

Collateral Consequences of Adjudication and Negotiating Alternatives

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Goals

- Why adjudications matter
- Strategies to avoid collateral consequences

I have a juvenile
adjudication...So what?





Collateral Consequences

- Records not completely sealed or confidential
- Felony Firearm/Body Armor Prohibition
- Sex Offender Registration
- DNA Collection
- Education Consequences
- Bar to Joining the Armed Forces
- Eviction or Denial of Access to Low Income Housing
- Employment Discrimination
- Denial of Childcare License
- Immigration
- Etc.....



Juvenile court records are *generally* confidential but there are exceptions Wis. Stat. §938.396

- Parent or juvenile
- Permission of parent or juvenile
- Law enforcement agencies
- Victim witness coordinator
- Victim's insurer
- Other courts
- Fire investigator
- Bail; impeachment; firearm possession
- Delinquency or criminal defense
- **Pre-sentence investigation**
- Sex offender registration
- **Serious Juvenile Offenders (anyone)**
- **Repeat offenders (multiple and felony) (anyone)**
- Notification of juvenile's school (felony)
- Firearms restriction record search
- Federal program monitoring
- Future court hearings

FELONY



Other consequences

- DNA Collection
- Body Armor Prohibition –Violent felony
- **Future prosecution**



Removal of Restriction

- Court must subsequently determine that the person is not likely to act in a manner dangerous to public safety
- 938.29(8)
- Negotiate upfront



Alternatives to adjudication

- Dismiss or amend charges
- Reduce to ordinance
- Use of DPA's and Consent Decree's
- Conversion to JIPs/CHIPs?
- Up front negotiations
- Win!!!
 - Motions
 - Trial

SEX OFFENDERS REGISTRY



Consequences of Registration

- Wis. Stat. §301.45
- Length: 15 years from disposition date, or if a juvenile is placed in Corrections, 15 years from discharge date
- Lifetime Registration is possible
- Failure to comply with Registration Class H Felony (6 years Prison) – Ignorance of requirements is not a defense



- Update Address of Residence
- Update Height, Hair Color, Weight
- Update Address of Workplace
- Update Address of School
- 10 days notice to D.O.C. of changes to any of the above
- Cannot move if you are not in compliance with all rules
- <https://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes>

SEX OFFENSES (Mandatory)

- 1ST Deg. Sexual Assault
- 2nd Deg. Sexual Assault
- 3rd Degree Sexual Assault
- Incest
- 1st Degree Sexual Assault of a Child
- 2nd Degree Sexual Assault of a Child
- Repeated Sexual Assault of a Child
- Sexual Exploitation of a Child
- Child Trafficking
- Exposing a Child to Harmful Materials
- Possession of Child Pornography
- False Imprisonment or Kidnapping

SEXY OFFENSES (Discretionary)

- Delinquency finding based on violation of:
 - - Chapter 940 (life and bodily security)
 - - Chapter 944 (sexual morality)
 - - Chapter 948 (crimes against children)
 - - 942.08 or 942.09 (invasion of privacy or depiction of nudity)
 - - 943.01 – 943.15 (damage/trespass)

Avoiding Registration

- Dismiss or amend charges
- Use of DPA's and Consent Decree's
- Get it "STAYED"
- Statutory exception
- Negotiate upfront

Statutory Exemption From Registration

Wis. Stat. §301.45(1m)

- Three Elements
- a. No Force, Victim over Age 12
- b. Def. > 19, within 4 years of Victim
- c. Not needed to protect public
- - Defendant's Burden (Clear and Convincing)

HOW to get it STAYED

- Sample motion at wispd.org

Legal Standard

- State v. Cesar G. 2004 WI 6, 272 Wis.2d 22
Allows the Court to Permanently Stay an order requiring an individual to register as a Sexual Offender
- Even for Mandatory Offenses

CESAR G. FACTORS

- RISK of committing future offenses
- SERIOUSNESS of offense
- AGE of victim and offender
- RELATIONSHIP of Def. and Victim
- PHYSICAL HARM to victim?
- MENTALLY ILL victim?
- CATCHALL (Any relevant info)

Negotiate and Argue for Either

- Deferral of Decision on Registration to follow completion of Sex Offender Treatment
- Stay of Registration with a review hearing on Stay to follow completion of Sex Offender Treatment



**U.S. Citizenship
and Immigration
Services**

Screening for Non-Citizen Clients

Revised 5/11 Wisconsin State Public Defender Applicant Case Information Form

Applicant Name (First M.I. Last)	Applicant Date of Birth
Permanent Address	Applicant Telephone Number
City, State, ZIP	Applicant Social Security Number
Ethnicity/ancestry: (Mark one or more)	<input type="checkbox"/> Arab <input type="checkbox"/> Hispanic/Latino
Race: (Mark one or more)	<input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> African American/African Descent <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian/Pacific Islander
Place of birth	Check if interpreter needed
U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	Language
Currently Detained/Incarcerated At	Today's Date
Attorney Name	FA Approval of Opening
Reason for Private Bar Appointment <input type="checkbox"/> Conflict of Interest <input type="checkbox"/> Prior Pending <input type="checkbox"/> Other	Date Appointed
Other Names?	Date/Time Arrested:
Alternative Means of Contact:	Pending Charges:
Family:	Length of Time in Area/State:

State Public Defender Confidential Intake Immigration Screening

The State Public Defender is required by current law to obtain the following information in order to provide competent representation to any criminal defendant. Your answers will be held in the strictest confidence.

Client Name: _____ Date of Birth: _____

This information was obtained by _____

Were you born in the U.S.? Yes, **STOP** form is complete
 No

Where were you born? _____

Are you a U.S. Citizen Yes No

Do you have documents available? Yes No

If no: Lawful Permanent Resident (LPR) (Green Card)

Entered U.S. with permission (e.g. student, work, or visitor visa)

Visa is still valid until _____

INQUIRE, INVESTIGATE, & ADVISE

Padilla v. Kentucky, 599 U.S. 356 (2010)

- You **CANNOT** be silent.
- You **MUST** determine your client's status.
- You **MUST** gather information.
- You **MUST** research the legal issues and seek help if needed.
- You **MUST** advise.

Are Juvenile Adjudications Convictions for immigration purposes?

- No.....BUT
- Lots of conduct based grounds could still cause a problem for your client
- Parents?
- *Immigration laws are in a state of flux and there is always the risk that statutory amendments, regulation changes, or agency interpretations or policies could result in greater consequences flowing from a delinquency adjudication.*



- **Drug Trafficking**
- **Drug Abuse or Addiction**
- **Behavior showing a physical or mental condition that poses a current threat to self or others**
- **Prostitution**
- **Violations of protective or “no-contact orders**
- **Gang related activity**
- **Sexual and violent offenses, or weapon involved**

- What if Charles is not a citizen?

- What if WAIVER is a possibility for Charles?

Negotiations



Effective Assistance of Counsel in Plea Negotiations

- Plea negotiations are critical stage in the proceedings
- Duty to communicate plea offers (timely)
 - Missouri v. Fry, 132 S. Ct. 1399 (2012)
- Duty to provide competent advice
 - Lafler v. Cooper, 132 S. Ct. 1376 (2012)

Get Prepared before you talk to the DA

- Research your judge
- Gather discovery
- Investigate
- Interview witnesses
- Identify motion issues
- Discuss goals and objectives with clients
- Clients is the boss

Importance of client interview



Juvenile Records



Expungement

- Must be at least 17
- Satisfactorily complied with the conditions of the dispositional order
- Juvenile will benefit from and society will not be harmed by the expungement
- Applies to ANY adjudication
- 938.355(4m)
- Negotiate upfront

No wait

- A record relating to a prostitution adjudication can be expunged if the person was a victim of human trafficking for the purposes of a commercial sex act and if the court determines that the person will benefit and society will not be harmed by the expungement. Wis. Stat. § 973.015(2m).

Effect

- The court can vacate the adjudication and expunge the record, which means that the record is sealed and destroyed. Wis. Stat. § 973.015(2m); WI SCR 72.06.
- Gives the youth much more control over when and how to disclose the information, an may be evidence or rehabilitation

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE INTEREST OF

**Petition to Expunge Court
Record of Adjudication/
Recommendation of District
Attorney**

Name _____

Date of Birth _____

Case No. _____

UNDER OATH I STATE:

1. I am the person adjudicated delinquent in this case. I am asking that the court's record of my adjudication be expunged. I understand that if the record is expunged:
 - only the court record of the adjudication will be expunged;
 - other court records, records of the police, the Crime Information Bureau, and other law enforcement agencies, district attorney, or social services will not be affected;
 - expungement does not mean that the delinquency adjudication is vacated or set aside, only that no record of the adjudication will exist in this court's records.
2. I am now 17 years of age or older.
3. I have satisfactorily completed all provisions of the court's dispositional order in this case, including any revisions or modifications of same.
4. Society will not be harmed by granting my request to expunge the record of the adjudication.
5. It will benefit me to have the record of the adjudication expunged.

State of _____

County of _____

Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed

My commission/term expires: _____

Petitioner

Name Printed or Typed

Address (Street, City, State, Zip)

Phone Number

Instruction to petitioner: Before filing with the court, please have the district attorney involved in your case complete the recommendation below. Depending on the district attorney's recommendation, the court may or may not schedule a hearing in this matter before making a decision.

Recommendation of District Attorney

1. I support the Petition.
2. I object to the Petition and request that this matter be set for a hearing on the Petition.

DISTRIBUTION:

1. Court
2. Petitioner
3. District Attorney

District Attorney

Date

Core Principle:

A juvenile defense attorney must understand the collateral consequences of delinquency adjudications, particularly for felonies and sex offenses. An attorney must advise clients of the potential consequences throughout the representation and should review those consequences before the client enters an admission.

