)(c)5,6,7.
- To criminal courts, if the child is tried in criminal court. Wis. Stat. § 938.396(1)(b)5.
- To a court exercising jurisdiction over a sexually violent person commitment pursuant to Chapter 980. Wis. Stat. § 938.396(10).
- To a petitioner who obtains a juvenile court order for disclosure, based on findings that the information sought is for good cause and cannot be obtained with reasonable effort from other sources, and that the petitioner's need for the information outweighs society's interest in protecting its confidentiality. Wis. Stat. § 938.396(1j)(c).
- To parties to a juvenile court proceeding as part of the discovery process under Wis. Stat. § 938.293.

C. Social Service Agency Records

Again, the general rule is that records of social service agencies, which includes county DSS, DCF, DOC, and licensed child welfare agencies, are confidential. Wis. Stat. § 938.78(1)(2). However, there is one circumstance under which social welfare agencies can disclose otherwise confidential information directly to the public, and a wide variety of ways in which they can exchange or disclose information to other entities and persons.

When a child has escaped from custody or has failed to return from an authorized absence, and more than 12 hours have passed since the escape or return time, the agency responsible for the child's custody or supervision can notify the public of the escape in limited circumstances set forth in Wis. Stat. § 938.78(3) and Wis. Admin. Code § DOC 376.10(8).

Social service agencies may exchange information with law enforcement agencies, other social welfare agencies, and schools, as follows:

Other Social Service Agencies: Social service agencies can exchange information with another social service agency. Wis. Stat. § 938.78(2)(b)1. These exchanges may be directly between agencies or staff or may take place through the statewide automated child welfare information system maintained by DCF. Additionally, the DCF is authorized to transfer that information to the court, thus giving the court control over its

dissemination. Wis. Stat. §§ 48.396(3)(bm), 938.78(2)(h).

Schools, Law Enforcement, Victim-Witness

Coordinator, Fire Investigator, Health Care Providers:

Social service agencies may exchange information with the entities and people listed here, about a child in the agency's care or custody. Wis. Stat. § 938.78(2)(b). The receiving agencies are required to keep the information confidential, and schools are, in return, obligated to turn over records to social welfare agencies, and if the records are "pupil records" protected by Wis. Stat. § 118.125, a court may order the school to turn them over to a social welfare agency as necessary for the agency to provide treatment and care. Wis. Stat. § 938.78(2)(b)2.



NOTE: *To facilitate these exchanges, a social welfare agency may enter into an "interagency agreement" with the applicable schools, other social welfare agencies or other law enforcement agencies "for the routine disclosure of information" authorized by the above statutes. Wis. Stat. § 938.78(2)(b)1m.*

Social welfare agencies can also disclose confidential records in the following situations:

- To the child who is the subject of the records, if age 14 or over, or to a parent, or to a person who has the written permission of the parent or 14-or-over child unless it would result in imminent danger to anyone. Wis. Stat. § 938.78(2)(ag)(am).
- To various parties involved in a sexually violent person commitment pursuant to Chapter 980. Wis. Stat. § 938.396(10).
- To relatives when a child is placed outside the home with that relative "only to the extent necessary to facilitate the establishment of a

relationship" between the child and relative. Wis. Stat. § 938.78(2)(h).

- Records about a child in its care or custody, on written request, to the Wisconsin Department of Safety and Professional Services (DSPS) or any of its examining boards or credentialing boards. Wis. Stat. § 938.78(2)(g).
- When a child in the care of a social service agency is missing, the agency must notify law enforcement and the National Center for Missing and Exploited Children. Wis. Stat. § 938.78(2m). DCF officials indicate the child's name and identifying data becomes public through that process, but the publicly available information does not state that the child was under agency care, only the city from which the child went missing.
- Other social service agencies are specifically authorized to disclose information in their files to DOC when a person who was in the custody of, or under the supervision of an agency is transferred to DOC custody, is placed under DOC supervision, or is the subject of a presentence investigation. Wis. Stat. § 938.78(2)(d).

D. Fingerprint Records

Law enforcement officers are required to obtain fingerprints, mug shots and other identifying data for all persons who are taken into custody for a delinquency offense that would be a felony if committed by an adult, and also for dozens of misdemeanors or ordinance violations. They have discretion to obtain fingerprints and identifying data for other offenses, as well. Wis. Stat. §§ 165.84(1), 165.83(1)(f).¹⁴

¹⁴ 1) For an offense which is a felony or which would be a felony if committed by an adult; 2) For an offense which is a misdemeanor, which would be a misdemeanor if committed by an adult or which is a violation of an ordinance, and the offense involves burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances or controlled substance analogs under ch. 961, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks; 3) For an offense charged or alleged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.; 4) As a fugitive from justice; 5) For any other offense designated by the attorney general.

All fingerprints and other identifying data must be sent to the DOJ within 24 hours of being taken into custody, where it is added to the Centralized Criminal History (CCH) system.¹⁵ In addition to identifying data, the “arrest” data recorded in the CCH system includes the charges that justified the custody decision. According to the DOJ, juvenile arrest data is automatically appended with a disposition of “Referral to Juvenile Authorities.”

The CCH database has three main uses. First, authorized law enforcement staff have access to the database through the TIME system. Their access includes access to juvenile records and can only be used for law enforcement and criminal justice purposes.

Next, the DOJ Firearms Unit performs firearms and concealed carry licenses background checks, also using the TIME system with access to juvenile records. However, they merely report whether or not a potential gun buyer or license applicant is prohibited from possessing firearms or being licensed, without specifying the basis for any disqualification.

Finally, potential employers, landlords, and the general public can access the CCH criminal background database through the Wisconsin Online Record Check System (WORCS).¹⁶ However, public access does not include juvenile information. For such criminal history checks, juvenile information is available only for authorized daycare and child welfare agency background checks, under Wis. Stat. §§ 48.685, 48.686.¹⁷

People can request to have their fingerprint record removed from the DOJ system if fingerprints were

taken when they were arrested or taken into custody, but then they were not charged, or they were cleared of the offense through court proceedings. Wis. Stat. § 165.84(1). The DOJ has a form for that request. See DOJ form DJ-LE-250B¹⁸ The removal request has to include documentation that they were not convicted (adjudicated) of offenses connected to the arrest (taking into custody).

According to DOJ information about removing fingerprint records, people eligible for removal are those who can prove that they were released without charges being filed, that the charges were not prosecuted or were dismissed, or they were acquitted by the court. According to the instructions accompanying the Fingerprint Record Removal Request, an informal disposition agreement or consent decree that results in dismissal of the delinquency petition by the court, would qualify for fingerprint removal.¹⁹

However, all charges that are part of the “arrest event” or are on the fingerprint card have to be dismissed or not prosecuted. Adjudication on only some charges, or on a lesser-included offense, precludes removal of fingerprint records.²⁰ So, for example, if a child is taken into custody for a felony burglary and a misdemeanor theft, and later adjudicated delinquent only for the misdemeanor theft, the fingerprint record will not be removed.

Finally, it is important to remember that expungement of a court record does not remove fingerprint records. The separate process, under Wis. Stat. § 165.84, is the only way to obtain removal of fingerprint records.

¹⁵ For more information about the CCH, see *Hall v. Wisconsin Department of Justice*, 2020 WI App 12, 391 Wis. 2d 378.

¹⁶ Welcome to WORCS, Wisconsin Online Record Check System, Wisconsin Department of Justice, <<https://recordcheck.doj.wi.gov/>>

¹⁷ CIB Frequently Asked Questions, Criminal History Unit, Wisconsin Department of Justice, <<https://www.doj.state.wi.us/dles/cib/cib-frequently-asked-questions>>

¹⁸ Wisconsin Fingerprint Removal Request, DJ-LE-250B, Rev. Date 01/03/2017, Office of the Attorney General, Wisconsin Department of Justice, <<https://www.doj.state.wi.us/sites/default/files/dles/cib-forms/record-check-unit/DJ-LE-250B%20%28Draft%201032017%29%20-%20Fingerprint%20Removal%20Request.pdf>>

¹⁹ Background Check and Criminal History Information, Wisconsin Department of Justice, <<https://www.doj.state.wi.us/dles/cib/background-check-criminal-history-information>>

²⁰ *Id.*

E. DNA Records

Wis. Stat. § 165.76 requires children to provide DNA samples to law enforcement when: 1) They are taken into custody for a “violent crime” as defined in Wis. Stat. § 165.84(7)(ab).²¹ Wis. Stat. § 165.76(1)(gm). The juvenile court is directed to check at detention hearings and plea hearings whether a DNA sample has been taken. If it has not, the court is statutorily required to order a sample. Wis. Stat. §§ 938.21(1m), 938.30(2m); or 2) They are adjudicated delinquent for a felony, or for a violation of Wis. Stat. §§ 940.225(3m), 941.20(1), 944.20, 944.30(1m), 944.31(1), 944.33, 946.52 or 948.10(1)(b). Wis. Stat. § 165.76(1)(am). Wis. Stat. § 938.34(15) requires the court to make a DNA analysis part of the dispositional order in those cases.

DNA stays in the DOJ data bank indefinitely, unless the person successfully files for expungement under Wis. Stat. § 165.77(4)(am).²² If the DNA requirement was due to an adjudication, the statute requires a court order “reversing, setting aside or vacating” the adjudication. An expungement order is not sufficient.

If the DNA data is stored because the child was taken into custody, the child can get the DNA data expunged if:

- The delinquency petition alleging commission of a violent crime that arose from the taking of custody, has been dismissed, or
- The trial court reached final disposition of the charges, and did not adjudge the child delinquent for a violent felony, or

- No delinquency petition or criminal complaint was filed alleging a violent crime and a year has passed, or
- The child was adjudged delinquent of a violent crime, but the adjudication was reversed, set aside or vacated.

F. Firearm and Body Armor Records

When notice of a felony delinquency adjudication is sent to the DOJ by the clerk of court, it is entered into the TIME system, which the firearms registry section uses to conduct background checks for firearm purchases and concealed carry licenses. Wis Stat. § 938.396(2g)(n).

However, under Wis. Stat. § 941.29(4m)(8) a juvenile delinquency adjudication does not bar firearm possession if a “court subsequently determines that the person is not likely to act in a manner dangerous to public safety.” The burden of proving “not likely” is by a preponderance of evidence by the person. Wis. Stat. § 938.341. See Juvenile Court form JD-1771.²³



NOTE: *Expungement of a juvenile adjudication does not automatically remove the firearms restriction. Any expungement request should be accompanied by a JD-1771²⁴ request for removal of firearms restrictions. If a judge grants a request to remove a firearm restriction, the order is sent to the firearms registry section of the DOJ for removal.*

Wis. Stat. § 941.291(2)(c) also prohibits a person who has been adjudicated delinquent for a “violent felony” from possessing body armor.²⁵ It is possible to obtain

²¹Felony violation, or solicitation, conspiracy or attempt to commit a violation of §940.01, 940.05, 940.198(2), 940.21, 940.225(1)(2) or (3), 940.235, 940.30, 940.302(2), 940.305, 940.31, 940.32(2)(2e) or (2m), 940.43, 940.45, 941.20, 941.21, 941.327, 943.02, 943.06, 943.10, 943.23(1g) or (2), 943.32, 948.02(1) or (2), 948.025, 948.03(2)(a), or (c) or (5)(a)2,3,4, or 4, 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, 948.095, 948.30(2); a violation of 940.02, 940.03, 940.06, 940.07, 940.08, 940.09(1c), 940.10, 940.19(2), (4), (5), or (6), 940.195(2),(4),(5) or (6), 940.20, 940.201(2), 940.203(2), 940.207(2), 940.208, 940.23, 941.30, or 948.03(3) or (5)(a)4. Also, a felony if a 939.621 penalty enhancer could be imposed.

²² Wisconsin DNA Databank Record Expungement Request, Office of the Attorney General, Wisconsin Department of Justice, DJ-LE-177, Rev. Date 3/27/2015, <https://www.doj.state.wi.us/sites/default/files/dles/clab-forms/2018-07_DJ-LE-177.pdf>

²³ Petition for Removal of Firearm Restriction (Juvenile), State of Wisconsin, Circuit Court, JD-1771, Rev. Date 05/2020, <<https://www.wicourts.gov/formdisplay/JD-1771.pdf?formNumber=JD-1771&formType=Form&formatId=2&language=en>>

²⁴ *Id.*

²⁵ “Violent felony” means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.198, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23,

a complete or partial exemption from the prohibition, if the applicant can show that they have a “reasonable need to possess body armor” to ensure personal safety, to earn a livelihood, or as a condition of employment, and that the person is likely to use the body armor in a safe and lawful manner. Wis. Stat. §§ 938.3415, 941.291(4)(a).

G. Physical, Psychological, Mental or Developmental Evaluations, Drug and Alcohol Assessments, and Counseling and Treatment Records.

Under circumstances set forth in Wis. Stat. § 938.295, courts can order physical, psychological, mental or developmental examinations of children, or alcohol and other drug abuse assessments. *See* Juvenile Court forms JD 1731²⁶, 1732²⁷. While such evaluations and assessments would normally fall within the medical records protections in the Health Insurance Portability and Accountability Act (HIPAA), a court-ordered evaluation or assessment results in a report to the court, where it becomes part of the court record. The reports may also make their way into other court filings, such as dispositional reports and recommendations, and motions and briefs by the parties. As part of the court record, they are subject to the confidentiality rules (and exceptions) regarding court records.



NOTE: Courts and attorneys can help to protect the privacy of a child by ordering reports on Wis. Stat. § 938.295 examinations and assessments to be sealed in the court record, and by requesting or ordering redaction of references to them in other court records.

Under circumstances set forth in Wis. Stat. § 938.296, courts can order testing for sexually transmitted diseases, HIV, and communicable diseases. In those cases, however, the test results are not reported to the court, thus do not become part of the court record. Rather, Wis. Stat. § 938.296 requires that the court order that results be released only to the child’s parents, the alleged victim and/or victim’s parents, and the health care professionals who care for the child and the victim. However, courts and attorneys should consider sealing the application or motion for testing, and the court order for testing.

At disposition, the court can order individual, family or group counseling, special treatment or care, and alcohol or drug treatment or education. Wis. Stat. §§ 938.34(2)(b), 938.34(6r), 938.34(14s). Even if the court does not specifically order counseling or treatment, a child placed on supervision may be expected to participate in counseling that is not specifically ordered by the court. Children placed in corrections or a residential treatment center are often required to participate in various types of treatment, such as drug and alcohol treatment, anger management, or critical thinking.

It is common practice to require parents and children to sign releases for disclosure of treatment records to the child’s social worker. The purpose of such releases is to allow the social worker to monitor cooperation and progress in treatment. However, if a child reveals previously undisclosed conduct, and that conduct is reported to authorities, it may become the basis for delinquency or criminal charges. For example, children in sex offender treatment may reveal previously undisclosed sexual conduct with another child. If that information is reported to a social worker or a law

940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, 948.085, or 948.30; or, if the victim is a financial institution, as defined in s. 943.80 (2), a felony, or the solicitation, conspiracy, or attempt to commit a felony under s. 943.84 (1) or (2).

²⁶Petition for Examination or Assessment, State of Wisconsin, Circuit Court, JD-1731, Rev. Date 11/2019, <<https://www.wicourts.gov/formdisplay/JD-1731.pdf?formNumber=JD-1731&formType=Form&formatId=2&language=en>>

²⁷ Order for Examination or Assessment, State of Wisconsin, Circuit Court, JD-1732, Rev. Date 11/2015, <<https://www.wicourts.gov/formdisplay/JD-1732.pdf?formNumber=JD-1732&formType=Form&formatId=2&language=en>>

enforcement officer by the treatment provider, charges may result.²⁸



NOTE: *Juvenile court professionals may wish to protect the privacy of the child and family as much as possible, while allowing social services and the court to assess treatment needs and monitor compliance with the dispositional order, by negotiating a release-of-information agreement that specifies what information can be disclosed by the treatment provider.*

H. Expungement

Wis. Stat. § 938.355(4m)(a) allows anyone who has been adjudicated delinquent to request “expungement” of the adjudication, if they are at least 17 years old, and if they can show that they have “satisfactorily complied with the conditions of the dispositional order.”²⁹ The court has discretion to expunge the record if it concludes that “the juvenile will benefit from, and society will not be harmed by” the expungement.

Expungement is initiated by filing Juvenile Court form JD-1780.³⁰ The form includes a space for the district attorney to make a recommendation about expungement. The court may or may not have a hearing on expungement. In cases in which the district attorney agrees, the court will often grant the request without a hearing.



NOTE: *If expungement is part of a plea negotiation, attorneys may want to ask that it be noted on the dispositional order as specific judges and attorneys may no longer be available at time of the request.*

Expungement is a limited action – it seals the court record of the specified adjudication only. It does not expunge records of other adjudications, or law enforcement records, social service records, district attorney records, or DOJ records. Expungement does not eliminate firearms restrictions based on the delinquency, so expungement motions should be accompanied by motions to lift firearms restrictions pursuant to Wis. Stat. § 941.29(4m)(8). Juvenile court professionals should also consider whether fingerprint records can be expunged pursuant to Wis. Stat. § 165.84(1), and whether DNA records can be expunged pursuant to Wis. Stat. § 165.77(4)(am).



NOTE: *Despite the limited nature of expungement, it is a valuable asset in dealing with the collateral consequences of a delinquency adjudication. In some instances, such as employment as a child care provider or an immigration adjustment of status, the decision-makers have discretion to determine whether an applicant has been rehabilitated. A court decision to expunge an adjudication may be strong evidence of rehabilitation.*

²⁸ Many treatment providers are mandatory reporters for purposes of child abuse and sexual abuse pursuant to Wis. Stat. § 48.981. Although mandatory reporters are required to report abuse when their child-client is the victim of abuse or threat of abuse, some treatment professionals interpret their responsibility to include cases in which the child-client is the perpetrator of abuse. Treatment providers may also have a duty, pursuant to Wis. Stat. § 175.32, to report if they believe in good faith based on a threat made by an individual seen in the course of professional duties regarding violence in or targeted at a school, that there is a serious and imminent threat to the health or safety of a student or school employee or the public. Finally, mental health professionals may have a “duty to warn” when they believe a client “has a substantial probability of harm to himself or herself or another person.” Wis. Stat. § 51.17(3)(a).

²⁹ § 938.355(4m)(b) requires expungement if the juvenile was adjudicated delinquent for one of several invasion of privacy crimes under Wis. Stat. § 942.08, it was the juvenile’s first adjudication, and the dispositional order has been satisfactorily completed.

³⁰ Petition to Expunge Court Record of Adjudication/ Recommendation of District Attorney, State of Wisconsin, Circuit Court, JD-1780, Rev. Date 11/2019, <<https://www.wicourts.gov/formdisplay/JD-1780.pdf?formNumber=JD-1780&formType=Form&formatId=2&language=en>>

CHAPTER 2

CONSEQUENCES FOR EDUCATION

A. School Child is Attending

Juvenile court clerks are required to notify school districts of felony delinquency petitions, and all adjudications. Wis. Stat. § 938.396(2g)(m). The statutes also allow free exchange of information between law enforcement agencies and the child's school district. Wis. Stat. § 938.396(1)(b)2,2m. These notifications may, in some circumstances, lead to school discipline, suspension or expulsion, even if the behavior did not take place on school grounds.

Just the filing of a delinquency petition or a Wis. Stat. § 938.13(12) petition, if the offense alleged is a felony, triggers an affirmative obligation for the juvenile court to notify the child's school district (including private schools and tribal schools). The clerk must tell the school "the nature of the delinquent act alleged" in the petition. If the case is closed, dismissed or terminated without a delinquency finding, the clerk must notify the applicable school board. Wis. Stat. § 938.396(2g)(m); See Juvenile Court Form JD-1725³¹.

An adjudication of delinquency triggers another notification to the school board, including a description of the "nature of the violation committed" and the disposition. Courts usually do this by sending the dispositional order to the school board. This notification requirement is not limited to adjudications for felony-level offenses. Wis. Stat. § 938.396(2g)(m)2. See Juvenile Court Form JD-1725³². If the adjudication is for a felony committed at the request of, or for the benefit of a gang, the clerk must notify the school of that fact. Wis. Stat. § 938.396(2g)(m)4.

Schools have authority to discipline, suspend or expel a student for conduct at school or conduct while

under the supervision of a school authority. Wis. Stat. § 120.13(1). Schools also have authority to suspend or expel for conduct off school property that "endangers the property, health or safety" of others at school or under school supervision, or "endangers the property, health or safety" of any school employee or school board member. Wis. Stat. § 120.13(1)(b)2.d.,(c)1. Threats to endanger property, health or safety, are sufficient grounds for suspension or expulsion. Also, conveying false bomb threats is sufficient grounds for suspension or expulsion. Wis. Stat. § 120.13(1)(b)2.b.,(c)1.

School authorities are required to suspend a student who possesses a firearm at school or while under school supervision. Wis. Stat. § 120.13(1)(bm). They have authority to expel a student who possesses a firearm off-grounds, if the school board is satisfied that the "interest of the school demands" expulsion. Wis. Stat. § 120.13(1)(c)1.



NOTE: *These statutory standards apply to all school districts, but each school district may have specific policies and standards as well. Juvenile justice professionals should familiarize themselves with local school suspension and expulsion policies.*

Wis. Stats. §§ 118.125(5)(b), 118.127, 120.13 prohibit using law enforcement records and court records as the "sole basis" for suspension or expulsion. However, the statute does not prohibit schools from using the alleged facts in law enforcement or court records as a basis for its own investigation of student conduct – investigations that can lead to discipline, suspension or expulsion.

If the dispositional order results in the child being enrolled in a different school district, the juvenile court clerk has to inform the new school district of any previous delinquency adjudications in that court, the nature of the adjudication charges, and the dispositions. Wis. Stat. § 938.396(2g)(m)5.

³¹ Notice to School Board, State of Wisconsin, Circuit Court, JD-1725, Rev. Date 03/2020, <<https://www.wicourts.gov/formdisplay/JD-1725.pdf?formNumber=JD-1725&formType=Form&formatId=2&language=en>>

³² *Id.*

Finally, if school attendance is a condition of the dispositional order, the juvenile clerk of court is required to notify the applicable school district of that condition. Wis. Stat. § 938.396(2g)(m)3. The school district is required, in turn, to notify the agency supervising the child within five days of violation of the school attendance requirement. Wis. Stat. § 118.125(2)(cm).

School boards are directed to limit disclosure of juvenile law enforcement or court information to “employees who work directly with the juvenile or who have been determined by the governing body or its designee to have legitimate educational interests, including safety interests, in the information.” School boards and employees are prohibited from further disclosing the information to others. Wis. Stat. §§ 938.396(2g)(m)6, 118.127.

B. Wisconsin Interscholastic Athletic Association (WIAA) Athletics

For youth participating in school athletics, continuing eligibility will be at issue in juvenile delinquency proceedings. The WIAA has set the following guidelines concerning participation in school athletics³³: 1) Every school district must establish a Code of Conduct which applies year-round to prospective athletes; 2) That Code of Conduct must, at a minimum, call for a one game suspension for any in-season violations involving possession and/or use of alcohol, possession and/or use of tobacco products and/or the possession, use, buying or selling of controlled substances; and 3) Any student charged and/or convicted of a felony shall, upon the filing of felony charges, become ineligible for all further participation until the student has paid his/her debt to society and the courts consider the sentence served (to include supervision).



NOTE: The “charged and/or convicted of a felony” language suggests that this rule only applies to children who are charged in adult criminal court. But some school districts also

apply it to children who are “petitioned” in juvenile court for behavior that “would be a felony if committed by an adult.” It is important to know the applicable interpretation in the particular youth’s school district.

WIAA rules do not indicate specific penalties, other than those stated above. Any suspension which results in a student missing any portion of WIAA tournament competition, results in that athlete being ineligible for the remainder of the WIAA tournament series in that sport.

Unlike with school discipline, law enforcement and court records regarding delinquent activity can be “the sole basis for taking action against a pupil under the school district’s athletic code.” Wis. Stat. §§ 118.127, 938.396(1)(c)3, 938.396(2g)(m)6).



NOTE: Each school district has its own Code of Conduct. Juvenile justice professionals need to know the specific penalties within each youth’s school district. This is especially important when it comes to drug offenses. Many school districts do not adhere to the one game minimum. Many have penalty structures worded in “percentage of season” versus a set number of games. Further, many districts have a reduced penalty for those who self-disclose.

The school must provide an opportunity for the student to be heard prior to any penalty being enforced (except for felony charges). If a student appeals a suspension, according to the school’s appeal procedure, the student is ineligible during the appeal process.

C. Post-secondary Education and Financial Assistance

A delinquency adjudication does not bar access to higher education in most cases. Colleges have different application forms, but the applications for

³³ Senior High Handbook (August 31, 2021). Wisconsin Interscholastic Athletic Association, <<https://www.wiaawi.org/Portals/0/PDF/Publications/2021-22handbook.pdf>>; Middle Level Handbook (January 21, 2021). Wisconsin Interscholastic Athletic Association, <<https://www.wiaawi.org/Portals/0/PDF/Publications/jrhandbook.pdf>>

the University of Wisconsin and its various campuses do not ask about criminal or delinquency backgrounds, or incarceration status. Similarly, the state's largest technical schools, Milwaukee Area Technical College (MATC) and Madison College, do not ask about criminal or delinquency backgrounds, or incarceration status. However, admissions offices sometimes become aware of an applicant's delinquent acts through other sources, such as a high school contact, media, or a victim. If that information reveals a violent crime or sexual assault, it may be taken into account in a "holistic" admissions decision-making process.

Universities also screen applicants for campus housing. Thus, it may be possible for a prospective student to be admitted to the university, but not be allowed to live in a dorm or similar campus housing. For example, youth who are on the sex offender registry based on a juvenile delinquency offense may be excluded from campus housing.

A delinquency adjudication does not bar access to federal student financial aid. The application form for financial aid, called the Free Application for Federal Student Aid (FAFSA), is phasing out all questions about drug convictions or adjudications. Delinquency adjudications do not disqualify a person for federal student aid, although youth who are incarcerated at the time of application may find that their options are limited.³⁴

³⁴ Federal Student Aid for Students in Adult Correctional and Juvenile Justice Facilities, 11/2021, Federal Student Aid, An Office of the U.S. Department of Education, <<https://studentaid.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf>>

CHAPTER 3

PROFESSIONAL LICENSING

A. Licensing in General

More than 200 professions require licenses through the Wisconsin Department of Safety and Professional Services (DSPS). They include accountants, plumbers, electricians, barbers, cosmetologists, dentists and hygienists, engineers, funeral directors, martial arts instructors, nurses, doctors and many other health professionals, social workers, substance abuse counselors and welders. Other departments also license and regulate various professions. The Department of Public Instruction (DPI) licenses education professionals; the Department of Revenue (DOR) regulates businesses selling alcoholic beverages and tobacco; DCF regulates child care centers and staff, as well as residential child welfare entities such as group homes, foster homes and residential treatment centers; and DHS regulates caregiver licensing as well as hospitals, nursing homes, adult family homes, hospices, assisted living facilities, and other care providers.

Wis. Stat. § 111.335(4)(b) prohibits any licensing agency from refusing a license, or suspending a license, based on a delinquency adjudication, unless the adjudication was for an “exempt offense.” Exempt offenses are defined as any violation of Chapter 940,

and various violations of Chapter 948.³⁵ Wis. Stat. § 111.335(1m)(b). The one major exception to this rule is by DCF. By statute, child care and child welfare licenses can be denied based on delinquency adjudications. DCF licensing is discussed in subsection B.

In practice, “criminal background” forms for the DSPS, DPI and DHS do not ask applicants to disclose juvenile adjudications for licensing, and the DOJ does not provide delinquency records when those agencies do background checks. See WSPS form 2252³⁶, 2253³⁷, 2254³⁸ and 3085³⁹. The WSPS forms ask only if an applicant has been “convicted.” The forms do not ask about “exempt” delinquency adjudications.

The same advice is given by DPI with regard to its criminal background questions for teacher licensing. Specifically, “Juvenile adjudications do not need to be disclosed on your application form. However, if you were prosecuted as an adult for an offense waived into adult court, you must report that information.”⁴⁰ The DPI criminal background questions (called the “Conduct and Competency Questions,”) ask if the applicant has ever been required to register with a state or federal sex offender registration program.⁴¹ That question seems to include registration ordered by a juvenile court.

The DHS Licensing Form, F-82064,⁴² asks if the applicant has “any criminal charges pending,” and if

³⁵ Wis. Stat. §§ 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095.

³⁶ Convictions and Pending Charges Form, #2252, Rev. Date 12/30/2021, State of Wisconsin, Department of Safety and Professional Services, <<https://dsps.wi.gov/Credentialing/General/FM2252.pdf>>

³⁷ Barbering and Cosmetology Convictions, Form # 2253, Rev. Date 12/30/2021, State of Wisconsin, Department of Safety and Professional Services, <<https://dsps.wi.gov/Credentialing/Business/fm2253.pdf>>

³⁸ Convictions and Pending Charges, Form # 2254, Rev. Date 12/30/2021, State of Wisconsin, Department of Safety and Professional Services, <<https://dsps.wi.gov/Credentialing/General/Fm2254.pdf>>

³⁹ Application for Predetermination, Form # 3085, Rev. Date 2/28/202, State of Wisconsin, Department of Safety and Professional Services, <<https://dsps.wi.gov/Credentialing/General/fm3085.pdf>>

⁴⁰ Frequently Asked Questions-Background check, retrieved 3/19/2022, Wisconsin Department of Public Instruction, <<https://dpi.wi.gov/licensing/background-check/faq>>

⁴¹ Licensing Resource, June 2020, Wisconsin Department of Public Instruction, <https://dpi.wi.gov/sites/default/files/imce/licensing/pdf/Preview_CC.pdf>

⁴² Background Information Disclosure, F-82064, 1/2022, Wisconsin Department of Health Services, Licensing Resource, June 2020, Wisconsin Department of Public Instruction, <https://dpi.wi.gov/sites/default/files/imce/licensing/pdf/Preview_CC.pdf>, <<https://www.dhs.wisconsin.gov/forms/f8/f82064.pdf>>

the applicant has ever been “convicted” of a crime. When DHS sends a background check request to the DOJ does not include delinquency adjudications in its response.

DOR, which establishes standards for local governments to issue licenses for alcohol establishments and bartender licenses also asks about “convictions,” not adjudications, although there is an additional category for being a “habitual law offender.”⁴³ The interpretation of that standard is up to the local government authority.

B. Licensing for Child Care and Child Welfare Agencies

DCF is the licensing agency for group homes, shelter care facilities, and child welfare agencies (residential care centers). Wis. Stat. § 48.66. It also licenses child placing agencies. Wis. Stat. § 48.60. DCF is prohibited from issuing a license for agencies or facilities if the licensee has been adjudicated delinquent or if a delinquency petition is pending for one of the many “serious crimes” listed in Wis. Stat. § 48.685(1)(c).⁴⁴ Wis. Stat. § 48.685(4m)(a), Wis. Admin. Code DCF Ch. 12, DCF-F-2978⁴⁵.

Similarly, Wis. Stat. § 48.686(4m) regulates child care centers, stating that a licensing agency cannot issue a license to someone who has been adjudicated

delinquent or has a pending delinquency petition for one of the even-longer list of serious crimes in Wis. Stat. § 48.686(1)(c)⁴⁶, or if they are registered as a sex offender. Wis. Admin. Code Ch. DCF 13, DCF-F-5296⁴⁷.

In general, a licensee operates a facility. A person does not need to be licensed to be an employee of a facility, but the bars to licensure may also serve as bars to employment. For both child welfare agency licensing and child care licensing, the statutes prohibit licensees from employing or contracting with a person who has been adjudicated delinquent for a “serious crime.”⁴⁸ They also prohibit licensees from having a household member reside at the child care program, or congregate care facility, if that household member is age 10 or older and has been adjudicated delinquent, or has a pending delinquency petition for a serious crime, or is registered as a sex offender. Wis. Stat. §§ 48.685(4m)(b), 48.686(4m)(a).

An applicant for an agency license or a “congregate care” license who has an adjudication for a “serious crime” has an opportunity to show, by clear and convincing evidence, that he or she has been rehabilitated. Wis. Stat. § 48.685(5)(a), *See Residential Care Centers, Group Homes, Shelter Care Facilities, and Child-Placing Agencies Barred Crimes Under Section 48.685 Stats.*⁴⁹ For child care licenses, some of the “serious crimes” are a permanent bar. For others,

⁴³ Operators, Licenses Alcohol Beverages Fact Sheet 3104, Rev. Date 8/20/2018, State of Wisconsin Department of Revenue, <<https://www.revenue.wi.gov/DOR%20Publications/3104OperatorsLicenses.pdf>>

⁴⁴ “Serious crime” means any of the following: 1) A violation of s. 940.19 (3), 1999 stats; 2) A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21, 948.215, 948.30, or 948.53; 3) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

⁴⁵ Background information disclosure, DCF-F-2978-E, Rev. Date 8/2019, Wisconsin Department of Children and Families, <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdcf.wisconsin.gov%2Ffiles%2Fforms%2Fdoc%2F2978.docx&wdOrigin=BROWSELINK>>

⁴⁶ “Serious crime” means any of the following: 1) A violation of s. 940.12, 940.22 (2) or (3), 940.285 (2), 940.29, 940.295, or 942.09 (2); 2) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies; 3) An offense under ch. 948 that is a felony, other than a violation of s. 948.22 (2); 4) A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person. 5. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.02, 943.03, 943.04, 943.10 (2), 943.32 (2), 948.081, 948.21, 948.215, or 948.53 (2) (b) 1.

⁴⁷ Background Check Request, DCF-F-5296-E, Rev. Date 10/2019, Wisconsin Department of Children and Families, <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdcf.wisconsin.gov%2Ffiles%2Fforms%2Fdoc%2F5296.docx&wdOrigin=BROWSELINK>>

⁴⁸ See footnote 44, 46.

⁴⁹ Residential Care Centers, Group Homes, Shelter Care Facilities, and Child-Placing Agencies Barred Crimes Under Section 48.685 Stats., retrieved 3/19/2022, Wisconsin Department of Children and Families <<https://dcf.wisconsin.gov/files/cwlicensing/pdf/cwbarredcrimes.pdf>>

the applicant may show rehabilitation after five years.
Wis. Stat. § 48.686(5)(a), *See* “Barred Offenses -
Regulated Child Care.”⁵⁰

⁵⁰ Barred Offenses - Regulated Child Care, Effective July 19 2019, Rev. 10/2019, Wisconsin Department of Children and Families,
<<https://dcf.wisconsin.gov/files/publications/pdf/5206.pdf>>

CHAPTER 4

EMPLOYMENT

A. In General

In general, Wisconsin law prohibits discrimination based on “conviction record,” and a delinquency adjudication is included in the definition of “conviction record.” Wis. Stat. §§111.321, 111.32(1),(3). However, the definition of “discrimination” has exceptions for certain offenses and professions.

Generally, it is not discrimination to refuse to hire a person if “the individual has been convicted of any felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.” Wis. Stat. § 111.335(3)(a)1. There is ambiguity about whether this exception, referring to “has been convicted of,” applies to juvenile adjudications.

If a bond is required for the job, and the person is “not bondable,” an employer may refuse to hire, or may fire an employee. Wis. Stat. § 111.335(3)(a)2.

Employment in the field of private investigation, private security guards, and burglar alarm installers, may be denied if the person “has been convicted of a felony” and “has not been pardoned for that felony.” Wis. Stat. § 111.335(3)(b),(c). Again, it is unclear if this exception applies to delinquency adjudications.

B. Education Agencies

Educational agencies, defined broadly to include state prisons, juvenile correctional facilities and secured

residential care centers, the Mendota and Winnebago Mental Health Institutes, the state schools for the deaf and the blind, a state center for the developmentally disabled, and all public and private schools, may refuse to hire or fire a person “who has been convicted of a felony and has not been pardoned for that felony.” Wis. Stat. §§ 111.335(1m)(a), 111.335(3)(e). The language, “convicted of a felony,” suggests that only adult convictions may disqualify a person from education employment, but there is no authoritative interpretation of whether it applies to delinquency adjudications.

C. Child Care and Child Welfare Work

Wis. Stat. § 48.685 (4m)(b) prohibits child welfare agencies, group homes, shelter care facilities, and residential care centers from employing or contracting with a caregiver or congregate care worker, if the employee or contractee has been adjudicated delinquent or has a pending delinquency petition for one of the “serious crimes” listed in Wis. Stat. § 48.685(1)(c).⁵¹ Wis. Stat. 48.685(4m)(b)2m prohibits employment at congregate care facilities if the employee was “charged” with a violation of a number of Chapter 948 crimes, but the “charge was dismissed or amended as part of a plea agreement.” The use of the word “charge” suggests that this law does not apply to juvenile delinquency cases.

Wis. Stat. § 48.686(4m) enacts similar limitations on child care centers, stating that a child care agency may not employ or contract with someone to provide child care who has been adjudicated delinquent for one of the serious crimes listed in Wis. Stat. § 48.686(1)(c)⁵² or if they are registered as a sex offender.

⁵¹ “Serious crime” means any of the following: 1) A violation of s. 940.19 (3), 1999 stats; 2) A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21, 948.215, 948.30, or 948.53; 3) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies; 3r) For purposes of licensing a foster home for the placement of a child or of providing subsidized guardianship payments to an interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a successor guardian under s. 48.623 (6) (bm), or of permitting a person to be a caregiver or nonclient resident of a licensed foster home, any violation listed in subd. 1. to 3. or sub. (5) (bm) 1. to 4; 4) A violation of the law of any other state or United States jurisdiction that would be a violation listed in subd. 1., 2., 3., or 3r. if committed in this state.

⁵² “Serious crime” means any of the following: 1) A violation of s. 940.12, 940.22 (2) or (3), 940.285 (2), 940.29, 940.295, or 942.09 (2); 2) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies; 3) An offense under ch. 948 that is a felony, other than a violation of s. 948.22 (2); 4) A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person. 5. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.02, 943.03, 943.04, 943.10 (2), 943.32 (2), 948.081, 948.21, 948.215, or 948.53 (2) (b) 1.

DCF-F-5296⁵³, the background check form for child care licensing and employee screening, specifically asks if the applicant was “ever adjudicated delinquent by a court of law or tribal court when [you] were aged 10 to 17 years?” DCF-F-2978⁵⁴, the background check form for child welfare licensing and employee screening also asks if the applicant was “ever adjudicated delinquent by a court of law, including tribal court,” for a crime or ordinance violation. In both cases, the applicant must describe the delinquent act, its date, location, and location of the court, and notes that the applicant may be asked to provide a certified copy of the delinquency petition, adjudication, or other relevant court or police documents.

Both forms also ask if the applicant has ever been required to register as a sex offender. Additionally, they ask if the applicant has been the subject of investigation, or has been found to have abused, neglected, or stolen the property of a child, adult or elderly person.

If the background check shows that the applicant was adjudicated delinquent for a “serious offense⁵⁵,” they will be excluded from employment unless they can prove rehabilitation. Wis. Stat. § 48.685(5). An applicant for child care employment is not eligible to prove rehabilitation until 5 years have elapsed from the completion of disposition. Wis Stat. §§ 48.686(4m), 48.686(5)(a). If the applicant was adjudicated delinquent for a non-serious offense, the agency must determine if the applicant's offense was “substantially related” to client care or program activities. Wis. Stat. §§ 48.685(5m), 48.686(5m).

D. Law Enforcement

Jobs in law enforcement do not require a license, but the DOJ Law Enforcement Standards Board does set

minimum qualifications for recruitment and employment, and “certifies” law enforcement personnel who meet those qualifications, as well as various training and education standards. The minimum employment standards also apply to tribal law enforcement and jail and/or juvenile detention officers.

Among the various training, education, and physical fitness standards is a requirement of a valid driver license, and the following: 1) Applicants must not have been convicted of a felony-level offense; 2) Applicants must not have been convicted of a domestic abuse crime; and 3) Applicants must be of good character.

The first two standards, referencing “conviction” of felony-level offenses or domestic abuse offenses, are ambiguous, as to whether they apply to delinquency adjudications. However, delinquency adjudications discovered in the background investigation would be relevant to the “good character” requirement.

The “good character” criterion requires a written report, including a search of local, state and national fingerprint records, a background investigation, and any other investigation that may “detect conditions which adversely affect performance of one’s duty as a law enforcement officer or jail or juvenile detention officer.” Wis. Admin. Code LES 2.01.

E. Eligibility for Job Corps

Job Corps is an education and job training program run by the federal Department of Labor, for youth, ages 16 to 24, who are low income and face barriers to education and employment, such as being a school dropout, being homeless, being a parent, being in foster care, or lacking basic skills needed for workforce preparation. 20 CFR 686.400(a). There are two Job Corps sites in Wisconsin – one in Milwaukee, and one

⁵³ Background Check Request, DCF-F-5296-E, Rev. Date 10/2019, Wisconsin Department of Children and Families, <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdcf.wisconsin.gov%2Ffiles%2Fforms%2Fdoc%2F5296.docx&wdOrigin=ROWSLINK>>

⁵⁴ “Serious crime” means any of the following: 1) A violation of s. 940.19 (3), 1999 stats; 2) A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21, 948.215, 948.30, or 948.53; 3) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

⁵⁵ *Id.*

in the Chequamegon-Nicolet National Forest near Laona, called “Blackwell.”

Job Corps does not automatically disqualify anyone based on a delinquency adjudication. It disqualifies people “convicted” of felony murder, child abuse, and sexual assault. Other than those convictions, “no individual shall be denied a position in the Job Corps solely on the basis of individual contact with the criminal justice system.” 29 U.S.C. §3195(b)(2)(3).

The most common intersection between Job Corps and the juvenile justice system involves youth who are on supervision, but want to join the Job Corps. People on probation, parole, under a suspended sentence or “under the supervision of any agency as a result of court action or institutionalization,” are ineligible for Job Corps *unless* the court or supervising agency certifies in writing that the applicant has responded positively to supervision, that it will release the applicant from supervision, and that it will permit the applicant to leave the area or the state while enrolled in Job Corps. If the applicant owes more than \$500 in fines or restitution, they must settle the restitution, or get the court’s agreement to suspend payment during Job Corps enrollment. 20 CFR §686.410. See “Job Corps Policy and Requirements Handbook.”⁵⁶

In determining eligibility, Job Corps staff also evaluate the likelihood that the applicant “can participate successfully in group situations and activities” and will not interfere with other students’ successful participation in the program. These standards allow consideration of anti-social conduct such as assault, illegal firearm possession, inappropriate sexual behavior and theft, whether or not it was adjudicated in juvenile court.⁵⁷

F. Military Enlistment

All branches of the military have eligibility criterion called “character/conduct,” which says its purpose is to “minimize entrance of persons who are likely to become disciplinary cases, security risks, or who are

likely to disrupt good order, morale, and discipline.” 32 CFR §66.6(8). As a general rule, an “adverse adjudication” for any serious sex offense, and an “adverse adjudication” for more than one felony level offense will make a person ineligible for military enlistment. 32 CFR §66.6(8)(i)-(vi) provides more details as it relates to ineligibility, which are summarized below:

Those who are ineligible include:

- Anyone on any form of judicial restraint, i.e. bond, probation, parole.
- Anyone who has a “significant criminal record,” which includes a person “who has been convicted of a felony.” This includes juvenile delinquency charges because the definition of “conviction” includes any “adverse adjudication of guilt,” including one by a juvenile court. 32 CFR 66.3. It is possible to get a waiver of this criterion if there is just one “major misconduct,” violation. 32 CFR 66.7.



NOTE: An “adverse adjudication” is also defined broadly in 32 CFR §66.3, to include any decision by a court, specifically including a juvenile court, that is not an unconditional drop or dismissal of charges, or an acquittal. A deferred prosecution agreement or consent decree, for example, is an adverse adjudication. Expungement is irrelevant to the military eligibility criterion.

- Anyone who has two “misconduct” offenses (defined as laws punishable by six months to a year of incarceration). It is possible to get a waiver of this criterion.
- Anyone who has a “pattern of misconduct,” defined as one “misconduct” offense and four

⁵⁶ Policy Requirements and Handbook, Chapters 1-6, March 15 2022, U.S. Department of Labor, Office of Job Corps, <[https://prh.jobcorps.gov/Entire%20PRH%20PDF/PRH%20\(Chapters%201-6\)%20-%2003.15.22.pdf](https://prh.jobcorps.gov/Entire%20PRH%20PDF/PRH%20(Chapters%201-6)%20-%2003.15.22.pdf)>

⁵⁷ *Id.*

“non-traffic offenses” (less than six-month penalty); or five or more “non-traffic” offenses. It is possible to get a waiver of this criterion.

- Anyone who has been found guilty in a juvenile adjudication for a felony crime of rape, sexual abuse, sexual assault, incest, and any offense that results in a dispositional requirement of sex offender registration. This is an absolute prohibition, no waiver is possible.
- Anyone with “a current or history of alcohol dependence, drug dependence, alcohol abuse, or other drug abuse” is incompatible with military life.” It may be medically disqualifying, although a waiver is possible.



NOTE: *Possession of marijuana is classified as a “misconduct” offense but selling or distributing marijuana is a “major misconduct” offense. Wrongful possession of narcotics or habit-forming drugs (not including marijuana) is a “major misconduct” offense. Alcohol possession charges are “misconduct” offenses or “non-traffic offenses.”*

CHAPTER 5

CONSEQUENCES FOR HOUSING

A. Housing in General

Most of this section is about public housing because that is where the intersection between delinquency adjudications and housing occurs most frequently. However, juvenile court professionals should be aware that delinquency proceedings may affect other types of housing as well -- both for the youth's family, and for the youth in the future.

For example, Wis. Stat. § 704.17(3m) allows a private landlord to evict a tenant if the tenant, a member of the household, or an invited guest "engages in any drug-related criminal activity on or near the premises" or "engages in any criminal activity that threatens the health or safety of, or right to peaceful enjoyment of the premises" by other tenants, persons residing in the near vicinity, or of the landlord or a landlord's agent.

Every homeless shelter has its own eligibility criteria, as do transitional housing programs. As a general rule, adult men and women's homeless shelters are unlikely to inquire into delinquency adjudications and would be unlikely to exclude someone based on a delinquency adjudication. However, Salvation Army family shelters (and presumably other family shelters) would be likely to exclude someone who is on the sex offender registry.

College dormitories, adult group homes and other living situations may have rules regarding eligibility that reference delinquent activity.

B. Public Housing

A child's involvement in delinquent activity can result in the child's family being evicted from public housing, change the amount of assistance available to the family, or make the family ineligible for public housing in the future.

There are several forms of federal housing assistance. The two most common are actually living in publicly-

owned housing, or receiving a "Section 8" subsidy to live in privately-owned housing. See Section 8 of the US Housing Act, 42 USC 1437(f). All federally-assisted housing programs, including Section 8 vouchers, are governed by local public housing authorities (LPHA), which have discretion to establish criteria for determining eligibility for public housing assistance, and criteria for evicting those who receive public assistance, within the parameters established by the Federal Department of Housing and Urban Development (HUD).

I. Eviction

The LPHA must immediately terminate a lease if it determines that any household member has ever been convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing. 24 CFR § 966.4(l)(5)(i)(A). HUD rules do not clarify whether a delinquency adjudication is considered a conviction.



NOTE: Except for the grounds regarding a methamphetamine conviction, proof of the kinds of criminal activity described in the following paragraphs does not require a conviction. A LPHA may consider "all credible evidence," including but not limited to any record of conviction, arrest, police contact or civil ordinance violations. 24 CFR §977.4(1)(5)(iii). Evictions for "criminal activity" may begin with informal communication between police officers and landlords or property managers.

The LPHA must state in its lease that if any member of the household or guest engages in drug-related criminal activity on or off the premises, that is grounds for termination of the lease. Eviction is not required under this provision, the LPHA can make a discretionary decision about that, taking into account mitigating factors. Some leases also state that drug-related civil activity can also be grounds for termination, and that possession of drug paraphernalia is a prohibited drug-related activity. "Drug" is defined as a controlled substance under 21 U.S.C. § 802, 24 CFR § 966.4(1)(5)(i)(B).

The lease must also state that the LPHA may evict a family when it determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety or right to peaceful enjoyment of the premises by other residents. 24 CFR § 966.4(1)(5)(i)(B).

The lease must also state that any criminal activity by a household member that “threatens the health, safety, or right to peaceful enjoyment of the premises” by other residents or persons residing in the immediate vicinity, is grounds for eviction. 24 CFR § 966.4(1)(5)(ii)(A).

LPHAs are required to establish standards that allow eviction if a household member has engaged in abuse or pattern of abuse of alcohol that “threatens the health, safety, or right to peaceful enjoyment of the premises” by other residents. 24 CFR § 966.4(1)(5)(vi)(A).

LPHAs are required to establish standards that allow for eviction if a household member has furnished false or misleading information about illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers. 24 CFR § 966.4(1)(5)(vi)(B).

Finally, LPHAs are allowed to evict for "other good cause" such as "harboring a fugitive" or threats to other residents or staff. 24 CFR § 966.4(1)(2)(iii)(a)-(e).

II. Eligibility

The criteria for future eligibility for public housing are similar to, but slightly broader than, the criteria for eviction. And where some eviction criteria are discretionary, they are mandatory for eligibility.

If any household member has ever been convicted of producing or manufacturing methamphetamine on the premises of federally assisted housing, the family is ineligible. 24 CFR § 960.204(a)(3).

Similarly, if any household member has been evicted from federally-assisted housing during the last three years for drug-related criminal activity, the family is ineligible. An LPHA may accept the family if the involved household member no longer lives with them or has completed an approved rehabilitation program. 24 CFR § 960.204(a)(1).

Families are ineligible if any household member is currently engaged in the illegal use of a controlled substance as defined at 21 U.S.C. § 802(6). “Currently engaged” means recent-enough behavior to justify a reasonable belief that illegal drug use is continuing. 24 CFR § 960.204(a)(2)(i).

Families are ineligible if any household member’s current use or pattern of use of illegal drugs or alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. 24 CFR § 960.204(a)(4)(b).

Families are ineligible if any household member is subject to lifetime sex offender registration. 24 CFR § 960.204(a)(4).

HUD allows, but does not require, LPHAs to consider an applicant’s history of criminal activity if it involves physical violence to persons or property, or would adversely affect the health, safety or welfare of other tenants. 24 CFR § 960.203(c)(3). Usually, these are discretionary decisions that take into account the recency of the conduct, as well as the nature of the conduct.

Again, it is important to note that evidence of “criminal activity” is not limited to convictions. It can be based on civil ordinance violations, police contacts or arrests. The HUD regulations do not specifically address “criminal activity” by youth, or delinquency adjudications, but it is generally thought that “criminal activity” includes acts by youth.



NOTE: *This chapter describes HUD regulations, but juvenile court professionals should familiarize themselves with specific standards promulgated by the LPHAs in their communities.*

CHAPTER 6

CONSEQUENCES FOR OTHER PUBLIC BENEFITS

SNAP/Food Share, is based on family size. If a child is placed out-of-home, the family's food allotment will decrease.

The most common public benefits received by children involved in the juvenile court and their families are BadgerCare (Medicaid); Supplemental Security Income (SSI) and Social Security Survivor benefits; Temporary Assistance to Needy Families (TANF), called Wisconsin Works; and Food Share, called Supplemental Nutrition Assistance Program (SNAP). Children who are adjudicated delinquent don't lose benefits based on the adjudication, but if they are placed out of home, the out-of-home placement can affect the family's financial status.

BadgerCare provides healthcare for non-disabled adults, parents and children. It follows the child to any out-of-home placement, so a child being out of home does not have a negative effect on the child or family.

SSI and Social Security Survivor benefits also follow the child to out-of-home placements. Loss of these benefits may create a serious financial burden on families that are dependent on a child's benefits to pay fixed costs such as rent. Additionally, SSI is not available to a "resident of a public institution," that houses more than 16 people. 20 CFR §§ 416.211, 416.1325. So, children placed in residential treatment centers and correctional institutions will have their benefits suspended while in those institutions and will need to have their benefits reinstated when they are released.

TANF, Wisconsin Works, provides temporary assistance to families with children under the age of 18. If a dependent child is expected to be continuously absent from a parent's home for more than three months, the parent must notify the Wisconsin Works agency within five days or lose benefits. Wis. Admin. Code § DCF 101.10. If there are no other dependent children in the home, the family will lose benefits. If there are other dependent children in the home, the amount the family receives does not change.

CHAPTER 7

OTHER FINANCIAL IMPACTS ON YOUTH, AND FAMILIES

Juvenile court proceedings can be very expensive for children and their families. Some of the costs are direct consequences, but many are indirect. This section describes some of the most common costs.

Restitution: An order for a child to pay restitution, pursuant to Wis. Stat. § 938.34(5), is a direct consequence of a delinquency adjudication. But custodial parents may also be responsible for restitution, pursuant to Wis. Stat. §§ 895.035, 938.45(1r). Failure to pay court-ordered restitution, either by a parent or a child, can result in the entry of a judgment against the child and parent. Wis. Stat. § 895.035(2m).

Victims of delinquency and their insurers may also bring a civil lawsuit against the child and parents, which could include damages for pain and suffering, as well as restitution. Wis. Stats. § 938.21(3m), *Herget v. Circuit Court*, 84 Wis. 2d 436, 267 N.W. 2d 309 (1978).

Forfeiture: A forfeiture may also be a direct consequence of a delinquency adjudication - up to the maximum amount of a fine that may be imposed upon an adult for the violation. Failure to pay that forfeiture may result in suspension of a driver license or a hunting and fishing license. Wis. Stat. § 938.34(8). The driver license suspension will result in further costs for reinstatement of the license. Parents can also be ordered to pay the child's forfeiture. Wis. Stat. § 938.45(1r). Failure to pay may result in the entry of a judgment against the child and the parent. Wis. Stat. § 895.035(2m)(b).

Victim-Witness Surcharge: The juvenile court is required to impose a \$20 delinquency victim and witness surcharge for each dispositional order it enters. Failure to pay the surcharge may result in suspension of a driver license or a hunting and fishing license. Wis. Stat. § 938.34(8d). The driver license suspension will result in further costs for

reinstatement of the license. Failure to pay may also result in entry of a judgment against the child and parents. Wis. Stat. § 895.035(2m)(b).

Cost of Legal Counsel: When a child is represented by an attorney appointed by the Office of the State Public Defender (OSPD) or an attorney provided by the county, the court must order parents to contribute to the cost, unless the parent is the petitioning party or a victim in the case, or the court finds that the interest of the parents and the child are "substantially and directly adverse" so that reimbursement would be unfair to the parent. Wis. Stat. § 938.275(2). The order is typically made at the dispositional hearing and may only be entered after completion of the proceeding or until the state or county is no longer providing the child with legal counsel. Wis. Stat. § 938.275(2)(am). The statutes do not address representation for post-dispositional matters.

The OSPD cost of counsel for indigent children in delinquency cases as of January 1, 2022, was \$240 when the alleged delinquent acts were misdemeanors, \$480 when the petition alleged felony-level offenses. Wis. Stat. §§ 938.275(2)(b), 977.07, Wis. Adm. Code § PD 6.01. In cases in which the county provided counsel, the court or a county department determines indigency, and the court "shall establish the amount of reimbursement," taking into account the parent's ability to pay. Wis. Stat. § 938.275(2)(c).

Cost of Pre-Trial Custody and Services: If a child is held in custody pending delinquency proceedings, the court must order the parent to contribute toward the expense of holding the child in custody pursuant to Wis. Stat. §§ 938.20, 938.21, based on the court's determination of ability to pay. Wis. Stat. § 938.275(1). This includes secure detention, non-secure placements, and monitoring services if they are part of the court's non-secure custody order. Wis. Stat. § 938.21(4)(a),(4m).

Cost of Physical, Psychological Examinations, Drug or Alcohol Abuse Assessments: In any case in which the court finds reasonable cause, it has authority to order a physical, psychological, mental or developmental examination, or an alcohol and other drug abuse assessment of the child. Wis. Stat. § 938.295(1). For

alcohol or drug abuse assessments, the parent is expected to pay through health insurance or other third-party payments if possible. If that type of payment is not possible, the court can order the county department to pay, and the county department can recover costs from parents based on their ability to pay. Wis. Stat. §§ 938.295(1)(c), 938.361. For other examinations, the county is required to pay. Wis. Stat. § 938.295(1).

The court also has authority to order a competency examination of the child under certain circumstances, with the cost paid by the county. Again, however, the county may recover costs from the parent, based on ability to pay. Wis. Stat. § 938.295(2). This cost can be substantial, especially if more than one competency evaluation is ordered.

Testing for Sexually Transmitted Diseases: If at or after the plea hearing but before a dispositional order is entered, or if the child has been found delinquent, in need of protection or services, or not responsible by reason of mental disease or defect, or if the child has pled to, or if the child has been found not competent, on a petition alleging a violation of Wis. Stat. §§ 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085, the court can order testing for sexually transmitted diseases and HIV. Wis. Stat. § 938.296(2). In that case, again, the court may order the county to pay, with recovery authorized from parents according to their ability to pay. Wis. Stat. § 938.296(6).

Testing for Communicable Diseases: If a child is alleged to have violated Wis. Stat. § 946.43(2m), expelling bodily fluids toward a person in a detention or other facility, the court can, if it finds probable cause, order communicable disease testing. Wis. Stat. § 938.296(5). The court may order the county to pay costs, with recovery authorized from parents according to their ability to pay. Wis. Stat. § 938.296(6).

Cost of Dispositional Services: If a child is found delinquent, in violation of a civil law or ordinance, or in need of protection or services, the court must order the parents to pay for post-adjudication and disposition services, including sanctions, according to the court's determination of ability to pay. Wis. Stat. §§ 938.275(1)(b),(c), 938.33(4m), 938.36.

Procedure for Determination of Ability to Pay: If it appears to the court that a child is likely to be placed outside the home, the court must order the parents to provide a statement of income, assets, debts and living expenses for a determination of ability to pay child support. Wis. Stat. §§ 938.30(6)(b), 938.31(7)(b). See Juvenile Court Forms JD-1717⁵⁸, JD-1718⁵⁹. The court may order the parents to provide that statement at any other time during the delinquency proceedings. The statement must be submitted to the court, the county department, and/or the agency that is writing the Wis. Stat. § 938.33 dispositional report.

The disposition report must make a recommendation for child support and must notify the parents that they can request that the court modify the amount. Wis. Stat. § 938.33(4m). The agency, and the court, are required to consider the factors set forth in Wis. Stat. § 301.12(14)(c).

The disposition order must state the amount that the parents are required to pay if the child is placed outside the home. Wis. Stat. §§ 938.355(2)(b)(4) and (4m), 938.36. Under Wis. Stat. § 938.36(2), the county pays for non-residential disposition services, but may recover costs from parents, based on their ability to pay.

⁵⁸ Order To Provide Statement of Income, Assets, Debts, and Living Expenses (Juvenile), State of Wisconsin Circuit Court, JD-1717, Rev. 5/30/00
<<https://www.wicourts.gov/formdisplay/JD-1717.pdf?formNumber=JD-1717&formType=Form&formatId=2&language=en>>

⁵⁹ Statement of Income, Assets, Debts and Living Expenses (Juvenile), State of Wisconsin Circuit Court, JD 1718, Rev. 11/21/19
<<https://www.wicourts.gov/formdisplay/JD-1718.pdf?formNumber=JD-1718&formType=Form&formatId=2&language=en>>

CHAPTER 8

LICENSES, FIREARMS, BODY ARMOR, VOTING AND JURY SERVICE

A. Driver Licenses

Driver licenses may be suspended by the juvenile court as either a direct or indirect consequence of adjudication. It is a direct consequence if “a motor vehicle is involved” in the offense, Wis. Stat. § 938.34(14m); if the adjudication is for a violation of Chapter 961 drug offense Wis. Stat. § 938.34(14r); or if the adjudication is for a bomb threat or possessing a firearm in a school or public building, Wis. Stat. § 938.34(14q).

Suspension of driver licenses is also an indirect consequence of a delinquency adjudication if the youth fails to pay a forfeiture or a victim-witness surcharge. Wis Stat. §§ 938.34(8),(8d)(d).

Finally, if a child is determined to have violated conditions of a delinquency dispositional order, the court may suspend or limit the child’s driver license. If the child does not have a driver license, the court may order the suspension to begin when the child first becomes eligible for the driver license. Wis. Stat. § 938.355(6)(d).



NOTE: *Driver license suspensions are also a dispositional option for habitual truancy and school dropout offenses Wis. Stat. §§ 938.342(1g)(a), (2), 938.345(2); and for underage alcohol purchase or possession, having a false ID, and drug paraphernalia violations. Wis Stat. §§ 938.344(2), (2b), (2d), (2e). Driver license suspensions may also occur if there is a violation of a juvenile in need of*

protections or services (JIPS) dispositional order.

The length of these various driver license suspensions varies considerably. No time frame is given for a Wis. Stat. § 938.34(14m) suspension; for a drug offense disposition under Wis. Stat. § 938.34(14r) the suspension is for at least six months and not more than five years; and if the suspension is for a bomb scare or firearm violation under Wis. Stat. § 938.34(14q) it is for two years. If the driver license suspension is for failure to pay a forfeiture, the length of suspension is for up to two years or until the forfeiture is paid, whichever is less. Wis. Stats. § 938.34(8). If the suspension is for failure to pay the victim witness surcharge, it is for not less than 30 days or more than five years, or until the surcharge is paid, whichever is less. Wis. Stat. § 938.34(8d)(d). For violating a condition of a delinquency order, the suspension may be for up to three years. Wis. Stat. § 938.355(6)(d).

Driving after suspension is illegal, and punishable by a forfeiture of \$50 to \$200, or more if a person suffered great bodily harm or death while the youth was driving after suspension. Wis. Stat. § 343.34(1)(a),(2)(ag). Reinstatement requires a fee of \$60, or \$200 if the offense was related to an OWI violation.⁶⁰ The youth has to show proof of insurance, which may be more costly because of the suspension. The youth may have to show proof that they have fulfilled all court requirements and fees and may have to retake the driver’s exam.⁶¹

B. Hunting, Trapping and Fishing Licenses

Hunting, trapping and fishing licenses (referred to as Chapter 29 licenses), may be suspended for up to one year if a child is found to have violated a civil law or ordinance under Wis. Stat. § 938.343(6). Also, if a person fails to pay a court-ordered forfeiture in a civil

⁶⁰ Drivers License Fees, retrieved 3/25/22, State of Wisconsin, Department of Transportation <<https://wisconsin.gov/Pages/dmv/teen-driver/teen-hw-apply/driver-fees.aspx#reinstate>>

⁶¹ Eligibility and reinstate driving privileges, retrieved 3/25/22, State of Wisconsin, Department of Transportation, <<https://wisconsin.gov/Pages/dmv/license-drvs/susp-or-rvkd/reinstate.aspx>>

law or ordinance case, the court can suspend a Chapter 29 license for up to two years, as a sanction for failing to pay the forfeiture.

In a delinquency case, if a child fails to pay a forfeiture or the victim-witness surcharge, the court may suspend any Chapter 29 license for not less than 30 days and up to five years. Wis. Stat. § 938.34(8),(8d).

Suspension of a Chapter 29 license for up to three years is a sanction for failure to comply with a dispositional order in a delinquency case or a JIPS case. Wis. Stat. § 938.355(6)(d)(2).

C. Firearms and Body Armor

It is illegal for a person who has been adjudicated delinquent for a felony-level offense to possess a firearm. Wis. Stat. § 941.29(1m)(bm). The clerk of court is required to notify the DOJ of all felony-level delinquency adjudications, which are then entered into the firearms registry section of the DOJ for purposes of background checks on firearms. Wis. Stat. § 938.396(2g)(n).

However, under Wis. Stat. § 941.29(4m)(8) a juvenile delinquency adjudication does not bar firearm possession if a “court subsequently determines that the person is not likely to act in a manner dangerous to public safety.” The burden of proving “not likely” is by a preponderance of evidence by the person. Wis. Stat. § 938.341. Expungement of a juvenile court order does not remove the firearm restriction, so a separate request to remove the firearm restriction must be made. See Juvenile Court Form JD-1771⁶².

Wis. Stat. § 941.291(2)(c) also prohibits a person who has been adjudicated delinquent for a “violent felony” from possessing body armor. It is possible to obtain a complete or partial exemption from the prohibition, if the applicant can show that they have a “reasonable need to possess body armor” to ensure personal safety, to earn a livelihood, or as a condition of employment, and that the person is likely to use the

body armor in a safe and lawful manner. Wis Stat. §§ 938.3415, 941.291(4)(a).

D. Voting

The relevant disqualification excludes only people who are “convicted of” treason, bribery or a felony, therefore, a delinquency adjudication does not make anyone ineligible to vote. If the person is 18 years old, a citizen, and meets residence requirements, they can vote, even if they are still under a dispositional order. Wis Stat. §§ 6.02, 6.03, 938.35(1).

E. Jury Service

The relevant disqualification excludes those “convicted of a felony and has not had his or her civil rights restored”, therefore, a delinquency adjudication does not make anyone ineligible to serve on a jury. If the person is 18 years old, a citizen, and understands English, they can serve on a jury, even if they are still under a dispositional order. Wis. Stat. § 756.02, 938.35(1).

⁶² Petition for Removal of Firearm Restriction (Juvenile), State of Wisconsin, Circuit Court, JD-1771, Rev. Date 05/2020, <<https://www.wicourts.gov/formdisplay/JD-1771.pdf?formNumber=JD-1771&formType=Form&formatId=2&language=en>>

CHAPTER 9

CONSEQUENCES OF SEX OFFENDER REGISTRATION REQUIREMENT

Wis. Stat. § 938.34(15m)(bm) requires sex offender registration for violations of various laws found in Chapters 940 and 948,⁶³ unless an exception at Wis. Stat. § 301.45(1m) applies. It makes it discretionary for the court to order sex offender registration for other offenses if the court determines that the underlying conduct was sexually motivated and that registration would be in the interest of public protection. Wis. Stat. § 938.34(15m)(am).⁶⁴

However, even in cases in which a registration order is required, the Wisconsin Supreme Court has held that the registration order can be stayed, “contingent on the juvenile’s satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court.” Wis. Stat. § 938.34(16). The criteria governing the “stay” discretion are set forth in *In re Cesar G.*, 2004 WI 61, 272 Wis. 2d 22. If the child successfully completes supervision, the stayed order does not go into effect.

The effects of a sex offender registration order are onerous, for several reasons:

- Registration orders are in effect for at least 15 years after an adjudicated delinquent completes the dispositional order. The court

has discretion to order lifetime registration. Wis. Stat. §§ 938.34(15m)(d), 301.45(5).

- Notification requirements for registrants include notification to the registry whenever they move, change schools, change work, leave the state, start or stop a volunteer activity, or set up an email account or internet website. Violation of those notification requirements is a crime. Wis. Stat. §§ 301.45(2),(3),(4),(4m),(4r),(6). If the violation occurs and the petition is filed while the registrant is still within juvenile court jurisdiction, juvenile court confidentiality rules apply. However, if the violation occurs and charges are filed when the registrant is an adult, those charges are public and may reveal an otherwise confidential underlying juvenile adjudication for a sex offense.
- More than 150 Wisconsin municipalities and local governments have “residency restrictions” that limit the places where a registrant can live. For example, the restrictions may prohibit living within 1000 feet of a park, daycare center or school. If a child’s family lives in a “prohibited” area, residency restrictions may prevent a child from living with their family.⁶⁵ Lifetime registrants are barred from public housing. Other types of housing such as group homes or college dormitories, may bar sex offender registrants.

⁶³ If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, ~~948.075~~, 948.08, or 948.085 (2), 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim’s parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).

⁶⁴ Except as provided in par. (bm), if the juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy, or attempt to commit any violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the juvenile report under s. 301.45.

⁶⁵ Sex Offender Restrictions and Requirements, LC Information Memos, IM-2021-07, retrieved 3/24/22, Wisconsin State Legislature, <https://docs.legis.wisconsin.gov/misc/lc/information_memos/2021/im_2021_07>

- As a general rule, registrants cannot enter school grounds except for limited purposes. Wis. Stat. § 301.475(1). Children who are on the sex offender registry can attend school if the agency supervising their dispositional order works with school officials “to ensure the safety of the students attending the school with the student.” Wis. Stat. § 301.475(3)(d). Parents who are registrants can go to their child’s school if the parent has previously notified the school officials of their registration status. Wis. Stat. § 301.475(3)(c).
- The DOC can place additional limitations on a registrant’s activities. Some municipalities also limit where sex offenders can go, i.e., “not to a park with a playground area.”⁶⁶
- Although the Wisconsin Registry for juvenile offenses is largely confidential, local police chiefs and sheriffs are authorized to make the information public “if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.” Wis. Stat. § 301.46(2)(e). They are specifically authorized to release registry information to schools, child care providers, child welfare agencies, neighborhood watch programs, organizations like the Girl Scouts and Boy Scouts, and any other community-based organization DOC “determines should have access to information under this subsection in the interest of protecting the public.”
- A registrant who wishes to move, work or attend school out of state may be subject to the other state’s registration laws. The registrant should notify the Wisconsin registry before leaving the state and should report to the new state’s registry within 72 hours of arrival. The registrant may have to register in both states. The other state may make the juvenile registration public, as many other states do not keep juvenile registrations confidential.⁶⁷
- Being on the sex offender registry is an absolute bar to military enlistment and major categories of employment. Registrants are barred from all child care and child welfare employment and employment in education.

⁶⁶ *Id.*

⁶⁷ Registrant FAQ, Sex Offender Registry, retrieved 3/24/22, Wisconsin Department of Corrections, <<https://appsdoc.wi.gov/public/faqsForRegistrants>>

CHAPTER 10

CONSEQUENCES IN OTHER COURTS

A. Adult Criminal Court and Sentencing

Wis. Stat. § 938.35 states a general rule that “the disposition of a juvenile, and any record of evidence given in a hearing in court, is not admissible against the juvenile in any case or proceeding,” but also makes exceptions to that general rule.

In adult criminal court, juvenile adjudications can be considered in setting bail. Wis. Stat. §§ 969.01(4), 938.35(1)(cm). Also, people who testify in a criminal (or civil) court may be impeached with evidence of delinquency adjudications. Wis. Stat. §§ 906.09, 938.35(1)(cm). Because criminal court is public, any mention of delinquency adjudications on the record will make the adjudication part of the public record.

Juvenile adjudications and court records can be used as substantive evidence in adult criminal cases, but only if the party wishing to present the evidence first obtains juvenile court approval for release of records for that purpose. In *State v. Bellows*, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998), the court held that the trial court erred by admitting a CHIPS petition and juvenile court minutes as evidence that the defendant was guilty of criminal child abuse. Further, it held that the criminal court had an obligation “to determine whether there is record support for a finding that the juvenile court complied with the statutory guidelines and the considerations outlined in *Herget v. Circuit Court*, 84 Wis. 2d 436, 448-451 (1978).”⁶⁸

Wisconsin’s various repeater statutes do not use delinquency adjudications as the basis for sentence enhancement or additional penalties. Wis. Stat. §§ 939.62(3)(a), 939.618, 939.619, 939.6195, 939.621.

However, delinquency adjudications may be used in sentencing after conviction of a felony or misdemeanor, “only for the purpose of a presentence investigation.” Wis. Stat. § 938.35(1)(a). The sentencing recommendations of the parties and the court’s sentencing decision may be influenced by these delinquency adjudications. Additionally, while the presentence investigation report itself is treated as a confidential document, it accompanies the defendant to the DOC, where it is taken into consideration by the department “for correctional programming, parole consideration, or care and treatment of any person” in DOC control, including probation, parole, or extended supervision. Wis. Stat. § 972.15(5).



NOTE: *DOC use of juvenile adjudications for correctional programming, as well as treatment, is particularly significant when an adjudication is for a sex offense. Even if a youth is convicted of a non-sex offense as an adult, DOC may apply the more stringent sex offender rules of probation or extended supervision to that youth. It may also require successful completion of sex offender treatment as a condition of probation or extended supervision.*

Finally, delinquency adjudications can be the basis for subsequent criminal charges. A child on the sex offender registry can be charged in criminal court with failing to comply with the requirements of registration, pursuant to Wis. Stat. § 301.45(6). Similarly, a child who is prohibited from possessing a firearm based on a felony-level delinquency adjudication, can be charged with illegal possession of a firearm, pursuant to Wis. Stat. § 949.29(1m).

B. Family and Civil Courts

Anytime an adjudicated delinquent testifies in any court, the delinquency adjudication may be admissible

⁶⁸ In *Herget*, the court held that the person seeking release of confidential information must provide 1) the type of information being sought; 2) the basis for the belief that the information is in juvenile records; 3) the relevance of the information to the cause of action; 4) the probable admissibility of the information; 5) efforts made to obtain the information from other sources; and 6) hardship that would result if the information is not released. The court must also give the child who is the subject of the records an opportunity to present her or her position on disclosing the records. 84 Wis. 2d at 452.

for impeachment purposes. Wis. Stat. §§ 906.09, 938.35(1)(cm).

Children and their parents may also be sued in civil court for restitution, even when the underlying act was the subject of a delinquency proceeding. Whether juvenile police or court records can be admitted in evidence in that case, is a matter of discretion for the circuit court judge. *State v. Herget, supra.*, 84 Wis. 2d 436.

Juvenile court adjudications are also admissible in family courts when the court is considering the custody of a child. Wis Stat. §938.35(1)(c). The Wis. Stat. § 767.41(5) factors governing custody and physical placement in family court do not specifically reference delinquency adjudications but do include information that may be found in juvenile court records, such as whether a party, or person who resides with a party, has engaged in child abuse or neglect, domestic violence, or has a significant problem with alcohol or drug abuse. Again, case law suggests that the decision whether juvenile court records can be admitted into evidence in such a case, requires an exercise of discretion by the judge, applying the factors set forth in *State v. Herget, supra.*, 84 Wis. 2d 436, *State v. Bellows, supra*, 218 Wis. 2d 614, *Courtney F. v Ramiro M.C.*, 2004 WI App 36, 269 Wis 2d 709 (Ct. App., 2004).

Finally, children adjudicated delinquent for a “sexually violent offense,” as defined in Wis. Stat. § 980.01(6),⁶⁹ may become eligible for a Chapter 980 commitment as a Sexually Violent Person if they are confined in a correctional institution or secured residential care center as a disposition and are referred to prosecutors with allegations that they have a mental disorder and are dangerous to others. Wis. Stat. §§ 980.015(2)(b), 980.02(2)

⁶⁹“Sexually violent offense” means any of the following: (a) Any crime specified in s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085; (am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a); (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (2), (4), (5), or (6), 940.195 (4) or (5), 940.198 (2) or (3), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated; (bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated; (c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a), (am), (b), or (bm).

CHAPTER 11

IMMIGRATION

CONSEQUENCES

Negative immigration consequences may be triggered by criminal convictions, admissions, or “bad conduct.” Certain adult court criminal convictions and “admissions,” have immediate severe consequences, resulting in deportation and permanent inadmissibility. Juvenile delinquency adjudications and “admissions,” do not carry those direct consequences, but “bad conduct” can have serious, long-term negative immigration consequences for youth. An adjudication for selling marijuana, for example, can become a permanent impediment to a youth’s later attempt to achieve legal status in the United States.



NOTE: *Immigration law refers to “removal,” which is the functional equivalent of deportation. “Inadmissibility” refers to entrance at a border, but it also refers to attempts to improve one’s legal status, for example obtaining a visa, lawful permanent resident status (green card), or naturalization and citizenship.*

Immigration courts have “consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes. *In re Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000). Nor can an “admission” to a delinquent act be considered; an “admission” under the immigration act. *Matter of M-U-*, 2 I&N Dec. 92 (BIA 1944). Therefore, immigration consequences resulting directly from convictions or “admissions” do not apply to proceedings in juvenile court.

A. Grounds for Inadmissibility and Removal

Some grounds for inadmissibility and removal are based on “bad conduct,” and a delinquency adjudication can be evidence of that conduct. 8 U.S.C. §§ 1182(a)(2), 1227(a)(2).

Drug Trafficking: A person is inadmissible if authorities have “reason to believe” that they have ever “assisted or participated in trafficking a controlled substance.” This could be a permanent bar to obtaining lawful status, because it can only be waived for certain visa applicants. It is also very broad, including offenses such as possession with intent to deliver, and marijuana offenses, even if marijuana is legal in the state. (Marijuana is a federal “controlled substance”). It also includes aiding and abetting or conspiring to traffic. This is one of the most common “bad conduct” grounds applied to children in immigration cases.

Drug Abuse or Addiction: A person can be deported if, at any time after entry to the United States, the person abused or was addicted to controlled substances. This requires a medical determination that the person meets (or met) the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for abuse or addiction, but a delinquency adjudication may trigger an inquiry into this question. There is a related category of “habitual drunkenness” that might be triggered, for example, by multiple convictions for operating while intoxicated.

Condition Posing Threat to Self or Others: If a person has a physical or medical condition that poses a threat to self or others, they can be denied admission. Again, it is a medical determination, but one which might be triggered by a delinquency adjudication for a sex offense, for example, or even a history of suicide attempts.

Violation of Domestic Violence “No Contact” Order: If an order is entered in a domestic violence case, a person can be deported for violating the order, whether it’s a condition of supervision or a violation of an injunction or temporary restraining order. No conviction is necessary, so a juvenile court finding of a violation could be sufficient evidence.

Engaging in Prostitution: A non-citizen is inadmissible if they come to the United States to engage in prostitution. A single act is insufficient evidence, but if a child is adjudicated delinquent more than once it may be sufficient evidence of “engaging in in a pattern or practice of sexual intercourse for financial or other material gain.”

Making False Claims of Citizenship: There are many ways this could happen – from using a fake passport as ID to get into a bar, to claiming citizenship on an employment application.

B. Discretionary Decisions

Bad conduct, as evidenced by juvenile adjudications, can also be a negative factor in discretionary immigration decisions. For example, immigration officials have discretion to grant asylum or cancel removal, based on the totality of the circumstances. Similarly, requests for affirmative relief, like an adjustment of status to lawful permanent resident, asylum, or Deferred Action for Childhood Arrivals (DACA), involve discretionary decisions.

Delinquency adjudications, again as evidence of bad conduct, can result in a person being held in immigration detention. If a child is apprehended by Immigration and Customs Enforcement (ICE), the child can be released to family, transferred to the Office of Refugee Resettlement (ORR), or kept in ICE custody. A delinquency record weighs in favor of ICE detention.⁷⁰

C. Sex Offenses and Violent Felonies

Other long-term consequences can result from delinquency adjudications. Naturalized citizens and legal permanent residents cannot file visa applications on behalf of close family members if they have been convicted of any number of sex offenses. Delinquency adjudications count as a “conviction” for these purposes, if the youth was age 14 or older, and if the sex offense involved a child under the age of 12 or was by force or threat with a child between the ages of 12 and 15.

Also, children with a delinquency adjudication that would be a felony involving violence or the threat of physical force if committed by an adult, are ineligible

for the “Family Unity” program, which allows people who arrived under special amnesty programs with temporary or permanent legal status to help close family members, including children, to obtain temporary lawful status and work authorization. See Immigration Act of 1990 (as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996, § 383).

D. Special Immigrant Juvenile Status

Finally, children who are in juvenile court either for delinquency or need for protection or services, may have a path to permanent lawful status through “Special Immigrant Juvenile Status.” If a juvenile court has placed a child under the custody of an agency, an individual or an entity appointed by the court; reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis; and the court determines that it is not in the child’s best interest to be returned to their home country, a child may apply for special immigrant status.



***NOTE:** Most of the information in this section was taken from the Immigration Law Resource Center’s publications on immigration consequences of a delinquency adjudications.^{71 72} However, immigration law is complicated and changes often with new case law and new interpretation of statutes, so consultation with an immigration attorney is always advisable.*

⁷⁰ Phipps, Rebecca, Starting Over: The Immigration Consequences of Juvenile Delinquency and Rehabilitation, Section III. C. 3, Vol. 40:515(2016), N.Y.U. Review of Law & Social Change, <https://socialchangenyu.com/wp-content/uploads/2016/10/hipps_digital_9-19.pdf>

⁷¹ Prandini, Rachel, What are the Immigration Consequences of Delinquency?, 3/20, Immigration Legal Resource Center, <https://www.ilrc.org/sites/default/files/resources/imm_consequences_of_delinq_3.30.20.pdf>

⁷² Immigration Consequences of Juvenile Delinquency, Inadmissibility (8 USC § 1182(a)) and Deportability (8 USC § 1227(a)), 1/18, Immigration Legal Resource Center <https://www.ilrc.org/sites/default/files/resources/juvenile_delinquency_cheat_sheet_ilrc_jan_2018_update_0.pdf>

CHAPTER 12

CONSEQUENCES FOR A YOUTH'S FUTURE FAMILY LIFE

A delinquency adjudication can have a significant impact on a youth's future legal relationship with his or her children, the ability to be a foster parent or to adopt a child, and the ability to care for the children of relatives.

A. Termination of Parental Rights

Some of the grounds for involuntary termination of parental rights may be proved by a "final judgment of conviction," but none of the grounds specifically reference delinquency adjudications. Wis. Stat. §§ 48.415(8),(9m).

However, Wis. Stat. § 48.415(9), parenthood as a result of sexual assault, can be established by proof that the child was conceived as a result of a sexual assault in violation of Wis. Stat. §§ 940.225(1),(2),(3), 948.02(1),(2), 948.025, or 948.085. The proof can be a judgment of conviction or "other evidence" that the father sexually assaulted the mother during the possible time of conception. An adjudication of delinquency, based on a violation of one of these statutes, therefore, would be sufficient to prove grounds for termination of the father's parental rights.

Also, delinquency dispositional orders sometimes include no-contact conditions or placements that make it difficult or impossible for a delinquent parent to maintain contact with a child, resulting in grounds for termination of parental rights under Wis. Stat. §§ 48.415(1),(2),(4),(6).



NOTE: *The Court of Appeals has held that before juvenile court delinquency records can be introduced in a termination of parental*

rights (TPR) proceeding, the juvenile court must conduct an in-camera review of requested records to determine relevance, and to determine if the criteria set forth in State v. Herget, supra., 84 Wis. 2d 436, have been met. Courtney F. v. Ramiro M.C., supra, 269 Wis. 2d 709.

B. Contested Child Custody Between Parents

Family courts have authority to make "just and reasonable" decisions regarding a child's legal custody and physical placement in paternity, divorce, annulment, legal separation or independent custody cases. Wis Stat. § 767.41(1). Custody decisions involve dozens of factors unrelated to delinquency proceedings. However, evidence that one parent has engaged in a pattern or serious incident of battery or abuse to the other parent, as defined by Wis. Stat. §§ 940.19, 940.20(1m), 813.12, 813.122, creates a rebuttable presumption that it is "detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party." Wis. Stat. § 767.41(2)(d).

C. Foster Care

No government or private child welfare agency can license a foster home if the license applicant, or a non-client resident of the home, has been adjudicated delinquent or has a pending delinquency petition for one of a long list of "serious crimes" listed at Wis. Stat. § 48.685(1)(c).⁷³ Wis. Stat. § 48.685(4m)(a). However, Wis. Stat. § 48.685(5)(a) allows applicants with delinquency adjudications for serious crimes to show by clear and convincing evidence that they have been rehabilitated. Wis. Admin. Code § DCF 56.05(1)(f).

⁷³ "Serious crime" means any of the following: 1) A violation of s. 940.19 (3), 1999 stats; 2) A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21, 948.215, 948.30, or 948.53; 3) A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.



NOTE: Information from DCF on barring crimes and other offenses⁷⁴ states that some crimes are a permanent bar, and others allow rehabilitation after five years. However, the language of Wis. Stat. § 48.685(5)(bm) regarding permanent bars and delayed eligibility for rehabilitation applies only to foster care applicants who have been “convicted of” those serious crimes. Because Wis. Stat. § 48.685(4m)(a) and (b) carefully include delinquency adjudications, and (5)(bm) does not, it appears that the legislature did not intend to make a delinquency adjudication for a serious crime a permanent bar or subject to delayed eligibility for rehabilitation for foster care licensing.

D. Adoptions

The DCF, DSS, and child welfare and child placing agencies may only place children for adoption in licensed foster homes. Wis. Stat. § 48.833. Therefore, the requirements and restrictions for foster parents apply to adoptive placements.

The only exception to the requirement of a foster care license is when a parent with custody of a child places the child in the home of a relative with the goal of adoption. Wis. Stat. § 48.835(2). However, if a parent wants to place the child with a non-relative, it must be a licensed foster care home. Wis. Stat. § 48.837(1).

E. Subsidized Guardianship

There are many avenues for appointment of a guardian of the person for a child. Juvenile courts have authority to appoint guardians for children who have been adjudicated to be a child in need of protection of services (CHIPS) or an “uncontrollable” child, when they have been placed outside the home, and a court report recommends guardianship. In making the dispositional decision on guardianship, the court must

consider “whether the person would be a suitable guardian of the child.” Wis. Stat. § 48.977(2)(a).

For families who need financial assistance to provide for the child, Wisconsin statutes authorize “subsidized guardianship” with monthly payments similar to foster care payments pursuant to Wis. Stat. § 48.977(3r). Subsidized guardianship may also be established if a child and proposed guardian meet the eligibility requirements in Wis. Stat. § 48.623, where a voluntary placement has been made. However, to qualify for subsidized guardianship payments, the applicant and other non-client residents of the home must pass the same background check as foster parents. Wis. Stat. § 48.623(1)(b)3. If they have a delinquency record for “serious crimes”⁷⁵ they are ineligible unless they can prove rehabilitation by clear and convincing evidence. Wis. Stat. §§ 48.685(5)(a), Wis. Admin. Code § DCF 55.03(1)(b)3.



NOTE: Wis Stat. § 48.685(5)(bm) makes rehabilitation unavailable to a subsidized guardianship applicant who “has been convicted of” most of the serious crimes. Because Wis. Stat. § 48.685(4m)(a),(b) carefully include delinquency adjudications, and (5)(bm) does not, it appears that the legislature did not intend to make a delinquency adjudication for a serious crime a permanent bar to subsidized guardianship.

F. Kinship Care

Kinship care is established when a relative other than a parent has custody and care of a child. It can be established through a voluntary placement, or a court-ordered placement.

If the placement is court-ordered and the relative seeks kinship payments, the relative must apply for a foster care license and meet the requirements of Wis. Stat. § 48.57(3m)(am)1, Wis. Admin. Code § DCF 58.03. This means that the requirements and restrictions for foster parents would apply to kinship

⁷⁴ Barring Crimes and Other Offenses under Section 48.685, Stats., Foster Care and Subsidized Guardianship, 8/19, Wisconsin Department of Children and Families, <<https://dcf.wisconsin.gov/files/cwportal/fc/pdf/fc-sg-barredcrimes.pdf>>

⁷⁵ See footnote 73.

payments. However, kinship statutes do provide another avenue for payment if an applicant is denied a foster care license. The kinship relative may apply for payments under Wis. Stat. § 48.57(3m)(ap)3.

COLLATERAL CONSEQUENCES OF TOP 30 JUVENILE ADJUDICATIONS SUMMARY CHART

Statutes	Public Hearings and Record	Fingerprints	DNA	Firearm Restrictions	School	Child Welfare Job	Child Care Job	Education Job	Law Enforcement Job	Military	Housing	Driver License	Other Courts	Immigration	Foster Care, Adoption, Subsidized Guardianship or Kinship
All SO Registrant					Note 3	X	X	X	Note 6	Note 7	Note 8		Note 10		X
940.19-940.20	Note 1	F, Note 2	F	F	Note 3	F, Note 4	F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	F, Note 12
940.225	Note 1	MF, Note 2	F	F	Note 3	F, Note 4	F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	F, Note 12
941.10					Note 3				Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
941.23		MF, Note 2	F		Note 3				Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	Note 11	
941.30	Note 1	F, Note 2	F	F	Note 3			F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.01	Note 1	F, Note 2		F	Note 3			F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.017	Note 1	F, Note 2		F	Note 3				Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.02-943.03	Note 1	F, Note 2	F	F	Note 3		MF	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.10	Note 1	MF, Note 2	F	F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.11		F, Note 2			Note 3				Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	Note 11	
943.14		F, Note 2			Note 3				Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.20	Note 1			F	Note 3			F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.23	Note 1	F, Note 2	F	F	Note 3		(1g)	F	Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	Note 11	
943.32	Note 1	F, Note 2	F	F	Note 3		(2)	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.34	Note 1	MF, Note 2		F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
943.50	Note 1	F, Note 2		F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
944.20		MF, Note 2			Note 3				Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
946.41	Note 1	F, Note 2		F	Note 3			F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
947.01					Note 3				Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
947.015	Note 1	F, Note 2		F	Note 3			F	Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	Note 11	
947.019	Note 1	F, Note 2		F	Note 3			F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
948.02-948.025	Note 1	MF, Note 2	F	F	Note 3	F, Note 4	F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	F, Note 12
948.05, 948.055	Note 1	MF, Note 2	F	F	Note 3	F, Note 4	F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	F, Note 12
948.09		MF, Note 2			Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
948.11-948.12	Note 1	MF, Note 2		F	Note 3	F, Note 4	F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	F, Note 12
948.60-948.605	Note 1	MF, Note 2		F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Note 9	Note 10	Note 11	
961.41	Note 1	MF, Note 2		F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	MF, Note 11	
961.573	Note 1	MF, Note 2		F	Note 3		F, Note 5	F	Note 6	Note 7	Note 8	Discretionary Disposition	Note 10	MF, Note 11	

Disclaimers: This chart is intended to be a handy starting point. It cannot accurately describe detailed statutory formulations. Practitioners must read the text of the guide and complete their own research in each adjudication. The chart does not include information about professional licensing, Job Corps, public benefits, financial impacts on families, Chapter 29 licenses, voting, and jury service. Those topics are covered in the guide.

Attempting, aiding and abetting, conspiracy, solicitation, enhancers: This chart lists only substantive crimes. All modifiers under Chapter 939 are omitted. Some collateral consequences apply only to the completed crime, others apply to attempted crimes. Practitioners must complete their own research.

Definitions: M = Misdemeanors; F = Felonies; SO = sex offender

Note 1: All felonies are public record if previous delinquency adjudication; 940.225(1), 943.23(1g), 943.32(2) and 948.02(1) are always public record.

Note 2: Fingerprints required for all felonies. Also, for misdemeanors involving sex crimes with child victims, firearms, controlled substances and burglary tools.

Note 3: Child's school notified of all adjudications, may discipline for behavior in or out of school that "endangers the property, health or safety" of others, particularly false bomb threats, firearms possession. Some restrictions on sex offender registrant.

Note 4: Disqualifying unless prove rehabilitation.

Note 5: Disqualifying unless five years since completed disposition and prove rehabilitation.

Note 6: Delinquency adjudications relevant to "good character" requirement.

Note 7: Military has a complex system of categorizing crimes. Major sex offenses, sex offender registration and more than one felony are absolute bars to enlistment.

Note 8: Possible eviction if activity threatens health, safety or peaceful enjoyment of premises, with emphasis on drug crimes. Sex offender registration may be good cause to exclude, also localities restrict residency.

Note 9: DL suspension is disposition for offenses involving motor vehicles, bomb threats and firearms at school, and drug crimes. Also sanction for not paying forfeiture or surcharge or violating conditions of dispositional order.

Note 10: Admissible for bail, sentencing in criminal cases, if relevant in child custody, TPR cases, witness impeachment in all cases.

Note 11: Drug trafficking, violating DV no contact order are particularly serious, "bad conduct" is general standard. Consult immigration lawyer.

Note 12: Disqualifying unless prove rehabilitation, but some exceptions and alternatives available.