

# **The Consequences of Adjudication**

Sanctions Beyond the Sentence for Juveniles  
Under Colorado Law  
2019 Edition



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# The Consequences of Adjudication

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# 1. Introduction

## ***The True Consequences of Adjudication***

The impact of a child's involvement with the justice system can be far greater than a sentence imposed by a court. Numerous federal, state, and local laws create additional consequences for children adjudicated delinquent or convicted in an adult court, many of which remain in effect far beyond any judicially-imposed sentence. Unlike a sentence, however, those additional consequences are frequently unknown to attorneys, judges, and the people whose lives they profoundly affect.

This publication attempts to document the true impact of a juvenile adjudication, or a conviction of a child as an adult, in Colorado. It contains consequences that arise under Colorado law, yet typically are not included in the sentence imposed by a judge at the conclusion of a case. The goal of this work is to provide all participants in the juvenile justice system a more accurate understanding of how adjudication or conviction will impact the life of a child and the community in which that child will live.

Colorado law requires that before a court allows a child to proceed without counsel, the court must find the child understands the possible consequences that could result from an adjudication or conviction. C.R.S. 19-2-706(2)(c)(V). That finding should not be made unless the child is informed, at minimum, of the following:

**If you are adjudicated a juvenile delinquent, or are convicted of a crime in adult court, you will likely face consequences beyond the sentence imposed by the court.**

**If you are a student you could be suspended or expelled. If you work you could lose your job or the ability to get certain kinds of jobs, including the United States military.**

**If you or your family receives any type of public benefit from the government, such as public housing or food stamps, an adjudication or conviction could result in losing those benefits.**

**An adjudication or conviction can impact your ability to be a part of your own family, especially if you have children or ever want to have children.**

**You can permanently lose your right to possess a firearm.**

**Finally, if you are not a United States citizen, an adjudication or conviction can result in you being detained, being deported, being deemed inadmissible to this country, or being unable to change your immigration status.**

Since the 2014 edition of this publication, Colorado law has created both additional consequences of involvement with the justice system and additional opportunities for relief. It is thus more important than ever that children accused of a crime, and all participants in the justice system, be aware of the true consequences of an adjudication or conviction.

## ***Five Critical Questions for Assessing Consequences***

Some of the consequences addressed in this publication—such as the loss of a public benefit—can have an immediate impact on children and their families. Other consequences, however, may be impossible to identify as issues before a case reaches disposition. For instance, a child may not be aware that he or she will one day aspire to enter a profession for which adjudication of a particular crime is disqualifying.

Five questions can help children, their families, and their attorneys identify those consequences most likely to impact their decision-making process as a case moves toward disposition.<sup>1</sup> This publication is loosely organized around these questions, which are designed to be asked of children accused of criminal offenses:

### **1. Do you attend school, or do you work?**

Involvement in the juvenile or criminal justice system can result in a child no longer being able to attend school. Additionally, a juvenile adjudication or conviction can disqualify a person from holding some jobs. Asking this question can help identify whether a child studies, works, or aspires to work in a field likely to track and care about criminal activity.

### **2. Do you or your family receive any public benefits?**

Eligibility for several types of public benefits, including public housing, can be lost due to a juvenile adjudication or conviction. Asking this question can identify whether children are at risk of losing critical support, either for themselves or their family.

### **3. What is your family situation?**

Some types of juvenile adjudications or convictions can impair an individual's ability to be a part of his or her family, especially for juveniles who either have or will want to have children themselves. Asking about family can identify whether this is a concern.

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<sup>1</sup> These five questions are a modified version of those suggested by Gabriel J. Chin in *Making Padilla Practical: Defense Counsel and Collateral Consequences at Guilty Plea*, 54 How. L. J. 675, 690 (2011).

#### **4. Do you own, or will you want to own, any firearms?**

A juvenile adjudication or conviction can leave an individual permanently unable to possess a firearm. Asking this question can both determine whether that is a concern and caution against future criminal charges resulting from unlawful possession of a weapon.

#### **5. Are you a United States citizen?**

Non-citizens charged with crimes are often at risk of being detained, deported, deemed inadmissible, or subject to other consequences. Asking this question can determine whether immigration status is a necessary concern.

### ***Collateral Consequences Defined Under State Law***

Colorado's Children's Code defines the term "collateral consequence." In most contexts, it means either a mandatory "collateral sanction," or a discretionary "disqualification." C.R.S. 19-2-927(8). Specifically:

- "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's adjudication for an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.
- "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's adjudication for an offense.

Most of the consequences listed in this publication fall within this statutory definition of "collateral consequence." Some consequences not meeting this definition have been included where necessary for individuals and practitioners to fully assess their situation.

### ***The Impact of Federal Law***

Federal law imposes numerous consequences of adjudication or conviction beyond those created by Colorado statutes and regulations, but is generally beyond the scope of this publication. A few broadly applicable federal statutes and regulations have been included for purposes of making this publication more useful to the general public and legal community.

For additional information, see the *National Inventory of Collateral Consequences of Conviction*,<sup>2</sup> maintained by the Council of State Governments, and *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations*,<sup>3</sup> produced by the American Bar Association and Public Defender Service of the District of Columbia.

### ***Limitations of this Publication***

This publication describes consequences arising under the 2019 Colorado statutes and most electronically-searchable Colorado regulations. Due to the volume of material covered it is necessarily incomplete, as some statutes and regulations have inevitably been missed. Regulations have not been included where they are substantively duplicative of statutory consequences. Many consequences applicable primarily to adults have also been omitted. For a more thorough treatment of adult consequences, see *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender’s website.<sup>4</sup>

The internal policies established by individual state and local agencies are not included. Those policies can, however, have a profound impact on the consequences of a juvenile adjudication or conviction. Local public housing authorities, for example, may have widely different positions on how an adjudication or conviction impacts eligibility.

Sparse information regarding enforcement is another major limitation. Every effort has been made to note where statutory language indicates a particular penalty or sanction is required. In many cases, however, an adjudication or criminal conviction “may” prevent someone from obtaining a particular license, certification, or benefit. How individual agencies exercise that discretion is difficult to ascertain. In some cases what appears to be discretionary language could be enforced in a way that effectively renders a consequence mandatory.

In sum, this publication is intended only as a guide to be used in identifying issues. It is not a substitute for legal advice, and people with specific issues should talk to an attorney.

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<sup>2</sup> Available: <https://niccc.csgjusticecenter.org/>.

<sup>3</sup> Available: <https://www.americanbar.org/content/dam/aba/migrated/cecs/interalexile.authcheckdam.pdf>.

<sup>4</sup> <http://www.coloradodefenders.us/>.

## **2. Why Juvenile Records Matter**

### ***Adjudications Can Be Treated as Convictions***

An adjudication of delinquency is typically the result of actions taken in a juvenile court and governed by the Colorado Children's Code. A conviction, in contrast, is the result of an adult criminal court's finding of guilt.

Although adjudications and convictions are different, the two are treated identically in many contexts. Agencies regulating licensure for some professions, for instance, will view an adjudication the same as a conviction. Penalties for crimes committed later in life can be enhanced by a prior adjudication. Additionally, an adjudication can serve as evidence of conduct that can result in the loss of a public benefit or immigration consequences. Other examples apply. Children and their families cannot assume that because they are in juvenile court an adjudication will not "count."

### ***Juvenile Records Are Widely Available***

Although juvenile records are more strictly controlled than adult criminal records, they are available to many people for many purposes. Schools in particular have broad access to records of juvenile proceedings.

- Some arrest and criminal records are open to the public under section 19-1-304(1)(b.5) if the records:
  - o Are in the custody of the investigating law enforcement agency, the agency responsible for filing a petition against the child, and the court, and
  - o Concern a child who is adjudicated delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile or for committing an act that would constitute a class 1, 2, 3, or 4 felony or would constitute any crime that involves the use or possession of a weapon if such act was committed by an adult, or
  - o Concern a child who is charged with committing any of the acts listed immediately above. For a juvenile who is charged with such an act, the records open to the public shall not include the juvenile's name, date of birth, or photograph. C.R.S. 19-1-304(1)(b.7).
- Direct file records, including a child's physical description, are available to the public when the child is between the ages of twelve to eighteen and is alleged to have committed an offense that would constitute unlawful sexual behavior or a crime of violence. C.R.S. 19-1-304(5).
- Court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance are open to inspection to the following persons without a court order under section 19-1-304(1)(a):
  - o The juvenile named in said record.
  - o The juvenile's parent, guardian, legal custodian, or attorney.
  - o Any attorney of record.

- The juvenile's guardian ad litem.
- The Probation Department for limited purposes.
- Any agency to which legal custody of the juvenile has been transferred.
- Any law enforcement agency or police department in the state.
- The Colorado Bureau of Investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase.
- A court which has jurisdiction over a juvenile or domestic action in which the juvenile is named.
- Any attorney of record in a juvenile or domestic action in which the juvenile is named.
- The Department of Human Services.
- Any person conducting an evaluation pursuant to section 14-10-127.
- All members of a child protection team.
- Any person or agency for research purposes if certain conditions are met.
- The victim and the complaining party.
- The Department of Corrections for limited purposes.
- The principal, or the principal's designee, of a school in which the juvenile is or will be enrolled, or a public school superintendent.
- The Department of Education for limited purposes.
- Court records are also accessible to any person having a legitimate interest in the proceedings, with the consent of the court. C.R.S. 19-1-304(1)(b). As are social and clinical studies of the juvenile. C.R.S. 19-1-304(1)(d).
- County departments and numerous types of attorneys have electronic access to court databases. C.R.S. 19-1-304(7).
- Probation records are open to a list of individuals and agencies similar to those who have access to court records, including school officials. C.R.S. 19-1-304(1)(c).
- Law enforcement officers' records are open to a list of individuals and agencies similar to those who have access to court records, including school officials. C.R.S. 19-1-304(2)(a).
- Parole records are open to school officials and assessment centers for children. C.R.S. 19-1-304(2.5).

Widespread record availability has profoundly impacted individuals' ability to move beyond an arrest. Gone are the days when a minor run-in with the law could be forgotten. Because many potential employers, landlords, creditors, or government officials can check criminal records at any time and without notice to the child involved, a prior interaction with the justice system can become an easily detectable and permanent blemish upon an individual.

### ***Juvenile Records Can Be Automatically Shared with Schools***

In many circumstances, juvenile justice authorities are required to share information concerning criminal behavior with a child's school.

- Whenever a petition is filed in juvenile court, or charges are filed in district court, alleging a child between the ages of twelve to eighteen has committed an offense that if committed by an adult would constitute the following, details of the alleged act or offense *shall* be provided immediately to the school district in which the child is enrolled:
  - Unlawful sexual behavior, as defined in section 16-22-102(9).
  - A crime of violence, as defined in section 18-1.3-406.
  - For more information see section 19-1-304(5).
- Whenever a petition is filed in juvenile court alleging any of the following, the prosecuting attorney *shall* make a good faith effort to notify the principal of the child's school within three working days or the superintendent of the child's school district:
  - A class 1, 2, 3, or 4 felony.
  - A level 1, 2, or 3 drug felony.
  - An offense involving unlawful sexual behavior as defined in section 16-22-102(9).
  - A crime of violence as described in section 18-1.3-406.
  - A burglary offense as described in part 2 of article 4 of title 18.
  - Felony menacing, in violation of section 18-3-206.
  - Harassment, in violation of section 18-9-111.
  - Fourth degree arson, in violation of section 18-4-105.
  - Aggravated motor vehicle theft, in violation of section 18-4-409.
  - Hazing, in violation of section 18-9-124.
  - Possession of a handgun by a juvenile, in violation of section 18-12-108.5.
  - An offense where the alleged victim is a student or staff person at the same school as the juvenile.
  - An offense where it is alleged that the juvenile possessed a deadly weapon during the commission of the alleged crime.
  - For more information see section 19-1-304(5.5).
- Courts *shall* notify a child's school district upon conviction or adjudication for an offense that, under section 22-33-106(1)(d), can result in suspension or expulsion. C.R.S. 22-33-106.5(1).
- Courts *shall* notify a child's school district upon conviction or adjudication for an offense that constitutes a crime of violence, an offense involving controlled substances, or (for individuals between the ages of twelve and eighteen) an offense that would constitute unlawful sexual behavior. C.R.S. 22-33-106.5(2).
- When a court sentences a defendant under the age of eighteen to probation, with a condition that the defendant attends school, the court *shall* notify the school district. C.R.S. 18-1.3-204(2.3).
- Several other statutes either permit or encourage the sharing of information between juvenile justice authorities and a child's school. C.R.S. 19-1-302, 19-1-303, 22-32-109.1, 22-32-109.3.

## ***Expungement Is Not Always Automatic***

Expungement is a designation of juvenile records whereby the records are deemed never to have existed. C.R.S. 19-1-103(48). Expunged records generally may only be inspected by order of the court, and are not open to either the public or any agency of the armed forces. C.R.S. 13-10-115.5(3), 19-1-306(3).

Expungement does not always happen automatically. An individual is immediately eligible for expungement, and the process should be automatic, under the following circumstances:

- A finding of not guilty at an adjudicatory trial.
- Dismissal of a petition in its entirety prior to any disposition or alternative to sentencing.
- The completion of a sentence or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment, for a petty offense, drug petty offense, class 2 or class 3 misdemeanor offense, or level 1 or level 2 drug misdemeanor if the offense does not involve unlawful sexual behavior as defined in section 16-22-102(9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302(1), and the defendant was under eighteen years of age at the time the offense was committed.
- Upon completion of a diversion at the prefiling level, unless victim notification is required and the victim objects.
- For more information, see section 19-1-306(4).

Under other circumstances the expungement process should be automatically initiated, but a hearing is required if either the victim or the prosecuting attorney objects. At the hearing the court shall order records expunged if it finds that the rehabilitation of the juvenile has been satisfactorily completed and expungement is in the best interest of the juvenile and the community. Those circumstances include the conclusion of a juvenile's supervision for the following:

- A juvenile diversion program, deferred adjudication, or informal adjustment, except for those described above.
- A sentence for a class 1 misdemeanor or a petty or misdemeanor offense that is not eligible as described above.
- A sentence for a felony or felony drug offense if:
  - o The felony did not constitute unlawful sexual behavior as defined in section 16-22-102(9);
  - o The felony was not a crime of violence as described in section 18-1.3-406;
  - o The felony was not a class 1 or 2 felony; and
  - o The juvenile had no prior felony adjudications.
- For more information, see section 19-1-306(5).

Individuals who qualify for expungement as explained above, but for whom the process was not automatically initiated, can petition for expungement. Individuals who

do not qualify for expungement as explained above, including a mandatory sentence offender pursuant to section 19-2-516(1) or a repeat offender pursuant to section 19-2-516(2), can only petition thirty-six months after the date of their unconditional release from the juvenile sentence. For those individuals the victim and prosecuting attorney may object, and a hearing *shall* be held. For more information, see section 19-1-306(6).

Expungement of municipal court records may occur automatically or may be initiated by filing a petition in the juvenile court. C.R.S. 13-10-115.5(4), 19-1-306(9). The process in municipal court is governed by section 13-10-115.5(4). If the case has a listed victim, the prosecutor may object. If the prosecutor objects the court shall conduct a hearing. At the hearing the court shall order records expunged unless it finds that the juvenile has not been rehabilitated and expungement is not in the best interest of the juvenile or the community.

Courts and the Department of Revenue can expunge records of a conviction for underage drinking and driving with a BAC of at least .02 but not more than .05 if the person requesting the action is over twenty-one years of age and several additional criteria are met. C.R.S. 42-2-121(5), 42-4-1715(1)(b).

Expungement may be available for individuals arrested as the result of mistaken identity. C.R.S. 24-72-702.

Instructions for expunging juvenile adjudications, as well as the documents necessary for doing so, can be found on the Colorado State Judicial Branch website.<sup>5</sup>

### ***Expungement Is Not Available for Some Offenses***

Most juvenile records can be expunged if statutory eligibility criteria are satisfied. C.R.S. 19-1-306. Juvenile records cannot be expunged for:

- Any person who has been adjudicated as an aggravated juvenile offender pursuant to section 19-2-516(4) or a violent juvenile offender pursuant to section 19-2-516(3).
- A person adjudicated of homicide and related offenses.
- A person adjudicated for a felony offense involving unlawful sexual behavior as described in section 16-22-102(9).
- A person charged, adjudicated, or convicted of any offense or infraction pursuant to title 42 (traffic offenses), or a corresponding municipal traffic code.
- For more information, see sections 13-10-115.5(5), 19-1-306(8).

Some of these limits may not apply when a child has received a deferred adjudication or other alternative to adjudication.<sup>6</sup>

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<sup>5</sup> <http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Seal>.

<sup>6</sup> See *C.B. v. People*, 122 P.3d 1065 (Colo. App. 2005).

## ***Expunged Records Are Available to Some People***

After expungement, basic identifying information on the juvenile remains available to district attorneys, local law enforcement agencies, the Department of Human Services, the state Judicial Department, and the victim. C.R.S. 13-10-115.5(3)(a), 19-1-306(3)(a). Any record that is ordered expunged remains available to:

- Any judge and the Probation Department for use in any future proceeding in which the person whose record was expunged is charged with an offense.
- Any district attorney, law enforcement agency, or agency of the Judicial Department in any subsequent criminal investigation or prosecution as a substantive predicate offense conviction or adjudication of record.
- The victim, upon court order.
- Persons, agencies, and entities allowed access to or allowed to exchange information pursuant to section 19-1-303, for the purposes described therein.
- County departments of human or social services.
- For more information, see sections 13-10-115.5(3), 19-1-306(3).

## ***Other Criminal Record Sealing Provisions Are Limited***

Criminal records not covered by the expungement statutes can only be sealed under limited circumstances. Instructions for sealing criminal records, as well as the documents necessary for doing so, can be found on the Colorado State Judicial Branch website.<sup>7</sup> For more information regarding record sealing, see *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>8</sup>

## ***Adjudication Proceedings Are Open to the Public***

The general public shall not be excluded from juvenile justice system hearings unless the court determines that it is in the best interest of the juvenile or the community to exclude the general public. C.R.S. 19-2-110.

## ***A Child's Family Can Be Burdened***

Colorado law allows courts to place requirements on the parents, guardians, or legal custodians of children who are the subject of adjudication proceedings. These requirements can include:

- Attending all proceedings. C.R.S. 19-2-113(1)(a).
- Other expectations for parents, guardians, or custodians who are a party to the delinquency proceedings. C.R.S. 19-2-113(1)(b).

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<sup>7</sup> <http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Seal>.

<sup>8</sup> <http://www.coloradodefenders.us/>.

- For parents who are a party to the delinquency proceedings, requirements may include:
  - Maximum parent involvement in sentencing orders.
  - Participation by the parent in parental responsibility training.
  - Cooperation by the parent in treatment plans for the child.
  - Performance of public service by the parent.
  - Cost of care reimbursement by the parent.
  - Supervision of the child.
  - Any other provisions the court deems to be in the best interests of the child, the parent's other children, or the community.
  - For more information see sections 19-2-113(2), 19-2-114, 19-2-919.
- Parents, guardians, and custodians may also be ordered to pay restitution to, or perform services for, one or more victims. C.R.S. 19-2-919.

### ***How a Case Is Settled Matters***

Once a child is accused of committing a crime, the case can end in many different ways. Some types of dispositions are more favorable than others in terms of avoiding the long-range consequences of an adjudication or conviction. Children, their families, and their attorneys should discuss pursuing the following options:

- Informal Adjustments.
  - When a juvenile enters an informal adjustment, he or she does not plead guilty but rather the case is continued for six months with the possibility of an additional six month extension. During that time the child may be placed under the supervision of the Probation Department or another designated agency.
  - Informal adjustments are not available for some juveniles with a history of prior adjudications.
  - For more information, see section 19-2-703.
- Diversion.
  - Many district attorneys' offices offer diversion programs designed to prevent further involvement of the child in the formal legal system. Diversion results in a specific action of the legal system not being taken in regard to a child and in lieu thereof providing individually designed services by a specific program.
  - For more information, see sections 19-1-103(44), 19-2-303.
- Deferred Adjudication.
  - Under a deferred adjudication, the child pleads guilty to an offense but the court continues the case before adjudicating the child a delinquent. The child is placed under supervision during the period of continuance. If the child successfully complies with the conditions of supervision, the plea or finding of guilt is withdrawn and the case is dismissed.
  - For more information, see section 19-2-709.

## ***Relief from Collateral Consequences***

Several mechanisms exist to address, and in some cases alleviate, the collateral consequences of interactions with the justice system.

### **1. Orders of Collateral Relief**

Courts may now issue an Order of Collateral Relief, which relieves a person of specific collateral consequences for the purpose of improving that person’s likelihood of success in the community. The orders “may relieve an adjudicated juvenile of any collateral consequences of the adjudication, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve ...” They are available at the time of adjudication or at any time thereafter. C.R.S. 19-2-927.

Orders of Collateral Relief cannot relieve any collateral consequence imposed by law for licensure with the Department of Education, or for employment with the Judicial Branch, the Department of Corrections, the Division of Youth Services in the Department of Human Services, or any other law enforcement agency in the State of Colorado. Additionally, courts cannot issue an Order of Collateral Relief if the juvenile: (1) has been adjudicated for a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ or the body, (2) has been adjudicated for a crime of violence as described in section 18-1.3-406, or (3) is required to register as a sex offender pursuant to section 16-22-103. C.R.S. 19-2-927.

Instructions for obtaining an Order of Collateral Relief, as well as documents necessary for doing so, can be found on the Colorado State Judicial Branch website.<sup>9</sup>

### **2. Pardon**

A pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon, unless the pardon is limited. C.R.S. 16-17-103(1).

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<sup>9</sup> [http://www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=254](http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=254). As of October 2019, forms on this website had not been updated to reflect the availability of this mechanism to juveniles and numerous other statutory changes.

### **3. School and Employment**

The consequences discussed in this chapter are focused on juvenile adjudications. If a child's case is transferred to or filed in adult court, however, a convicted child should assume that all consequences of an adult conviction apply. For a more thorough explanation of adult consequences, see *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>10</sup>

#### ***Elementary and Secondary School Attendance***

As discussed in Chapter 2, several statutes either require or allow for information sharing between school systems and criminal justice agencies. C.R.S. 19-1-302, 19-1-303, 19-1-304, 22-32-109.1, 22-32-109.3, 22-33-106.5(2). This means that a child's involvement with the juvenile justice system can also result in problems at school.

- A student may be suspended or expelled from public school for committing any of the following offenses on school grounds, in a school vehicle, or at a school activity or sanctioned event:
  - o Possession of a dangerous weapon without authorization.
  - o Use, possession, or sale of a controlled substance.
  - o An act that, if committed by an adult, would be robbery pursuant to part 3 of article 4 of title 18, C.R.S., or assault pursuant to part 2 of article 3 of title 18, C.R.S. An exception exists for third degree assault.
  - o For more information, see section 22-33-106(1)(d).
  - o Courts *shall* notify a child's school district, upon conviction or adjudication for one of the offenses above, that the child is subject to mandatory expulsion. C.R.S. 22-33-106.5(1).
- A student may also be suspended or expelled from public school for:
  - o Continued willful disobedience or open and persistent defiance of proper authority.
  - o Willful destruction or defacing of school property.
  - o Behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel, including behavior that creates a threat of physical harm to the child or to other children.
  - o Declaration as a habitually disruptive student.
  - o Carrying, using, displaying, or threatening with the use of a firearm facsimile.
  - o Making a false accusation of criminal activity against an employee.
  - o For more information, see section 22-33-106(1).
- When a school district receives information indicating that a student at least twelve but under eighteen years of age has had a petition filed in juvenile court or charges filed in district court alleging either a crime of violence or unlawful

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<sup>10</sup> <http://www.coloradodefenders.us/>.

- sexual behavior, the school board shall determine whether the student should be suspended or expelled. C.R.S. 22-33-105(5).
- A student *shall* be expelled for not less than one year if determined to have brought a firearm to school or possessed a firearm at school, subject to modification by the superintendent. C.R.S. 22-33-106(1.5).
  - A student may be expelled or suspended for intentionally making a false accusation of criminal activity against an employee of an educational entity. C.R.S. 22-12-105(3).
  - A student who is expelled may be prohibited from enrolling in another school district for twelve months. C.R.S. 22-33-106(3)(c).
  - If the expelled student is convicted, is adjudicated a juvenile delinquent, receives a deferred judgment, or is placed in a diversion program as a result of committing the offense for which he or she was expelled, he or she may be prohibited from enrolling or reenrolling in the same school in which the victim of the offense or a member of the victim's immediate family is enrolled or employed. C.R.S. 22-33-106(4).
  - A student who is expelled from or denied admission to school may seek review of the decision. C.R.S. 22-33-105(2)(c), 22-33-108.
  - In addition to state statutes and regulations, individual school districts may have policies regarding how they respond to adjudications, convictions, or allegations of criminal behavior. Students should check their local school for such policies.

### ***University or College Attendance***

Effective in May of 2020, section 23-5-106.5 will limit how Colorado institutions of higher education can ask about applicants' criminal and juvenile history. However many colleges, including the University of Colorado, ask applicants whether they have ever been adjudicated or convicted of some crimes. A record of juvenile adjudications, as well as a history of discipline in primary or secondary school, can decrease an individual's chance of being accepted into a college or university. Additionally:

- No person convicted of a riot offense *shall* be enrolled in a state-supported institution of higher learning for twelve months following the date of conviction. A student who is enrolled *shall* be suspended for twelve months. C.R.S. 23-5-124.

### ***Critical Employment Areas***

Employers and government licensing agencies generally do not have access to juvenile records. Some exceptions do, however, apply. Note the following general rules and the sections of this chapter regarding the Department of Education and Department of Human Services.

- Government Licenses, Certificates, Registrations, and Contracts
  - o As a general rule, if a job requires any type of government-issued license, certificate, registration, or contract, then an adjudication or criminal conviction could have adverse employment consequences.
- Vulnerable People and Positions of Trust
  - o As a general rule, the greater the extent to which a job involves working with vulnerable populations (i.e. students, the mentally ill, prisoners, etc.), the greater the extent to which an adjudication or criminal conviction may curtail employment possibilities.
  - o Also, as a general rule, the greater the extent to which a job involves a position of trust or responsibility (i.e. financial responsibility, responsibility for the wellbeing of another, etc.), the greater the extent to which an adjudication or criminal conviction may curtail employment possibilities.

## ***Military***

Most branches of the military require individuals seeking to enlist or join the officer corps to demonstrate good morals. This demonstration could include examinations or interviews regarding juvenile offenses. Each branch of the armed forces has different standards regarding what types of criminal or juvenile histories they will or will not accept. Individuals with questions should contact an attorney or a recruiter. The following considerations apply:

- Federal statute defines “criminal history record information” as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release.” 5 U.S.C. § 9101.
- No person convicted of a felony shall be allowed to enlist in any armed force, absent an exception from the Secretary of Defense. 10 U.S.C. § 504. A “conviction” appears to include juvenile adjudications. 32 C.F.R. 66.3.
- No person shall be allowed to enlist in any armed force who has been convicted, or found guilty in a juvenile adjudication, for a felony crime of rape, sexual abuse, sexual assault, incest, any other sexual offense, or when the disposition requires the person to register as a sex offender. 32 C.F.R. 66.6(b)(8).
- Individuals are considered ineligible for enlistment if under any form of judicial restraint (bond, probation, or parole). 32 C.F.R. 66.6(b)(8).

## ***AmeriCorps and the Peace Corps***

AmeriCorps participants must complete a criminal history check. 45 C.F.R. 2522.200(a). Although different programs apply different acceptance criteria, individuals are categorically ineligible if they are required to register as a sex offender or have been convicted of murder. 45 C.F.R. 2540.202.

Peace Corps volunteers must complete a criminal history check. 22 C.F.R. 305.8.  
A record of arrests or convictions may be disqualifying. 22 C.F.R. 305.5.

## ***The Department of Education***

The Department of Education has access to most juvenile records. C.R.S. 19-1-304. That access can result in the denial of employment in many school-related fields.

- Nearly every person seeking licensure in a school-related profession must submit to a fingerprint-based criminal history check and must disclose prior felony or misdemeanor convictions. C.R.S. 22-60.5-103 (citing various education licensing statutes).
- A license *shall be* denied, annulled, suspended, or revoked when the applicant or holder is convicted of any of the following offenses, either by jury verdict, entry of a verdict, acceptance of a guilty plea, or a plea of nolo contendere. C.R.S. 22-60.5-107(2.5).
  - Felony child abuse.
  - A crime of violence.
  - A felony offense involving unlawful sexual behavior.
  - A felony, the underlying basis of which has been found by a court on the record to include an act of domestic violence. An exception may apply if five years have passed since the offense.
  - Indecent exposure.
  - A crime under the laws of the United States or other states with elements similar to the crimes above.
  - A felony drug offense, subject to exceptions. C.R.S. 22-60.5-107(2.6).
- Licensure *shall be* denied, annulled, suspended, or revoked when the applicant or holder has received a disposition or adjudication for an offense that would constitute felony unlawful sexual behavior. C.R.S. 22-60.5-107(2.5)(a)(III).
- Licensure may be denied, annulled, suspended, or revoked when the applicant or holder is convicted of, pleads nolo contendere to, or receives a deferred sentence for a violation of any of the following offenses. C.R.S. 22-60.5-107(2).
  - Misdemeanor sexual assault.
  - Misdemeanor unlawful sexual contact.
  - Misdemeanor sexual assault on a client by a psychotherapist.
  - Misdemeanor child abuse.
  - A misdemeanor, the underlying factual basis of which has been found by the court on the record to involve domestic violence, and the conviction is a second or subsequent conviction for the same offense.
  - Contributing to the delinquency of a minor.
  - A misdemeanor committed under the laws of the United States or another state, the elements of which are similar to sexual exploitation of children as defined by section 18-6-403(3)(b.5).
  - A misdemeanor offense involving the sale of controlled substances.
  - Any felony other than those which require denial or revocation of a license.

- A crime under the laws of the United States or any other state with elements similar to the crimes listed above.
- An offense committed by a juvenile that would constitute a physical assault, battery, or drug-related offense if committed by an adult and the offense was committed within the last ten years.
- When any school district finds good cause to believe that any licensed personnel have been convicted of a felony or misdemeanor, the district *shall* require the person to submit to a fingerprint-based criminal history check. C.R.S. 22-32-109.9.
- Good moral character is required for licensure as a teacher, special service provider, principal, or administrator. C.R.S. 22-60.5-201, 22-60.5-210, 22-60.5-301, 22-60.5-306.
- A teacher may be dismissed for immorality, conviction of a felony, or the acceptance of a guilty plea, a plea of nolo contendere, or a deferred sentence for a felony. C.R.S. 22-63-301.
- When the Department of Education denies, revokes, or annuls a license due to a conviction for felony child abuse or unlawful sexual behavior, the department *shall* enter into a settlement agreement with the individual that prohibits ever teaching at a public or nonpublic school in the United States. C.R.S. 22-60.5-108(4).
- Public, nonpublic, charter, institute charter, and on-line schools all have an obligation to perform a criminal history check on prospective employees. C.R.S. 22-1-121, 22-2-119, 22-30.5-110.5, 22-30.5-110.7, 22-30.5-511.5, 22-30.7-111, 22-32-109.7, 22-32-109.8.
- Supplemental education service providers are subject to criminal history checks. C.R.S. 22-2-129(3)(b).
- A school director of a school district *shall not* have been convicted of commission of a sexual offense against a child, and *shall* be removed from office if found guilty of a felony. C.R.S. 22-31-107(5), 22-31-129(1)(e).
- Courts *shall* report to the Department of Education when a defendant known to be a current or former employee of a school district, or who holds a license or authorization pursuant to article 60.5 of title 22, C.R.S., is convicted, pleads nolo contendere, or receives a deferred sentence for:
  - A violation of any crime under part 4 of article 3 of title 18 (pertaining to unlawful sexual behavior), when the victim is a child. C.R.S. 18-3-416.
  - Incest or aggravated incest. C.R.S. 18-6-301, -302.
  - Wrongs to children (child abuse and sexual exploitation of a child). C.R.S. 18-6-405.
  - Contributing to the delinquency of a minor. C.R.S. 18-6-701.
  - Child prostitution related offenses. C.R.S. 18-7-409.
  - Any felony. C.R.S. 13-1-130.
  - Several of these reporting requirements apply to charter school employees.
- For additional information, see 1 CCR 301-37:10.00.

The Department of Education imposes additional requirements on nonlicensed employees, which can be impacted by a juvenile offense.

- Nonlicensed school district employees must disclose prior convictions and submit fingerprints for a fingerprint-based criminal history check. C.R.S. 22-32-109.8. They *shall* be disqualified from employment if convicted of, or convicted of attempt, solicitation, or conspiracy to commit, any of the following:
  - Felony child abuse.
  - A crime of violence.
  - A felony involving unlawful sexual behavior.
  - A felony, the underlying basis of which includes an act of domestic violence, subject to a limited exception.
  - A felony drug offense committed on or after August 25, 2012, subject to a limited exception.
  - Felony indecent exposure.
  - A similar offense in any other state or the United States.
  - A conviction, in this context, includes conviction by a jury or court, forfeiture of any bail, bond, or other security deposited to secure appearance, payment of a fine, a plea of guilty or nolo contendere, and the imposition of a deferred or suspended sentence. C.R.S. 22-32-109.8(8).
  - For additional information, see section 22-32-109.8(6.5).
- Charter school employees are disqualified from employment for the same reasons as listed directly above. C.R.S. 22-30.5-110.7(6.5).
- Institute charter school employees are disqualified from employment for the same reasons as listed directly above. C.R.S. 22-30.5-511.5(2.5).
- Public school service contractors are subject to a criminal records check requirement. C.R.S. 22-32-122(4).
- Students participating in an educator preparation program are subject to a criminal records check. C.R.S. 22-2-119.3.

## ***The Department of Human Services***

The Department of Human Services has access to most juvenile records, including those that have been expunged. C.R.S. 19-1-304, 19-1-306(3). A history of juvenile offenses can impact an individual—or anybody the individual resides with—seeking to provide child care services.

- The license for any family child care home, foster care home, child care center, residential child care facility, secure residential treatment center, or child placement agency *shall* be denied, revoked, or suspended if the applicant, an affiliate of the applicant, any employee of the applicant, or anyone who resides with the applicant at the facility has been convicted of:
  - Child abuse, as specified in section 18-6-401.
  - A crime of violence, as defined in section 18-1.3-406.
  - Any offenses involving unlawful sexual behavior, as defined in section 16-22-102(9).

- Any felony, the underlying factual basis of which had been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3.
  - Any felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate.
  - A pattern of misdemeanor convictions, as defined by rule of the state board, within the ten years immediately preceding the date of submission of the application.
  - Any similar offenses under the laws of any other state.
  - For purposes of the above, “convicted” means conviction by a jury or a court, and includes a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere. C.R.S. 26-6-104(7)(a)(II).
  - Background check provisions apply.
  - For additional information, see sections 26-6-104(7), 26-6-107, 26-6-108(2.5), 12 CCR 2509-6:7.500.3, and 12 CCR 2509-8:7.701.3.
  - Foster care homes, including kinship foster care homes, certified by county departments or licensed child placement agencies, are subject to similar restrictions. C.R.S. 26-6-106.3.
  - Employees of county departments who have direct contact with children being placed are subject to non-hiring or dismissal on the same grounds. C.R.S. 26-6-104(7.5).
- The license for any facility regulated under part 1 of article 6 of title 26, C.R.S., may be denied, suspended, or revoked if the licensee, an affiliate of the licensee, any person employed by the licensee, or a person who resides with the licensee at the facility is:
- Convicted of any felony, notwithstanding section 24-5-101, or receives a deferred judgment agreement or a deferred prosecution agreement to any felony.
  - Convicted of third degree assault, any misdemeanor with an underlying factual basis of domestic violence, violation of a protection order, misdemeanor child abuse, or substantially similar offenses in other states. For these crimes, “conviction” has the same meaning as in section 26-6-104(7)(a)(II), which includes adjudications and deferred adjudications.
  - Convicted of unlawful use, distribution, manufacturing, sale, or possession of a controlled substance, including unlawful offenses related to marijuana.
  - Charged with the commission of an act of child abuse or an unlawful sexual offense.
  - Admits to an act of child abuse, or if substantial evidence of child abuse is found.
  - For additional information, see section 26-6-108(2) and 12 CCR 2509-8:7.701.3.

- Somewhat less restrictive requirements may apply to employees or volunteers at:
  - o Substitute child care providers. C.R.S. 26-6-103.3.
  - o Guest child care facilities and public services short-term child care facilities. C.R.S. 26-6-103.5(2).
  - o Licensed neighborhood youth organizations. C.R.S. 26-6-103.7(4), 12 CCR 2509-8:7.720.4.
  - o Foster care or kinship foster care homes. C.R.S. 26-6-107(1)(a.7), 12 CCR 2509-6:7.500.2.
  - o Exempt family child care home providers. C.R.S. 26-6-120, 9 CCR 2503-9:3.915.
- Colorado regulations place additional restrictions on child care facilities and organizations. For more information, see 12 CCR 2509-8.
- A provider may not be able to receive money under the State Child Care Assistance Program if convicted of certain offenses. 9 CCR 2503-9:3.915.
- A founded report of child abuse, with or without a juvenile adjudication, can result in the juvenile being placed in a database available to numerous agencies and employers. C.R.S. 19-1-307, 26-6-107(1)(a)(I), 12 CCR 2509-2.

A juvenile record can also impact an individual's ability to work in a field that requires employment or licensure by the Department of Human Services.

- The Department of Human Services defines "conviction" as including adjudication for an offense that would constitute a criminal offense if committed by an adult, including a deferred adjudication that has not been successfully completed. C.R.S. 27-90-111(2)(b).
- A person *shall* be disqualified from employment involving direct contact with vulnerable persons regardless of the length of time that may have passed since the discharge of the sentence imposed for any of the following criminal offenses:
  - o A crime of violence.
  - o Any felony offense involving unlawful sexual behavior.
  - o Any felony, the underlying facts of which have been found by a court on the record to include an act of domestic violence.
  - o Any felony offense of child abuse.
  - o For additional information, see section 27-90-111(9)(b).
- A person *shall* be disqualified from employment involving direct contact with vulnerable persons if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:
  - o Third degree assault.
  - o Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence.
  - o Violation of a protective order.
  - o Any misdemeanor offense of child abuse.
  - o Any misdemeanor offense of sexual assault on a client by a psychotherapist.
  - o For additional information, see section 27-90-111(9)(c).

- If a person was adjudicated a juvenile delinquent for the commission of any of the disqualifying offenses listed above, and more than seven years have elapsed since the commission of the offense, the person may submit a request for reconsideration of the disqualification. C.R.S. 27-90-111(9)(d).
- Background check provisions apply. C.R.S. 27-90-111(4).
- A person who is required to register as a sex offender *shall not* work at a Department of Human Services juvenile facility, or an entity that contracts with the Department of Human Services for the operation of a juvenile facility. C.R.S. 19-2-403.3, 19-2-410(4).
- Background checks are mandatory for all employees who have direct contact with any vulnerable person, and most employees of facilities that administer drugs. C.R.S. 25-1.5-302(8), 27-90-111(4).
- Employees of county departments providing protective services to at-risk adults, or who have direct contact with children, must undergo a criminal history records check. C.R.S. 26-3.1-107, 12 CCR 2509-1:7.000.6, 12 CCR 2518-1:30.320.
- A substantiated finding of mistreatment of an at-risk adult, with or without a juvenile adjudication, can result in the juvenile being placed in a database some employers are required to check. C.R.S. 26-3.1-111, 12 CCR 2518-1:30.960.

### ***Other Governmental Restrictions Based on Juvenile Record***

With the exception of the Department of Education and the Department of Human Services, it does not appear that most state regulatory agencies have access to juvenile records. Some other regulatory statutes, however, indicate that licensure, registration, or employment can be denied on the basis of a juvenile adjudication. C.R.S. 6-16-104.3(10) (regarding professional fundraising consultants), 6-16-104.6(10) (regarding paid solicitors). It is thus advisable to consult with an individual or attorney with specialized knowledge of a particular profession.

Colorado's Public Employment Eligibility Statute provides extensive guidance regarding how convictions, arrests, and charges can be used for purposes of state licensing, registration, and employment. See section 24-5-101 for additional information.

### ***Private Restrictions Based on Juvenile Record***

Most employers are prohibited from requiring job applicants to self-disclose their criminal history on a job application. C.R.S. 8-2-130. Although private employers are unlikely to have access to most juvenile records, they have great discretion in determining whether to hire people and there are few checks on private employment decisions.

Under Title VII of the Civil Rights Act of 1964, employers are not supposed to impose blanket exclusions on employing anyone with a prior arrest or conviction.<sup>11</sup> The

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<sup>11</sup> See *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401 (C.D. Cal. 1970). Additional information can be found on the Equal Employment Opportunity Commission's website at [www.eeoc.gov](http://www.eeoc.gov).

U.S. Equal Employment Opportunity Commission issued guidance regarding consideration of arrest and conviction records in April 2012. Generally, a criminal-history-based employment prohibition should depend on: (1) the nature and gravity of the offense or offenses; (2) the time that has passed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought. Regardless, the fact remains that there are few controls on private employers.

No Colorado law prohibits discrimination by private employers based on a juvenile or adult criminal history, and employment can typically be terminated for essentially any reason. Thus, even if a state agency determines that a previously adjudicated or convicted person is eligible for a license to practice a certain profession, that individual has no guarantee of finding an employer willing to accept his or her history.

### ***The Effect of Out-of-State and Federal Adjudications***

Many of the statutes regulating Colorado professions specify that out-of-state or federal convictions count against an applicant or licensee in the same way as a Colorado conviction. Many others do not specify. Just because another state does not consider a certain type of conviction or adjudication disqualifying does not mean that Colorado authorities will agree.

### ***The Effect of Internal Regulations and Policies***

This publication contains only Westlaw-searchable Colorado statutes and regulations. It does not include all of the internal regulations and policies followed by individual governmental authorities or agencies. One therefore cannot assume, based on the absence of a statutory or regulatory consequence, that an individual employed in a regulated profession will not be subject to an adverse employment action if adjudicated or convicted of a crime.

### ***The Effect of Federal Law***

The impact of federal law is beyond the scope of this publication. Nevertheless, federal restrictions on some broadly applicable professions have been included to make this publication more useful.

Nearly all jobs working for the federal government are subject to criminal history checks, and many jobs regulated by the state are subject to additional federal regulation. The extent to which a juvenile adjudication or conviction will prevent employment varies from job to job. For additional information, see the *National Inventory of Collateral Consequences of Conviction*,<sup>12</sup> maintained by the Council of State Governments, and *Internal Exile: Collateral Consequences of Conviction in Federal Laws and*

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<sup>12</sup> Available: <https://niccc.csgjusticecenter.org/>.

*Regulations*,<sup>13</sup> produced by the American Bar Association and Public Defender Service of the District of Columbia.

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<sup>13</sup> Available: <https://www.americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf>.

## **4. Public Benefits Programs**

Many types of public benefits can be adversely affected by a criminal act. Several of the consequences below specifically reference juvenile adjudications or are based on conduct alone. For others, it is unclear whether an adjudication will “count” for purposes of determining eligibility. Individuals should assume that any conviction and sentencing in an adult court, regardless of the actor’s age at the time of the offense, may cause a consequence to apply.

### ***Public Housing***

The federal government has established several subsidized housing programs that are administered by local Public Housing Authorities (PHAs). Individual PHAs have great discretion regarding who—and what types of criminal histories—they will accept. Federal law, however, imposes several broadly applicable restrictions on who PHAs can admit or retain as residents.

Many of the restrictions below apply to “any household member,” thus creating a situation where the conduct of one child can result in a loss of housing for an entire family. Additionally, many are based on the PHA’s evaluation of conduct alone and do not require a conviction or adjudication in order to prohibit or terminate housing.

- PHAs *must* prohibit admission if:
  - The PHA determines that any household member is currently engaged in illegal use of a drug.
  - The PHA determines that a household member’s illegal drug use or pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
  - Any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally-assisted housing.
  - Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
  - A PHA must also prohibit admission if a household member has been evicted from federally assisted housing for drug-related criminal activity within the last three years, subject to limited exceptions.
- PHAs may prohibit admission if any household member is currently engaged in or has engaged in during a reasonable time before the admission:
  - Drug-related criminal activity.
  - Violent criminal activity.
  - Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.
  - Other criminal activity that may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA.

- PHAs *must* terminate assistance if they determine that any member of the household has ever been convicted of producing methamphetamine on the premises of federally assisted housing.
- PHAs may terminate assistance if they determine:
  - o Any household member is currently engaged in any illegal use of a drug.
  - o A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
  - o Any household member has engaged in violent criminal activity, or any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents, staff, or persons residing in the immediate vicinity.
  - o Any tenant is fleeing to avoid prosecution or confinement, or is violating any condition of probation or parole.
  - o Termination may occur if the PHA determines a household member has engaged in a criminal activity, regardless of whether the household member was arrested or convicted for the activity.
- For additional information, see 42 U.S.C. §§ 1437d, 1437f, 1437n, 13661-13663; 24 C.F.R. §§ 5.850 to 5.861, 960.204, 966.4, 982.310, 982.553.

Colorado landlords are subject to restrictions on how they can use criminal history as a criterion in consideration of rentals. C.R.S. 38-12-904. Additional restrictions may nevertheless apply to public housing, even in the absence of federal regulation. For instance:

- Group homes for people with mental illness, as established pursuant to section 30-28-115, *shall not* accept people determined to be not guilty by reason of insanity of a violent offense, or who have been convicted of a felony involving a violent offense. C.R.S. 30-28-115(2)(b.5), 31-23-303(2)(b.5). It is unclear whether a juvenile adjudication counts as a conviction in this context.
- Homeless and emergency shelters have widely varying policies regarding people with a criminal history, especially violent crimes and sex offenses.

## **Food Stamps**

A criminal offense can result in a loss of food stamps. In most of the circumstances below, however, it is unclear whether a juvenile adjudication counts for purposes of eligibility.

- Federal legislation disqualifies individuals convicted of the following offenses from food stamp eligibility if they are not in compliance with the terms of their sentence or are a fleeing felon. 7 U.S.C. § 2015(r). Disqualification may impact the overall benefits to which the individual's household members are entitled. It is unclear whether juvenile adjudications count as convictions.
  - o Aggravated sexual abuse under federal or similar state law.
  - o Murder under federal or similar state law.

- Sexual exploitation of children under federal or similar state law.
- A federal or state offense involving sexual assault.
- A person *shall* be temporarily disqualified from receiving food stamps for:
  - Obtaining, or aiding another in obtaining, food stamp benefits to which the person is not entitled. C.R.S. 26-2-305(1)(a). Subsequent offenses may result in permanent disqualification.
  - Being found by the agency or convicted in a court of having made a fraudulent statement or representation in order to receive multiple food stamp benefits simultaneously. C.R.S. 26-2-305(1)(b).
  - Being found guilty in a court of law of purchasing controlled substances with food stamps. An individual *shall not* be ineligible due to a drug conviction unless misuse of food stamp benefits is part of the court findings. C.R.S. 26-2-305(1)(c). Subsequent offenses may result in permanent disqualification.
- A person *shall* be permanently disqualified from receiving food stamps for:
  - Trafficking in food stamps having a value of five hundred dollars or more. C.R.S. 26-2-305(1)(a).
  - Being found guilty in a court of law of trading ammunition or explosives for food stamps. C.R.S. 26-2-305(1)(d).
- Fleeing felons and people in violation of state or federal probation or parole conditions are ineligible to participate. 10 CCR 2506-1:4.304.4.
- An entire household's eligibility for benefits may be affected if one member is disqualified due to certain convictions. 10 CCR 2506-1:4.206, -1:4.411.1.

### **Federal Student Loan Eligibility**

- A student who is convicted of any offense under any federal or state law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving federal student assistance shall not be eligible to receive any grant, loan, or work assistance under subchapter IV of chapter 28 of title 20 from the date of that conviction for the period of time specified below. 20 U.S.C. § 1091(r).
  - Possession of a Controlled Substance.
    - First Offense: One Year.
    - Second Offense: Two Years.
    - Third Offense: Indefinite.
  - Sale of a Controlled Substance.
    - First Offense: Two Years.
    - Second Offense: Indefinite.
  - Juvenile adjudications do not count as convictions for this purpose. 34 C.F.R. § 668.40(a)(2). A conviction in adult court, however, likely does.
- A student whose eligibility has been suspended may resume eligibility before the end of the ineligibility period if certain statutorily specified conditions are met. 20 U.S.C. § 1091(r)(2).

- Pell Grants *shall not* be awarded to individuals who are incarcerated in a federal or state prison, or subject to involuntary civil commitment upon completion of a period of incarceration for a sex offense. 20 U.S.C. § 1070a(b)(6).

### **Worker's Compensation Benefits**

- Subject to limited exceptions, a person entitled to benefits under articles 40 to 47 of title 8, C.R.S., *shall* neither receive nor be entitled to such benefits for any week following a conviction during which that person is confined in a jail, prison, or any Department of Corrections facility. After release, an individual shall be restored to the same position as he otherwise would have enjoyed with respect to benefits. C.R.S. 8-42-113.
- Any person who makes a false statement material to a claim under articles 40 to 47 of title 8, C.R.S., *shall* forfeit all rights to compensation. C.R.S. 8-43-402.
- Any person who makes a false statement material to a claim under articles 30, 30.5, and 31 of title 31, C.R.S. (pertaining to firefighters and police), *shall* forfeit all rights to compensation. C.R.S. 31-31-1203.

### **Unemployment Benefits**

- No payment of unemployment benefits *shall* be made if separation from employment occurs because of incarceration after conviction of a violation of any law, or loss of a license, certification, credential, or other professional designation that is essential to job performance. C.R.S. 8-73-108(5)(e)(X).

### **Colorado Works Program / TANF**

- A person convicted of a drug-related felony offense under the laws of this state, any other state, or the federal government shall not be eligible for assistance under the works program unless such person is determined by the county department to have taken action toward rehabilitation such as, but not limited to, participation in a drug treatment program. C.R.S. 26-2-706(3).
- A person is disqualified from receiving benefits if an inmate of a public institution, except as a patient in a public medical institution. C.R.S. 26-2-706(1.5)(d).
- For additional information, see 9 CCR 2503-6:3.604.

### **Veterans Benefits**

- If any individual to whom pension is being paid under a law administered by the Department of Veterans Affairs is imprisoned in a federal, state, or local penal institution as a result of conviction of a felony or a misdemeanor, such pension payments will stop on the sixty-first day of imprisonment following conviction. Normally a portion of the benefits can be assigned to an eligible family member during the period of incarceration. 38 C.F.R. § 3.666.

- No veteran *shall* receive a pension if the veteran is a fugitive felon, and no apportionment will be made to the veteran’s dependents. 38 C.F.R. § 3.666.
- No person *shall* be eligible for residence in an armed forces retirement home if he or she has been convicted of a felony. 24 U.S.C. § 412(b).
- All veteran’s benefits are forfeited if “evidence satisfactory to the Secretary” shows a veteran to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies, or if convicted of various offenses under federal or military law. 38 U.S.C. § 6104, 38 U.S.C. § 6105.
- Similar offenses, including spying, result in forfeiture of National Service Life Insurance, Servicemembers’ Group Life Insurance, and Veterans’ Group Life Insurance. 38 U.S.C. § 1911, 38 U.S.C. § 1973.

### **Medical Assistance**

- No medical assistance shall be furnished under the Colorado Medical Assistance Act, unless federal financial participation is available, while an individual is confined in a correctional institution, jail, juvenile commitment facility, or Department of Human Services facility. C.R.S. 25.5-4-205.5.
- An individual serving as an authorized representative to receive payment vouchers under the consumer-directed care model must submit an affidavit stating that he or she has not been convicted of any crime involving exploitation, abuse, or assault on another person. C.R.S. 25.5-6-1102(9).

### **Social Security**

- Old-age and survivors insurance benefit payments will not, subject to various exceptions, be paid for any month in which a person is:
  - o Confined in a jail, prison, or other penal institution for conviction of a criminal offense.
  - o Confined by court order in an institution at public expense in connection with a verdict of not guilty by reason of insanity, a finding of incompetence to stand trial, or a similar verdict or finding.
  - o Confined by court order in an institution at public expense, immediately following completion of confinement for a criminal offense, an element of which is sexual activity, pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding.
  - o Fleeing to avoid prosecution or custody for a felony.
  - o Violating a condition of probation or parole imposed under federal or state law.
  - o For additional information, see 42 U.S.C. § 402(x).
- No person shall be eligible for Supplemental Security Income for the Aged, Blind, and Disabled, subject to certain exceptions, if the person is:
  - o An inmate at a public institution. 42 U.S.C. § 1382(e)(1).
  - o Fleeing to avoid prosecution or custody for a felony. 42 U.S.C. § 1382(e)(4)(A)(i).

- Violating a condition of probation or parole imposed under federal or state law. 42 U.S.C. § 1382(e)(4)(A)(ii).
- Social Security Disability Insurance (SSDI) *shall not* be paid for any physical or mental impairment, or any increase in the severity of a pre-existing impairment, which arises in connection with commission of a felony. 20 C.F.R. § 404.1506.
- A person who has been convicted of any offense under federal or state law resulting in imprisonment for more than one year, or has been convicted of specified federal offenses, generally cannot serve as a representative payee for a beneficiary entitled to certain benefits under the Social Security Act. 42 U.S.C. § 1383(a)(2)(B).

## **5. Family Concerns**

A criminal act, or even allegations of a criminal act, can adversely impact an individual's ability to be a part of his or her family. Several of the consequences below specifically reference juvenile adjudications or are based on conduct alone. For others, it is unclear whether an adjudication will "count" for purposes of subsequent court actions. Individuals should assume that any conviction and sentencing in an adult court, regardless of the actor's age at the time of the offense, may cause a consequence to apply.

### ***Parenting Time and Decision Making Following Divorce or Separation***

- In determining parenting time following a divorce or separation, courts shall consider:
  - Whether one of the parties has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child in question was conceived as a result. C.R.S. 14-10-124(1.5)(a). If so, the court shall consider, as the primary concern, the safety and well-being of the child and the abused party. C.R.S. 14-10-124(4)(d).
  - In formulating a parenting plan, if the court finds one of the parties has committed an act of child abuse or neglect, domestic violence, or sexual assault resulting in the conception of the child, it shall consider conditions or limitations on parenting time that ensure the safety of the child and of the abused party. C.R.S. 14-10-124(4)(e).
  - In determining requests for modification of parenting time, courts may consider whether one party has committed an act of domestic violence. C.R.S. 14-10-129(2)(c).
  - If the court finds that one of the parties has committed sexual assault resulting in the conception of the child, the court shall consider whether it is in the best interests of the child to prohibit or limit the parenting time of that party. C.R.S. 14-10-124(4)(a)(IV).
- In allocating decision-making authority, courts shall consider:
  - Whether one of the parties has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child in question was conceived as a result. C.R.S. 14-10-124(1.5)(b). If so, the court shall consider, as the primary concern, the safety and well-being of the child and the abused party. C.R.S. 14-10-124(4)(d).
  - If the court finds that one of the parties committed child abuse or neglect, then it *shall not* be in the best interests of the child to allocate mutual decision-making with respect to any issue over the objection of the other party or the legal representative of the child. C.R.S. 14-10-124(4)(a)(I).
  - If the court finds that one of the parties has committed an act of domestic violence, then it *shall not* be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the legal representative of the child, unless the court finds that the

parties are able to make decisions cooperatively in the best interest of the child in a manner that is safe for the abused party and the child. C.R.S. 14-10-124(4)(a)(II).

- If the court finds that one of the parties has committed sexual assault and that the child was conceived as a result of the sexual assault, there is a rebuttable presumption that it is not in the best interests of the child to allocate sole or split decision-making authority to the person found to have committed sexual assault, or to allocate mutual decision-making between the person found to have committed sexual assault and the assaulted party. C.R.S. 14-10-124(4)(a)(III).
- If a parent has been convicted of any of a list of crimes, the other parent—or any other person who has been granted custody of or parental responsibility for the child pursuant to court order—may file an objection to parenting time. The offending parent shall then have the burden of proving that parenting time by such parent is in the best interests of the child or children. C.R.S. 14-10-129(3). The list of crimes is lengthy, but includes:
  - Any crime, the underlying factual basis of which has been found by a court on the record to include domestic violence.
  - Murder.
  - Sexual assault.
  - Unlawful sexual contact if the victim is compelled to submit.
  - Incest and aggravated incest.
  - Most crimes against children.
- Before a neutral third person is appointed to serve as a child and family investigator, the person shall submit fingerprints for a background check, which the Judicial Department shall use to determine if they are suitable. C.R.S. 14-10-116.5(4).

### ***Custody of Children and the Parent-Child Relationship***

- A court may order termination of the parent-child legal relationship upon a finding that:
  - The parent is subject to long-term confinement, provided other conditions are met. C.R.S. 19-3-604(1)(b).
  - The parent has committed various criminal acts against a child, a sibling, or another child of the parent. C.R.S. 19-3-604.
- A court may order removal of a child, without reasonable efforts to prevent the child's removal or to reunify the child with the family, when it finds that a parent has been convicted of the following. C.R.S. 19-1-115(7).
  - Murder of another child of the parent, including aiding, abetting, attempting, conspiring, or soliciting to commit the same.
  - Voluntary manslaughter of another child of the parent, including aiding, abetting, attempting, conspiring, or soliciting to commit the same.
  - A felony assault that resulted in serious bodily injury to the child or another child of the parent.

- A court may terminate a parent-child legal relationship if it finds that the parent was convicted on or after July 1, 2013, of an act of sexual assault or a crime in which the underlying factual basis was sexual assault, and the child was conceived as a result of that act or sexual assault or crime. C.R.S. 19-5-105.5. Similar provisions apply when no conviction occurred. C.R.S. 19-5-105.7.
- Under some circumstances, a previously terminated parent-child relationship can be reinstated. Reinstatement is not possible if the original dependency and neglect action involved substantiated allegations of sexual abuse or an incident of egregious abuse or neglect against a child, a near fatality, or a suspicious fatality or near fatality. C.R.S. 19-3-612(2)(f).
- Once a court terminates a parent-child legal relationship, the child cannot be placed with an individual other than a relative of the child or an agency unless that individual is of “good moral character.” C.R.S. 19-5-104(1).
- Several types of civil protection orders can be more difficult or impossible to modify if, since the order was issued, the restrained person was convicted of or pled guilty to a crime against the protected person. C.R.S. 13-14-108(3), -108(6).

### ***Emergency and Kinship Placement of Children***

- An agency *shall not* arrange emergency placement of a child with someone who has been convicted of:
  - Child abuse.
  - A crime of violence.
  - A felony involving unlawful sexual behavior.
  - A felony with an underlying factual basis involving domestic violence.
  - A felony involving physical assault or a drug-related offense, if committed within the preceding five years.
  - Violation of a protective order.
  - A crime involving homicide.
  - For additional information, see section 19-3-406(4) and 12 CCR 2509-4:7.304. A criminal history check is required.
- An agency *shall not* place a child in noncertified kinship care if the kin or any adult who resides with the kin at the home is required to register as a sex offender or has been convicted or adjudicated of:
  - Child abuse.
  - A crime of violence.
  - An offense involving unlawful sexual behavior.
  - A felony with an underlying factual basis involving domestic violence.
  - A felony involving physical assault or a drug-related offense within the preceding five years.
  - A pattern of misdemeanor convictions within the preceding ten years.
  - For more information, see section 19-3-407 and 12 CCR 2509-4:7.304. A criminal history check is required.
- Once a court terminates a parent-child legal relationship, the child cannot be placed with an individual other than a relative of the child or an agency unless that individual is of “good moral character.” C.R.S. 19-5-104(1).

## **Name Changes**

- A court shall not grant a petition for a name change if the court finds the petitioner was previously convicted of a felony or adjudicated a juvenile delinquent for an offense that would constitute a felony if committed by an adult in this state or any other state or under federal law. C.R.S. 13-15-101(2)(b).
- There are several statutory exceptions to the general rule. C.R.S. 13-15-101(3).

## **Adoption and Foster Care**

- A court *shall not* grant a decree of final adoption if it determines that the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony in one of the following areas: child abuse or neglect; spousal abuse; any crime against a child; or any crime involving violence, rape, sexual assault, or homicide, excluding other physical assault and battery. C.R.S. 19-5-210(4).
- For stepparent, kinship, or custodial adoptions, in addition to not granting a decree of final adoption in the circumstances above, the court *shall not* grant the decree of final adoption if it determines that the prospective adoptive parent was convicted of a felony for physical assault or battery that was committed within the past five years. C.R.S. 19-5-210(4).
- Petitions for adoption must be accompanied by a criminal history records check of any adult residing in the home and a report regarding felony or misdemeanor convictions of the offenses listed above, as well as any crime the underlying factual basis of which involved domestic violence, violation of a protective order, and any felony physical assault or battery or felony drug-related conviction. C.R.S. 19-5-207(2.5)(a)(IV). Slightly different rules apply to stepparent, second parent, kinship, or custodial adoptions. C.R.S. 19-5-208(5).
- For additional information, see 12 CCR 2509-6:7.500.2, 12 CCR 2509-8:7.710.3, 12 CCR 2509-8:7.710.5.
- For information regarding foster care, see The Department of Human Services in chapter 3.

## **Guardian or Conservator Appointment**

- A court may require a criminal background check to determine the fitness of a nominee for appointment as a guardian, emergency guardian, conservator, or special conservator. C.R.S. 15-14-110; Colorado Probate Forms 805, 834, 850.

## **Inheritance**

- An individual who is determined to have feloniously killed the decedent forfeits all benefits with respect to the decedent's estate. C.R.S. 15-11-803(2). Including PERA benefits. 8 CCR 1502-1:2.

- A person who has been arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person, shall not direct the final disposition of the deceased person or arrange the ceremonies for the deceased person. This does not apply if charges are not brought or the person is acquitted. C.R.S. 15-19-109.

## **6. Firearms**

A criminal act, or even allegations of a criminal act, can adversely impact an individual's ability to possess a firearm. Several of the consequences below specifically reference juvenile adjudications. For others, it is unclear whether an adjudication will "count" for purposes of subsequent court actions. Individuals should assume that any conviction and sentencing in an adult court, regardless of the actor's age at the time of the offense, may cause a consequence to apply.

### ***Restrictions Under Colorado Law***

- It is a felony offense to knowingly possess a firearm subsequent to adjudication for an act which, if committed by an adult, would constitute a felony, or subsequent to adjudication for attempt or conspiracy to commit a felony, under Colorado or any other state's law or under federal law. C.R.S. 18-12-108(3).
- It is a felony offense to knowingly possess a firearm subsequent to conviction for any felony, or subsequent to conviction for attempt or conspiracy to commit a felony, under Colorado or any other state's law or under federal law. C.R.S. 18-12-108(1).
  - o A deferred judgment and sentence, pursuant to section 18-1.3-102, is a prior conviction. Although the law is unsettled, this appears to be true even if the deferred judgment and sentence is successfully completed.<sup>14</sup>
- The Colorado Bureau of Investigation *shall* request a background check in connection with the prospective transfer of a firearm.
  - o The transfer *shall* be denied if it would violate applicable state or federal laws. C.R.S. 24-33.5-424(3).
  - o The transfer *shall* be denied if the prospective transferee has been arrested for or charged with a crime that, if convicted, would prohibit the transferee from purchasing, receiving, or possessing a firearm. C.R.S. 24-33.5-424(3).
- A concealed handgun permit *shall* be denied, revoked, or refused to renew to an individual who:
  - o Has been convicted of perjury in relation to a permit application. C.R.S. 18-12-203(1).
  - o Is subject to any of several types of protective orders. C.R.S. 18-12-203(1).
  - o Has been convicted of two or more alcohol-related driving offenses within ten years, subject to a statutory exception. C.R.S. 18-12-202(3), 18-12-203(1).
  - o A criminal background check is required. C.R.S. 18-12-205(4)(c).
- A temporary emergency permit to carry a concealed handgun requires a criminal history check. C.R.S. 18-12-209(2).

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<sup>14</sup> See C.R.S. 16-7-206(3); *M.T. v. People*, 269 P.3d 1219, 1221-22 (Colo. 2012); *People v. Allaire*, 843 P.2d 38, 40-41 (Colo. App. 1992).

- Whenever a court subjects a person to a mandatory protection order under section 18-1-1001, which qualifies as an order described in 18 U.S.C. § 922(g)(8), the court *shall* order the person to refrain from possessing or purchasing any firearm or ammunition for the duration of the order, and relinquish any firearm or ammunition subject to the person's immediate possession and control for the duration of the order. C.R.S. 18-1-1001(9).
  - A person who fails to timely file a receipt documenting relinquishment of a firearm may be criminally liable. C.R.S. 18-1-1001(9)(i).
  - A person who possesses or attempts to purchase or receive a firearm or ammunition while the protection order is in effect may be criminally liable. C.R.S. 18-1-1001(9)(k).
  - Similar provisions apply to civil protection orders issued pursuant to article 14 of title 13. C.R.S. 13-14-105.5.
- If a defendant is convicted of any crime, the underlying factual basis of which is found by the court on the record to be a misdemeanor crime of domestic violence, as defined in 18 U.S.C. § 921(a)(33), or that is punishable by a term of imprisonment exceeding one year and includes an act of domestic violence:
  - The court *shall* order the person to refrain from possessing or purchasing any firearm or ammunition, and relinquish any firearm or ammunition subject to the person's immediate possession and control, for the duration of the order. C.R.S. 18-6-801(8).
  - A person who fails to timely file a receipt documenting relinquishment of a firearm may be criminally liable. C.R.S. 18-6-801(8)(i).
- Firearms used during a criminal episode that gave rise to a conviction may be forfeited. C.R.S. 18-12-110.
- A conviction with an underlying factual basis of domestic violence is one of numerous considerations relevant to whether a court can issue an extreme risk protection order curtailing the right to possess firearms. C.R.S. 13-14.5-105(3).
- A conviction for improperly conducting a private firearm transfer *shall* result in being prohibited from possessing a firearm for two years. C.R.S. 18-12-112(9).

### ***Restrictions Under Federal Law***

- It is unlawful for any person to possess a firearm or ammunition who:
  - Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
  - Is a fugitive from justice.
  - Is an unlawful user of, or addicted to, any controlled substance.
  - Is under a court order that restrains the person from harassing, stalking, or threatening an intimate partner or the intimate partner's child.
  - Has been convicted in any court of a misdemeanor crime of domestic violence.
- For more information, see 18 U.S.C. § 922(g).

## **7. Citizenship and Immigration**

Immigration and citizenship related consequences are imposed by federal law, and are therefore outside the scope of this publication. The information below is provided to highlight general concerns.

Any non-citizen convicted of a crime may face either removal from the United States, classification as “inadmissible,” or other consequences. Juvenile adjudications generally do not count as convictions for purposes of immigration law, and thus generally do not trigger conviction-based grounds for deportability or inadmissibility.<sup>15</sup> They can, however, serve as evidence of conduct-based grounds for the same. Additionally, convictions of juveniles as adults are typically considered convictions for purposes of immigration law.

### ***Consequences of Adjudication or Conviction for Non-Citizens***

- Inadmissibility: Certain crimes can render a person inadmissible. This means that if the person leaves the United States, they will not be able to return.
- Deportation: Certain crimes can render a person deportable. This means that the person can be removed from the country.
- Other possible consequences include but are not limited to:
  - Mandatory detention during immigration proceedings.
  - Inability to obtain deferred action for childhood arrivals.
  - Inability to obtain asylum or protected status.
  - Inability to obtain cancellation of removal.
  - Inability to become a citizen.
  - Inability to become a legal permanent resident.

### ***Inadmissibility***

- Most non-citizens who are deemed inadmissible will not be able to reenter if they leave the country. If an undocumented immigrant is determined inadmissible, after removal he or she will be barred from seeking readmission for a period of time.
- Subject to limited exceptions and waivers, grounds for inadmissibility include:
  - Conviction of, or admission to having committed, any crime involving moral turpitude. Note that the definition of “moral turpitude” is different in this context than in the rest of this publication.
  - Conviction of, or admission to having committed, any crime relating to a controlled substance. A limited exception applies for a single possession of a small amount of marijuana.
  - Conviction of two or more criminal offenses, the resulting aggregate sentences to confinement for which were five years or more.

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<sup>15</sup> *In re Devison-Charles*, 22 I. & N. Dec. 1362 (BIA 2000).

- Subject to limited exceptions and waivers, conduct-based grounds for inadmissibility include:
  - Health related grounds, including physical or mental disorders.
  - Drug abuse or addiction.
  - Controlled substance trafficking.
  - Prostitution or commercialized vice.
  - Trafficking in persons.
  - Money laundering.
  - Security related grounds.
  - Illegal presence in the United States.
  - Falsely claiming citizenship.
- This list is not complete. For additional information, see 8 U.S.C. § 1182.

### ***Deportability***

- Subject to limited exceptions and waivers, grounds for deportation include:
  - Conviction of a single crime involving moral turpitude within five years of admission (or in some cases ten years) for which a sentence of one year or longer may be imposed.
  - Conviction of two or more crimes involving moral turpitude, in separate criminal episodes, regardless of the time after admission or the sentence imposed.
  - Conviction of any aggravated felony, as defined in 8 U.S.C. 1101(a)(43).
  - Conviction of violating any controlled substance law, other than a single offense involving possession for one's own use of thirty grams or less of marijuana.
  - Conviction of a firearms offense.
  - Conviction of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment.
  - Conviction of various federal offenses.
- Subject to limited exceptions and waivers, conduct-based grounds for deportation include:
  - Illegal presence in the United States.
  - Smuggling aliens.
  - Drug abuser or addict.
  - Certain violations of a protective order.
  - Trafficking in persons.
  - Falsely claiming citizenship.
  - Security related grounds.
- This list is not complete. For additional information, see 8 U.S.C. § 1227.

### ***Inability to Obtain Citizenship***

- In order to become a naturalized citizen, a person must be of good moral character while in the United States for a minimum of five years. 8 U.S.C. § 1427(a).

- No person shall be regarded as one of good moral character if during the period for which good moral character is required the person was:
  - o Confined in a jail or prison for an aggregate of 180 days.
  - o Convicted of an aggravated felony at any time.
  - o Convicted of two or more gambling offenses.
  - o A member of one or more of the classes of persons described in the inadmissibility statute, 8 U.S.C. § 1182(a), based upon offenses or actions.
- This list is not complete. For additional information, see 8 U.S.C. § 1101(f).

### ***Mandatory Detention***

- Subject to certain exceptions, individuals who are inadmissible or deportable by reason of having “committed” offenses shall be taken into custody and held without bond during immigration proceedings. It is unclear whether this requirement applies only to convictions, or also to adjudications or conduct alone. 8 U.S.C. § 1226(c).

## **8. Other Civil Rights and Privileges**

Many civil rights and privileges can be adversely affected by a criminal act. Several of the consequences below specifically reference juvenile adjudications or are based on conduct alone. For others, it is unclear whether an adjudication will “count.” Individuals should assume that any conviction and sentencing in an adult court, regardless of the actor’s age at the time of the offense, may cause a consequence to apply.

### ***Driving***

- For purposes of most Colorado driving statutes, “conviction” is defined to include a plea of guilty or nolo contendere, a verdict of guilty, an adjudication of delinquency, or payment of a penalty. C.R.S. 42-1-102(19).
- Section 42-2-125 lists multiple offenses for which a driver’s license *shall* be revoked after conviction. These include:
  - Vehicular homicide, vehicular assault, or criminally negligent homicide while driving a motor vehicle. See also section 42-2-128.
  - Driving under the influence of a controlled substance, as defined in section 18-18-102(5).
  - In the case of a driver twenty-one years of age or older, driving under the influence (DUI) or DUI per se. Subject to exceptions.
  - Any felony in the commission of which a motor vehicle was used.
  - Failing to stop and render aid, as required by section 42-4-1601.
  - Perjury in the first or second degree or making of a false affidavit or statement under oath to the Department of Revenue under any law relating to the ownership or operation of a motor vehicle.
  - Reckless driving, if committed three times within two years.
  - Repeated offenses for DUI, DUI per se, or driving while ability impaired (DWAI).
  - Single offenses for DUI, DUI per se, DWAI, or underage drinking and driving (UDD), if the driver was under twenty-one years of age.
  - Violating any provision of title 42, C.R.S., without filing a notice of financial responsibility, if required to do so.
  - Knowingly and willfully leaving the scene of an accident involving a commercial motor vehicle driven by the person.
  - Violating section 44-3-901(1)(c) or (1)(d) (relating to minors obtaining or possessing alcohol) or 18-13-122(3) (underage possession or consumption of alcohol or marijuana), or any counterpart municipal charter or ordinance, and failing to complete an alcohol evaluation, education, or treatment program.
  - Violating section 44-3-901(1)(c) or (1)(d) or 18-13-122(3), or any counterpart municipal charter or ordinance, and having a previous conviction for such offenses.
  - Providing alcohol to a minor, regardless of whether a vehicle was involved. C.R.S. 42-2-127.6.
  - Aggravated motor vehicle theft or trespass in a car.

- A person having multiple convictions of certain statutorily listed offenses can be designated a habitual driving offender and have his or her driver's license revoked. C.R.S. 42-2-202, 42-2-203.
- The Department of Revenue may suspend a driver's license following:
  - o The accumulation of too many points associated with various vehicular offenses. C.R.S. 42-2-127.
  - o A conviction for injuring a vulnerable road user. C.R.S. 42-4-1402.5(3)(c).
  - o A determination that the holder operated a motor vehicle without proper insurance. C.R.S. 42-2-127.7.
- A license may be canceled, denied, or not reissued upon conviction of misuse of license, titles, permits, or license plates. C.R.S. 42-2-122(1)(c).
- Alcohol and drug specific provisions:
  - o A law enforcement officer *shall* take possession of a driver's license upon probable cause to believe the holder is driving with excessive BAC or refusing to take a blood, breath, or saliva test. C.R.S. 42-2-126.
  - o Upon conviction for DUI, DUI per se, or, for a person under twenty-one years of age, for DUI, DUI per se, DWAI, or UDD, the court *shall* require the offender to immediately surrender his or her license. C.R.S. 42-2-129.
  - o Persons convicted of alcohol or controlled substance related offenses may be required to have a restricted license prior to obtaining any other driver's license. C.R.S. 42-2-132.5, 17-2-201(5.9).
  - o An interlock restricted license shall be revoked upon conviction for operating a vehicle after circumventing an interlock device. C.R.S. 42-2-132.5(7), -132.5(10).

## **Voting**

- The right to vote is lost while serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction. C.R.S. 1-2-103(4).
- The Secretary of State may cancel voter registration upon being furnished information that an elector has been convicted of a felony. C.R.S. 1-2-302(3.5)(b), 1-2-606.
- The right to vote is restored immediately upon release. Colo. Const. art. 7, § 10. If a voter's registration has been cancelled due to conviction or confinement, however, it is necessary to re-register.
- Persons confined while awaiting trial retain the right to vote. C.R.S. 1-2-103(4).
- The ballot of any person violating the prohibition on unlawful qualification as a taxpaying elector shall be void. C.R.S. 1-13-202.

## **Election Participation**

- An election judge or student election judge must never have been convicted of election fraud, any other election offense, or fraud. C.R.S. 1-6-101.

- An election judge *shall* be summarily removed if convicted of any felony. C.R.S. 31-10-406.
- An election judge may be removed if convicted of any crime. C.R.S. 1-6-120(2).
- County personnel shall request the criminal history records of all full-time, part-time, permanent, and contract employees who staff a counting center and have any access to certain voting equipment. The criminal history records of election judges may be requested. C.R.S. 24-72-305.6, 8 CCR 1505-1:6.
- Individuals with access to certain voting-related areas or equipment, or who are contracted to transport voting equipment, must pass a criminal background check and *shall* not have been convicted of an election offense or an offense with an element of fraud. 8 CCR 1505-1:20.

### ***Property Forfeiture***

- Any building, the ground upon which it sits, and all of its fixtures and contents, as well as any vehicle or other real property, can be deemed a public nuisance and forfeited to the state if used in the commission of various crimes. C.R.S. 16-13-301 to 16-13-316, 16-13-501 to 16-13-511.
- Firearms used during a criminal episode that gave rise to a conviction may be forfeited. C.R.S. 18-12-110.
- Any person who contracts with a person convicted of a crime in this state, for payment of any profits from the crime of which such person was convicted, *shall* pay to the state any money that would otherwise be paid to the convicted person. C.R.S. 24-4.1-201.

### ***Genetic and STI Testing***

- All children sentenced for an offense that would constitute a felony if committed by an adult, as well as other children adjudicated for select offenses, *shall* submit to collection of a biological substance sample. C.R.S. 19-2-925.6. Limited exceptions may apply.
- Every adult or juvenile bound over for trial for a sex offense involving sexual penetration, or any person who is indicted for or is convicted of such an offense, *shall* be ordered to submit to a diagnostic test for sexually transmitted infection. C.R.S. 18-3-415.
- Every person sentenced for a felony conviction, as well as select other offenses, must submit to and pay for collection of a biological substance to determine their genetic markers. C.R.S. 16-11-102.4. An exception exists for some deferred judgments and sentences.

### ***Jury Service***

- A prospective grand juror *shall* be disqualified if he or she has previously been convicted of a felony in any state, the United States, or any territory under the jurisdiction of the United States. C.R.S. 13-71-105(3).
- Convicted persons are not disqualified from service on petit juries.

## ***Witness Testimony***

- Individuals testifying as a witness in a court proceeding may have their credibility called into question by prior conviction of, or in some cases juvenile adjudication for, a felony. C.R.S. 13-90-101, 19-2-802(2), Colorado Rule of Evidence 608.

## ***Community Notification***

- People convicted of sexual offenses may be subject to community notification requirements. See “Special Considerations for Sexual Offenses.”
- For persons imprisoned due to child abuse offenses, prior to release from a correctional facility by discharge or parole, the Department of Corrections *shall* notify the victim, the local law enforcement agency having jurisdiction over the last-known home address of the offender, the local law enforcement agency having jurisdiction over the offender’s parole address, and the Colorado Bureau of Investigation. C.R.S. 17-22.5-202(3).
- People convicted of tampering with or drugging livestock *shall* have their name and photograph made available for publication in newspapers of general circulation and trade journals. C.R.S. 18-9-207(4).

## ***Gambling***

- A person may be excluded from a licensed gaming establishment if their presence in the establishment is determined to pose a threat to the interests of the state or to licensed gaming, or both. In making that determination, the gaming commission may consider prior conviction of a felony, a misdemeanor involving moral turpitude, or a violation of the gaming laws of any state, the United States, or any of its possessions or territories, including Indian tribes. C.R.S. 44-30-827, 44-30-1001(2).
- Persons may be excluded from a licensed animal-racing facility if they have been convicted of a felony under the laws of this state or any other state or of the United States, subject to the provisions of section 24-5-101. C.R.S. 44-32-803.

## ***Identification***

- A state identification card may be canceled, denied, or not reissued upon conviction of misuse of an identification card. C.R.S. 42-2-302(3).
- Applicants for a retired peace officer identification card must submit to a criminal background check. C.R.S. 17-1-115.2(3), 23-5-142(3), 24-31-109(3), 24-33.5-112(3), 24-35-119(3), 30-10-524(3), 31-30-106(3).

## ***Passports and Travel***

- A person may have their passport revoked or denied if convicted of a federal or state felony drug offense or certain misdemeanor drug offenses, if the person used

a passport or otherwise crossed an international border in committing the offense. 22 U.S.C. § 2714.

- Foreign governments can and often do restrict the entry of people convicted of certain crimes.

### ***Hunting and Fishing***

- The Colorado Wildlife Commission or a hearing officer can suspend the privilege of applying for, purchasing, or exercising the benefits of a license issued by the division for a period not to exceed five years if:
  - o A person has been convicted of a sufficient number of Colorado wildlife violations, or their out-of-state, federal, or Canadian equivalent, to acquire twenty or more “points” in a consecutive five-year period.
  - o A person has been convicted of any violation of title 18, C.R.S., that was committed while hunting, trapping, fishing, or engaging in a related activity or of any federal wildlife violations within Colorado and such federal convictions, individually or when combined with specified Colorado convictions, total twenty or more points.
  - o A person has been convicted of other statutorily listed wildlife offenses.
  - o For purposes of this statute, “conviction” means payment of a penalty assessment, a court conviction, a plea of nolo contendere, the acceptance of a deferred or suspended sentence by the court, or a juvenile adjudication.
  - o For more information, see section 33-6-106.
- Several types of wildlife offenses may result in both criminal penalties and immediate suspension of any or all wildlife license privileges. These include:
  - o Illegal possession of wildlife. C.R.S. 33-6-109.
  - o Illegal sale of wildlife. C.R.S. 33-6-113.
  - o Willful destruction of wildlife. C.R.S. 33-6-117.
  - o Computer-assisted remote hunting. C.R.S. 33-6-132.

### ***Impact on Civil Actions***

- Individuals and the estates of individuals convicted of a felony or adjudicated a delinquent as the result of an act generally shall not have a right to recover damages sustained during the commission of or during the immediate flight from the act. Subject to limited exceptions. C.R.S. 13-80-119.
- Individuals convicted of certain types of offenses are estopped from denying involvement if a civil suit is brought against them. C.R.S. 13-21-808 (injuries related to illegal drug use); 25.5-4-307(4) (false Medicaid claim actions).

### ***National Guard Youth Challenge Corps Program***

- Eligible youth must be free of felony convictions or capital offenses, not indicted or charged with a crime, and not on parole or probation for anything other than juvenile status offenses. C.R.S. 28-3-1703(1)(f).

## ***Tax Refunds***

- State tax refunds issued pursuant to the Taxpayer Bill of Rights in years when revenues exceed spending limits *shall not* be issued to:
  - o Any person who was convicted of a felony and served a sentence of incarceration for a total of one hundred eighty days or more during the fiscal year.
  - o Any person who is convicted of a misdemeanor or is adjudicated for an offense that would constitute a misdemeanor if committed by an adult and who is incarcerated for a total of one hundred eighty days or more during the fiscal year.
  - o Any person under eighteen years of age who is adjudicated for an offense that would constitute a felony if committed by an adult who is committed to the Department of Human Services for a total of one hundred eighty days or more during the fiscal year.
  - o For more information, see section 39-22-2003(1)(b).

## ***Medical Marijuana Registration***

- Registration necessary to obtain medical marijuana may be revoked for conviction of any criminal offense pertaining to controlled substances. 5 CCR 1006-2:2, - 2:12.

## ***Volunteer Opportunities***

- Volunteers at various organizations, especially those providing services to children, the elderly, or people with disabilities, may be required to undergo a criminal background check. C.R.S. 24-72-305.3; 8 CCR 1507-21.
- Organizations receiving funding from the Colorado Youth Mentoring Program must screen adult volunteers by conducting criminal background checks. C.R.S. 26-6.8-104(5).
- Court Appointed Special Advocate volunteers must include in their application a criminal history record and motor vehicle record. C.R.S. 19-1-205(3).

## ***Pet Ownership***

- Upon conviction for felony cruelty to animals, the court shall enter an order prohibiting the defendant from owning, possessing, or caring for a pet animal for three to five years, unless the defendant's treatment provider makes a recommendation not to impose the ban and the court agrees with the recommendation. C.R.S. 18-9-202(2)(a.5)(V.5).

## **9. Greater Penalties Upon Repeat Offenses**

Many types of offenses or adjudications can make it difficult for a child to obtain pre-trial release for a subsequent charge, and can expose a child to significantly greater consequences if he or she is found guilty of a subsequent charge.

For purposes of Colorado's Children's Code, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, a juvenile adjudication is equivalent to a conviction. C.R.S. 19-1-103(2). In other circumstances, it is unclear whether a juvenile adjudication counts as a prior offense. Any conviction and sentencing in an adult court, regardless of the actor's age at the time of the offense, may likely cause a consequence to apply.

### ***A Prior Adjudication Can Move a Case to Adult Court***

Although juvenile courts generally have jurisdiction over crimes committed by children, Colorado has two mechanisms for moving children's cases into an adult court: transfers and direct filing. C.R.S. 19-2-104. Under either mechanism, a move to adult court has profound effects on the child, including possible sentencing as an adult and the imposition of most collateral consequences associated with an adult conviction. C.R.S. 19-2-517(6), 19-2-518(1)(d). A prior adjudication or conviction can impact whether a case is transferred to, or direct filed in, an adult court.

- A juvenile court may transfer a child's case to adult court when either the child was twelve or thirteen years of age at the time of the offense and is alleged to have committed a delinquent act that constitutes a class 1 or 2 felony or a crime of violence, or the child was fourteen years of age or older at the time of the offense and is alleged to have committed a delinquent act that constitutes any felony. C.R.S. 19-2-518(1)(a). The juvenile court must also find that retaining jurisdiction would be contrary to the best interests of the juvenile or the public. In making that finding, the juvenile court must consider, among other things:
  - o The record and previous history of the child.
  - o The likelihood of rehabilitation of the child by use of facilities available to the juvenile court.
  - o Whether the child was twice previously adjudicated delinquent for delinquent acts that constitute felonies.
  - o Whether the child was previously adjudicated delinquent for a delinquent act that constitutes a crime of violence.
  - o Whether the child was previously committed to the Department of Human Services following an adjudication for a felony.
  - o This list is not complete. For more information, see section 19-2-518(4)(b).
- A prosecutor can direct file a case against a child in adult court if the child was sixteen years of age or older at the time of the offense, and:
  - o The child is alleged to have committed a class 1 or class 2 felony, or
  - o The child is alleged to have committed certain types of sexual assault, or

- The child is alleged to have committed a felony that is a crime of violence, or is alleged to have committed certain types of sexual assault, and
  - The child is found to have a prior adjudicated felony offense, or
  - The child has previously been subject to proceedings in the district court as the result of a direct filing or transfer, subject to limited exceptions.
- For more information, see section 19-2-517(1)(a).
- When a case is direct filed in adult court, the child may request a transfer back to juvenile court. C.R.S. 19-2-517(3). In evaluating a request for such a transfer, the court shall consider, among other things:
  - The record and previous history of the child.
  - The likelihood of rehabilitation of the child by use of the sentencing options available to the juvenile and district courts.
  - Whether the child was previously committed to the Department of Human Services following an adjudication for a felony.
  - This list is not complete. For more information, see section 19-2-517(3).

### ***A Prior Adjudication Can Impact Release on Bail***

- A child's criminal history is a relevant consideration in setting both pretrial and post-adjudication bond. C.R.S. 16-4-103(5)(g), 16-4-202(1)(d), 19-2-509(4)(a), 19-2-904.
- A child charged or accused of having committed a delinquent act that constitutes a felony or class 1 misdemeanor shall not, unless the district attorney consents, be released without bond or on a personal recognizance bond if:
  - The child has been found guilty of a delinquent act constituting a felony or class 1 misdemeanor within one year prior to his or her detention, or
  - The child is currently at liberty on another bond of any type, or
  - The child has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established. C.R.S. 19-2-509(1).
- An arrested person may be ineligible for bail if a crime of violence is alleged to have occurred after two previous felony convictions, or after one previous felony conviction for a crime of violence, while on bail pending disposition of a previous crime of violence charge, or while on probation or parole resulting from conviction for a crime of violence. A person may also be ineligible for bail if accused of possession of a weapon by a previous offender, subsequent to conviction for various offenses. Colo. Const. art. II, § 19; C.R.S. 16-4-101(1).
- Unless the district attorney consents or other conditions are met, no person shall be released on personal recognizance if he or she has a record of conviction of a class 1 misdemeanor within two years or a felony within five years. C.R.S. 16-4-104(2)(b).
- Restrictions apply to people who have failed to appear on bond in any case involving a felony or class 1 misdemeanor charge in the preceding five years, or are currently on bond for a different case. C.R.S. 16-4-104.

- Additional bond conditions may be required when a defendant has been previously convicted of driving under the influence offenses. C.R.S. 16-4-105(5), -105(6).
- Post-conviction bail can be denied for a second or subsequent offense for stalking within seven years. C.R.S. 16-4-201.5(1)(i).

### ***Increased Sentences May Apply for Repeat Offenders***

A child may face a greater sentence if, based on a history of prior offenses, he or she is classified as one of the following types of offender. C.R.S. 19-2-516, 19-2-518, 19-2-601, 19-2-908.

- Mandatory sentence offender. C.R.S. 19-2-516(1). A child qualifies if he or she:
  - o Has been adjudicated a juvenile delinquent twice, or has been adjudicated a juvenile delinquent and his or her probation has been revoked for a delinquent act, and
  - o He or she is subsequently adjudicated a juvenile delinquent or has probation revoked for a delinquent act.
- Repeat juvenile offender. C.R.S. 19-2-516(2). A child qualifies if he or she has been previously adjudicated a juvenile delinquent and is adjudicated a juvenile delinquent for a delinquent act that constitutes a felony or if his or her probation is revoked for a delinquent act that constitutes a felony.
- Aggravated juvenile offender. C.R.S. 19-2-516(4). A child qualifies if he or she is:
  - o Adjudicated a juvenile delinquent for a delinquent act that constitutes a class 1 or class 2 felony or if his or her probation is revoked for a delinquent act that constitutes a class 1 or class 2 felony, or
  - o Adjudicated a juvenile delinquent for a delinquent act that constitutes a felony and either is subsequently adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, or has his or her probation revoked for a delinquent act that constitutes a crime of violence, or
  - o Adjudicated a juvenile delinquent or if his or her probation is revoked for a delinquent act that constitutes a felonious unlawful sexual behavior, incest, or aggravated incest.
  - o Additional provisions concerning aggravated juvenile offenders are located in section 19-2-601.

A prior adjudication may render a child ineligible for a petty offense contract, a mechanism used in lieu of a petition for delinquency. C.R.S. 19-2-302.5(1)(a). Courts may also use a prior juvenile adjudication for purposes of enhancing a later sentence.<sup>16</sup> In adult court, prior offenses are typically a consideration in what sentence is imposed and can, in a wide variety of contexts, lead to aggravated sentences. C.R.S. 18-1.3-101 to -1407.

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<sup>16</sup> See *People v. Mazzoni*, 165 P.3d 719, 722-23 (Colo. App. 2006).

## ***Probation Eligibility***

- Probation following a felony conviction is not available to a person who has twice or more been convicted of a felony under the laws of this state, any other state, or the United States, if the current conviction or prior conviction is for any crime on a list defined by statute. C.R.S. 18-1.3-201(2.5). The list includes most crimes against a person, first degree arson, robbery, first or second degree burglary, theft from the person of another, and any felony offense against a child. Attempts and conspiracies to commit those crimes are also disqualifying.
- Restrictions on probation eligibility can be waived under some conditions. C.R.S. 18-1.3-201(4).
- Convictions for some offenses, committed while on bond for another offense, result in probation ineligibility. C.R.S. 18-8-212.
- Before being sentenced to probation, adults and children who meet the statutory definition of a sex offender may be required to undergo a sex-offense specific evaluation. C.R.S. 16-11-102(1)(b), 16-11.7-104(1).

## ***Habitual Criminal Laws***

- If a child's case is transferred to or direct filed in adult court, thus rendering the child eligible to be sentenced to the Department of Corrections, it appears that any resulting conviction for a felony can be used for purposes of applying Colorado's habitual criminal laws to a subsequent felony conviction.<sup>17</sup>
- If any person is convicted of a class 1 or 2 felony, or a level 1 drug felony, or a class 3 felony that is a crime of violence, and has been twice previously convicted—either in this state or elsewhere—of a class 1 or 2 felony, or a level 1 drug felony, or a class 3 felony that is a crime of violence, or a crime that would be such a felony if committed in Colorado, then that person shall be sentenced to the Department of Corrections for life. C.R.S. 18-1.3-801(1).
  - o An exception applies to some burglary convictions.
- If any person is convicted of a class 1, 2, 3, 4, or 5 felony or a level 1, 2, or 3 drug felony who, within ten years of the date of commission, has been twice previously convicted—either in this state or elsewhere—of a felony or a crime that if committed in Colorado would be a felony, then that person shall be sentenced to the Department of Corrections for a term of three times the maximum of the presumptive range for the class or level of felony for which the person was convicted. C.R.S. 18-1.3-801(1.5). If the offense of conviction is a level 1 drug felony, the person shall be sentenced to 48 years.
- If any person is convicted of any felony, who has three times previously been convicted—either in this state or elsewhere—of a felony or a crime that if committed in Colorado would be a felony, then that person shall be sentenced to the Department of Corrections for a term of four times the maximum of the presumptive range for the class or level of felony for which the person was

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<sup>17</sup> See *Sandoval v. People*, 426 P.2d 968 (Colo. 1967).

- convicted. C.R.S. 18-1.3-801(2). If the offense of conviction is a level 1 drug felony, the person shall be sentenced to 64 years.
- An exception applies to some felony convictions for unlawful possession of a controlled substance.
  - Any person who is convicted and sentenced pursuant to section 18-1.3-801(2), who is thereafter convicted of a felony which is a crime of violence, shall be sentenced to life imprisonment. C.R.S. 18-1.3-801(2.5).
- Exceptions to the habitual criminal sentencing scheme apply for:
- Select drug law convictions. C.R.S. 18-1.3-801(3).
  - Select escape convictions. C.R.S. 18-1.3-801(5).

### ***Youthful Offender System Eligibility***

- A young adult offender is not eligible for placement in the youthful offender system if he or she has received a sentence to that system for any prior conviction, and may not be eligible based upon his or her criminal history. C.R.S. 16-11-102(1.8), 18-1.3-407.5(2)(a)(III).

### ***Common Criminal Offenses***

A person convicted of any of the following may face a greater penalty if subsequently convicted of the same crime or a similar crime. The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. U.S. Sentencing Guidelines Manual ch. 4 (2018).

- Burglary. C.R.S. 18-1.3-804.
- Enticement of a child. C.R.S. 18-3-305(2).
- Sexual offenses against children. C.R.S. 18-3-412.
- Failure to register as a sex offender. C.R.S. 18-3-412.5(2).
- Stalking. C.R.S. 18-3-602(3).
- Theft of trade secrets. C.R.S. 18-4-408(3).
- Aggravated motor vehicle theft. C.R.S. 18-4-409(3).
- Theft from a store. C.R.S. 18-4-413(2).
- Defacing property. C.R.S. 18-4-509(2).
- Cybercrime. C.R.S. 18-5.5-102(3).
- Child abuse. C.R.S. 18-6-401(7)(e), 18-6-401.2.
- Sexual exploitation of a child. C.R.S. 18-6-403(5)(b).
- Violation of a protective order. C.R.S. 18-6-803.5(2).
- Public indecency. C.R.S. 18-7-301(2).
- Indecent exposure. C.R.S. 18-7-302(4).
- Cruelty to animals. C.R.S. 18-9-202.
- Wiretapping and eavesdropping devices. C.R.S. 18-9-302.
- Telecommunications crimes. C.R.S. 18-9-309(2.5).
- Possessing a dangerous or illegal weapon. C.R.S. 18-12-102(3).
- Additional firearms offenses. C.R.S. 18-12-107.
- Possession of a weapon by a previous offender. C.R.S. 18-12-108(5).

- Possession of a handgun by a juvenile. C.R.S. 18-12-108.5(1)(c).
- Possession or sale of a large-capacity magazine. C.R.S. 18-12-302(1).
- Underage possession or consumption of alcohol or marijuana. C.R.S. 18-13-122(4), 44-3-904(4).
- Misrepresentation of age to obtain alcohol. C.R.S. 44-3-904(4).

## ***Controlled Substance Offenses***

- Elevated sentencing provisions may or shall apply to individuals convicted of drug offenses that occurred while the individual was charged with or under supervision for another felony. These provisions can apply to delinquent acts that would be a felony if committed by an adult. C.R.S. 18-1.3-401.5(10), -401.5(11).
- Prior possession of a controlled substance offenses can elevate a fourth or subsequent offense from a level 1 drug misdemeanor to a level 4 drug felony, effective March 1, 2020. C.R.S. 18-18-403.5(2)(c).
- Elevated sentencing provisions apply to third or subsequent offenses for some level 1 and 2 drug misdemeanors, effective March 1, 2020. C.R.S. 18-1.3-501(1)(d.5).
- Individuals cannot receive a fine-only punishment for a drug felony if they have been twice previously convicted of a felony under the laws of any state or the United States. C.R.S. 18-1.3-401.5(2)(b)(V).
- A sentence for a drug felony cannot be suspended if the individual is ineligible for probation under section 18-1.3-201, except under limited circumstances. C.R.S. 18-1.3-401.5(12).
- Certain drug felony offenses can be converted to a misdemeanor conviction upon successful completion of the sentence. Individuals are not eligible for this relief if they have a prior conviction for a crime of violence, are ineligible for probation under section 18-1.3-201, or have two or more prior felony convictions for a drug offense (including any diversion, deferred prosecution, or deferred judgment and sentence). C.R.S. 18-1.3-103.5(4).
- Increased punishment upon subsequent convictions also applies to:
  - o Unlawful administration of gamma hydroxybutyrate (GHB) or ketamine. C.R.S. 18-13-123(5).
  - o Growing too many marijuana plants. C.R.S. 18-18-406(3)(a)(IV).
- The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. U.S. Sentencing Guidelines Manual ch. 4 (2018).

## ***Prostitution Offenses***

- Individuals charged with soliciting for prostitution or patronizing a prostitute are ineligible for prostitution offender programs if they have prior convictions or any charges pending for any felony, if they have been convicted of a list of state offenses, or if they have been convicted of an offense in another state that would constitute those offenses in Colorado. C.R.S. 13-10-126(2).

- The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. U.S. Sentencing Guidelines Manual ch. 4 (2018).

### ***Driving, Boating, and Flying Offenses***

A person who has accumulated multiple convictions for various driving-related offenses may be designated a habitual offender of motor vehicle laws, and subject to mandatory revocation of his or her driver's license and greater penalties for further offenses. C.R.S. 42-2-202, 42-2-203, 42-2-206. For purposes of habitual offender designation, qualifying offenses include convictions under any federal law, any law of another state, or any ordinance of a municipality that substantially conforms to the statutory provisions of this state regulating the operation of motor vehicles. C.R.S. 42-2-202(2)(b).

A person convicted of any of the following may face a greater penalty if subsequently convicted of the same crime or a similar crime. The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. U.S. Sentencing Guidelines Manual ch. 4 (2018).

- Driving without a license. C.R.S. 42-2-101(11).
- Driving under the influence, while ability impaired, or with excessive alcohol content. C.R.S. 42-2-125(1), 42-2-126(3), 42-2-126(4), 42-4-1301, 42-4-1307.
- Driving under restraint. C.R.S. 42-2-138.
- Offenses related to proof of financial responsibility. C.R.S. 42-7-301.5.
- Deviation from authorized route while transporting hazardous materials. C.R.S. 42-20-305(2).
- Overweight or oversize vehicle offenses. C.R.S. 42-4-510(12).
- Speed contest offenses. C.R.S. 42-4-1105(5).
- School bus related offenses. C.R.S. 42-4-1903(6).
- Operating a vessel while under the influence. C.R.S. 33-13-108.1(12).
- Operating an aquatic vessel while the privilege to operate is suspended. C.R.S. 33-13-108.2.
- Operating an aircraft under the influence of alcohol or drugs. C.R.S. 41-2-102(7).

### ***Other Criminal Offenses***

A person convicted of many other types of crimes may be punished more severely if subsequently convicted of the same crime or a similar crime. These include but are not limited to:

- Gambling related offenses.
- Environmental offenses.
- Animal, wildlife, and livestock related offenses.
- Unauthorized practice offenses.
- Offenses related to professions.

Because most of these types of offenses are rarely applicable to children they have not been included in this publication. For additional information, see *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>18</sup> The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. U.S. Sentencing Guidelines Manual ch. 4 (2018).

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<sup>18</sup> <http://www.coloradodefenders.us/>.

## **10. Special Considerations for Sexual Offenses**

Children adjudicated or convicted of sex offenses face a wide array of consequences beyond the sentence imposed by a judge. This chapter is intended to highlight those consequences and provide references to the applicable portions of this publication. In addition to the consequences listed below, all of the consequences applicable to *any* adjudication or conviction will typically also apply to sexual offenses.

Because sexual offense related consequences change frequently and are often imposed by local governments, they cannot be fully documented in this publication. The following considerations are, however, likely to apply.

### ***Residency and Zoning Restrictions***

- Colorado does not have a statewide law concerning where people required to register for a sex offense can live. Many municipalities and counties within Colorado—as well as many other states—do have such laws.
- Residency restrictions range from limitations on proximity to facilities such as schools, parks, and daycares, to effective banishment from a city or town. Some policies apply only to people convicted in adult court who have been labeled a “Sexually Violent Predator.” Others specifically include or exclude juveniles, or apply more broadly to all registrants. Zoning restrictions in some areas limit the number of unrelated registrants living together. Additionally, some loitering ordinances target individuals who have been convicted of sexual crimes. Violation of such policies can result in civil or criminal penalties.

### ***Registration Requirements***

- Colorado’s registration laws define “conviction” as having received a verdict of guilty by a judge or jury in juvenile or adult court, having pleaded guilty or nolo contendere, having received a disposition as a juvenile, having been adjudicated a juvenile delinquent, or having received a deferred judgment and sentence or a deferred adjudication. C.R.S. 16-22-102(3).
- Registration requirements apply to any person who receives a disposition, is adjudicated a juvenile delinquent, or receives a deferred adjudication based on the commission of any act defined under Colorado law as unlawful sexual behavior. C.R.S. 16-22-103(4).
- The registration laws are complex and frequently changing. C.R.S. 16-22-101 to 16-22-115. Registration requirements may be triggered either by conviction of a sexual offense or conviction of a nonsexual offense where the juvenile also admits that the crime had an underlying factual basis involving unlawful sexual behavior. C.R.S. 16-22-103.
- Under limited circumstances, individuals who were under the age of eighteen at the time of the commission of the offense and who are being prosecuted in juvenile court may be exempted from registration requirements. C.R.S. 16-22-103(5), 16-22-113(1)(e).

- Some individuals required to register as a sex offender after being found guilty of a single count of a sex offense crime may become eligible to petition to discontinue registration. A subsequent conviction or adjudication for unlawful sexual behavior *shall* render a person ineligible to petition to discontinue registration. C.R.S. 16-22-103(4), 16-22-113(1)(e), 16-22-113(3)(c).
- An adult conviction for many sex offenses will result in the individual's name, photograph, address, physical description, and a description of the offense committed being posted on the public Internet site of the Colorado Bureau of Investigation. C.R.S. 16-22-111.
- Local law enforcement agencies can, under some circumstances, post on the Internet the identity of individuals required to register because of a juvenile adjudication. C.R.S. 16-22-112(2)(b).
- Any member of the public may request a list of all juveniles and adults on the sex offender registry. C.R.S. 16-22-110(6).
- Being labeled a "Sexually Violent Predator" triggers specific rules regarding public community notification meetings when the person moves, Internet posting of registration information, and quarterly registration for life. C.R.S. 16-13-901 to 16-13-906, 16-22-111. Only people convicted in adult court are eligible for the "Sexually Violent Predator" label. This label does not require civil commitment in Colorado, but the same term is used to describe civil commitment requirements in many other states.
- Registration generally requires payment of fees and personal appearances at local law enforcement agencies. The person registering may be required to provide and keep current with local law enforcement his or her addresses for home, work, and school, as well as information concerning his or her vehicles, e-mail addresses, etc.

### ***Travel Between States and Internationally***

- Registration laws and opportunities to terminate registration vary greatly among the states. A person who has been successfully removed from one state's registry cannot assume he or she will not be required to register in another state. A person whose registration obligations in another state have already been terminated *shall* be required to register in Colorado until he or she obtains a court order in Colorado absolving him or her from registration in Colorado. C.R.S. 16-22-103(3).
- Some states restrict a wide array of activities by registrants, such as taking photographs of or living with minor children (including their own), participating in trick-or-treating, or entering public libraries or schools. These restrictions may apply regardless of where the person was convicted.
- Due to the diversity of registration obligations, anyone traveling outside of Colorado, even for a short time, should carefully investigate his or her obligations since a registrant may be required to notify Colorado law enforcement officials if he or she leaves the state and full registration may be required by other jurisdictions depending on the length of the trip and rules of that jurisdiction.

- Other nations can and do prohibit the admission of individuals convicted of a wide range of offenses. Individuals convicted of, or in some cases adjudicated for, sex offenses against minors, as defined in federal law, must hold a passport with a sex offender designation. 22 U.S.C. 212b.

## ***Social Stigma***

- Even when a person's registration status does not require public posting on the Colorado Bureau of Investigation's website, many private entities or local law enforcement agencies may make available information concerning adult and juvenile registrants.
- Those convicted of sexual offenses may not be permitted on social networking sites such as Facebook or match.com, even after completing their sentence.
- Nationally there have been numerous incidences of vigilantism against those believed to have committed a sexual crime.

## ***Why Juvenile Records Matter***

Juvenile records pertaining to sexual offenses are more widely available than those associated with other crimes, and may be automatically shared with a child's school even before the juvenile is found guilty of any crime. Additionally, expungement is not available for some individuals adjudicated for an offense involving unlawful sexual behavior and Orders of Collateral Relief are not available for people who are required to register as sex offenders. How a case is resolved is thus critical to future records availability. See the applicable sections on:

- Juvenile Records are Widely Available.
- Juvenile Records can be Automatically Shared with Schools.
- Expungement is Not Always Automatic.
- Expungement is Not Available for Some Offenses.
- Relief from Collateral Consequences.

## ***School and Employment***

Schools are likely to receive information concerning, and may suspend or expel a student because of, allegations of unlawful sexual behavior. The government agencies that have access to juvenile records, for purposes of employment and licensure, have specific provisions relating to sexual offenses. Many other professions are regulated by statutes or rules that specifically reference sexual offenses. For additional information regarding employment, review the applicable profession in *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>19</sup> Also see the applicable sections of this publication:

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<sup>19</sup> <http://www.coloradodefenders.us/>.

- Elementary and Secondary School Attendance.
- Military.
- AmeriCorps and Peace Corps.
- The Department of Education.
- The Department of Human Services.

### ***Public Benefits Programs***

Eligibility for several types of public assistance can be impacted if either an individual or a member of the individual's household has been convicted of a sexual offense. See the sections on:

- Public Housing.
- Food Stamps.
- Federal Student Loan Eligibility.
- Social Security.

### ***Family Concerns***

An individual's ability to participate in his or her family affairs may be impacted by a conviction for or an allegation of a sexual offense. See the sections on:

- Parenting Time and Decision Making Following Divorce or Separation.
- Custody of Children and the Parent-Child Relationship.
- Emergency and Kinship Placement of Children.
- Adoption and Foster Care.

### ***Greater Penalties Upon Repeat Offenses***

A sexual offense, committed or adjudicated either before or after another offense, can trigger various sentence enhancing statutes. Additionally, juveniles who have committed a sexual offense, if later considered for probation in another juvenile or adult case, are subject to a new psychosexual evaluation at their expense. C.R.S. 16-11-102(1)(b), 16-11.7-104(1). People sentenced to prison for a nonsexual offense, who have previously been adjudicated for a sexual offense, may be required to participate in sex offense treatment, limited in their ability to visit or communicate with children (including their own), and/or required to register as a sex offender while in prison or on parole. Department of Corrections AR 250-48, AR 700-19. See the applicable sections on:

- A Prior Adjudication Can Move a Case to Adult Court.
- Increased Sentences for Repeat Offenders.
- Probation Eligibility.
- Common Criminal Offenses.

## **11. Special Considerations for Controlled Substance Offenses**

Adjudication or conviction for a controlled substance related offense can result in consequences not typically associated with other crimes. This chapter is intended to highlight those consequences and provide references to the applicable portions of this publication. In addition to the consequences listed below, all of the consequences applicable to *any* adjudication or conviction will typically also apply to a controlled substance related offense.

What would otherwise be a felony conviction for some types of controlled substance offenses can be converted to a misdemeanor upon successful completion of a community-based sentence. C.R.S. 18-1.3-103.5. This mechanism was designed to reduce the significant negative consequences associated with a felony conviction, and its applicability to juveniles is unclear. Several exclusions apply based upon prior criminal history. C.R.S. 18-1.3-103.5(4). People charged with a crime should recognize, however, that many of the consequences listed in this publication also apply to misdemeanors.

For information on consequences specific to controlled substance related offenses, review the following chapters and sections of this publication.

### ***School and Employment***

Schools are likely to receive information concerning, and may suspend or expel a student because of, controlled substance related offenses. The government agencies that have access to juvenile records, for purposes of employment and licensure, have specific provisions relating to controlled substance offenses. Many other professions are regulated by statutes or rules that specifically reference controlled substance offenses. For additional information regarding employment, review the applicable profession in *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>20</sup> Also see the applicable sections of this publication:

- Elementary and Secondary School Attendance.
- The Department of Education.
- The Department of Human Services.

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<sup>20</sup> <http://www.coloradodefenders.us/>.

## ***Public Benefits Programs***

Eligibility for several types of public assistance can be impacted if either an individual or a member of the individual's household has been convicted, or even accused, of a controlled substance offense. See the sections on:

- Public Housing.
- Food Stamps.
- Federal Student Loan Eligibility.
- Colorado Works Program / TANF.
- Veterans Benefits.

## ***Family Concerns***

A controlled substance conviction or adjudication can impact an individual's ability to care for children. See the sections on:

- Emergency and Kinship Placement of Children.
- Adoption and Foster Care.

## ***Firearms***

It is unlawful for any person to possess a firearm who is a user of, or addicted to, a controlled substance. See Restrictions Under Federal Law.

## ***Citizenship and Immigration***

Subject to limited exceptions, a drug conviction or drug abuse can result in mandatory detention, inadmissibility, deportability, or other immigration consequences.

## ***Other Civil Rights and Privileges***

A controlled substance conviction or adjudication can adversely impact numerous civil rights and privileges. See the sections on:

- Driving.
- Passports and Travel.
- Impact on Civil Actions.
- Medical Marijuana Registration.

## ***Greater Penalties Upon Repeat Offenses***

Commission of a subsequent controlled substance offense may be punished substantially more severely. See the sections on:

- Controlled Substance Offenses.
- Driving, Boating, and Flying Offenses.

### ***Additional Federal Consequences***

Federal law imposes additional consequences directly tied to controlled substance convictions. For additional information, see Appendix 1 of *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations*,<sup>21</sup> and the *National Inventory of Collateral Consequences of Conviction*.<sup>22</sup>

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<sup>21</sup> Available: <https://www.americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf>.

<sup>22</sup> Available: <https://niccc.csgjusticecenter.org/>.

## **12. Special Considerations for Domestic Violence Offenses**

Adjudication or conviction for a domestic violence offense can result in consequences not typically associated with other crimes. This chapter is intended to highlight those consequences and provide references to the applicable portions of this publication. In addition to the consequences listed below, all of the consequences applicable to *any* adjudication or conviction will typically also apply to a domestic violence related offense.

For information on consequences specific to domestic violence related offenses, review the following chapters and sections of this publication.

### ***Why Juvenile Records Matter***

Expunging an adjudication involving domestic violence may be more difficult than other offenses. See the applicable section on:

- Expungement is Not Always Automatic.

### ***School and Employment***

The government agencies that have access to juvenile records, for purposes of employment and licensure, have specific provisions relating to domestic violence offenses. Many other professions are regulated by statutes or rules that specifically reference domestic violence. For additional employment related information, review the applicable profession in *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law*, available on the Colorado State Public Defender's website.<sup>23</sup> Also see the applicable sections of this publication:

- The Department of Education.
- The Department of Human Services.

### ***Family Concerns***

An individual's ability to participate in his or her family affairs may be impacted by an adjudication for or allegation of a domestic violence offense. See the sections on:

- Parenting Time and Decision Making Following Divorce or Separation.
- Emergency and Kinship Placement of Children.
- Adoption and Foster Care.

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<sup>23</sup> <http://www.coloradodefenders.us/>.

## ***Firearms***

The ability to possess a firearm can be impacted by either a felony or misdemeanor domestic violence conviction. See the applicable sections on:

- Restrictions Under Colorado Law.
- Restrictions Under Federal Law.

## ***Citizenship and Immigration***

Conviction of a crime of domestic violence is a ground for deportability. See Deportability.

## ***Greater Penalties Upon Repeat Offenses***

- Individuals with three previous domestic violence convictions may be convicted of a felony for what would otherwise be a misdemeanor domestic violence offense. C.R.S. 18-6-801(7).
- The state employs enhanced designation and tracking procedures for individuals with convictions involving domestic violence. C.R.S. 18-6-801.

### **Comments and Feedback**

I have undoubtedly missed some things and misstated others. Any feedback, corrections, or suggestions for how to improve subsequent versions of this publication would be greatly appreciated. Please contact me at: [mark.evans@coloradodefenders.us](mailto:mark.evans@coloradodefenders.us).