

COLLATERAL CONSEQUENCES

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WHAT ARE COLLATERAL CONSEQUENCES?

- Collateral Consequences (CC) are the “other” results of an arrest or an adjudication in juvenile court.
 - Some CC occur in every case, others occasionally
 - Some CC are not discovered until years after juvenile court jurisdiction has terminated
 - Some CC have permanent and life-changing effects

HISTORY OF JUVENILE COURT

- First juvenile court was established in 1899 in Cook County, Illinois.
- Within 25 years most states had a juvenile court structure/system
- Rehabilitation was the primary goal, not punishment
- Informal, non-adversarial and flexible
- Cases treated as civil—not criminal!

HISTORY, CONTINUED

- The original goals of the juvenile court:

In 1909, Judge Julian Mack, one of the first judges to preside over the nation's first juvenile court in Cook County, Illinois, described the goals of the juvenile court:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

(Mack, *The Juvenile Court* (1909) Harvard Law Review, vol. 23, p.120.)

WHAT HAPPENED?

- The original ideal was not implemented
- Gross injustices occurred
- US Supreme Court Intervened
 - *Kent v. United States* (1966) 383 U.S. 541
 - *In re Gault* (1967) 387 U.S. 1
 - *In re Winship* (1970) 397 U.S. 358
 - *McKeiver v. United States* (1971) 403 U.S. 528
- Get Tough on Juvenile Crime, Adult Crimes = Adult Time

PREVAILING MYTHS AND PRESSURES

- Police; Juveniles are more dangerous and youthful behavior is an accurate predictor
- Legislators: Juveniles need to be held accountable and the public demands this accountability
- Schools & Public Housing: We need to know to ensure safety.
- Public: records are automatically sealed, court is not meaningful and kids are let off easy

THE RESULT

- Significant Direct and Collateral Consequences for Juvenile Offenders
- Stigma of Juvenile Delinquent
- Consequences that are short-term and long-term
- Not easily rectified by the juvenile court system
- Consequences directly impact those that do not re-offend

WHY WE NEED TO CARE

- Zero Tolerance School Policies
- Employment Barriers
- Eviction and Homelessness
- Sex Offender Registration
- ALL OF THESE CONTRIBUTE TO THE DESTABILIZATION OF YOUTH

DESTABILIZATION OF YOUTH

- Drives youth into the underground economy
- Pushes them towards cost/benefit analysis that lead to higher risk activities for short term benefits
- Puts fragile egos at risk, exacerbates mental health issues like depression
- Causes delayed transitions or maintains negative cycles
- Social exclusion and stigma continue

LOST OPPORTUNITIES

- Urban areas with higher rates of employment of teen females have significantly lower teen pregnancy rates
- Youth who work in their teen years are more likely to work as young adults—this is critical for those that do not go to college
- Metropolitan areas with high teen employment rates have significantly higher employment participation rates for young adults five years later

LOST OPPORTUNITIES

- Youth who work are less likely to have police contact
- Economically disadvantaged youth who work during high school are less likely to drop out than their non-working peers
- African-American males who work between 21-30 hours per week are more likely to graduate from high school and attend college than their peers with no paid work experience

MOST IMPORTANT

- Long-Term Collateral Consequences send the message that rehabilitation is ultimately not rewarded
- The very “system” that is to “rehabilitate” becomes the number one cause of permanent consequences—this undermines the system
- Consequences swallow the crimes
- Harm is real and reduces public safety

PJDC CC HANDBOOK



PACIFIC JUVENILE
DEFENDER CENTER

SPECIFIC CONSEQUENCES

EXECUTIVE SUMMARY

IS IT A CRIMINAL CONVICTION?

- No. Under California law, a delinquency adjudication is not a criminal conviction. (WIC § 203.)
- However, for many practical purposes, delinquency adjudications are treated like criminal convictions, especially in the eyes of the public who do not understand the difference between adult convictions and juvenile adjudications.
- An adjudication is considered a conviction for purposes of California driving privileges. (Veh. Code §13105.)
- An adjudication is considered a conviction by the military.

PUBLIC ACCESS TO COURT PROCEEDINGS

- Generally, juvenile hearings are closed to the public. §676. However, they may be open if:
- requested by both the minor and his parent or guardian who is present; or
- the proceeding involves a serious offense listed at § 676(a); or
- the court finds that a person has a direct and legitimate interest in the case or the work of the court.

PUBLIC ACCESS, CONTINUED

- Up to two family members of a prosecuting witness, a victim of the offense (subject to exclusion in certain circumstances), and up to two support persons for the victim may attend a juvenile court hearing.
- When the petition alleges certain specified sexual offenses, the court may close the hearing to the public either upon a motion made by a district attorney, or during the victim's testimony, if the victim is younger than 16. (WIC § 676 (b).)

CONFIDENTIALITY

- Generally, delinquency adjudications and juvenile court files are confidential. (WIC § 827.)
- If a youth is adjudicated on a serious offense listed at §676 (a), the youth's name will be made public, unless the court makes a written finding on the record that good cause exists to keep the name confidential.(WIC § 676 (c).)
- The charging petition, minutes of the proceeding, orders of adjudication, and disposition of the court are publicly available, but no other documents in the file may be viewed. (WIC § 676 (d).)

CONFIDENTIALITY, CONTINUED

- Pursuant to WIC 827, certain parties may petition the juvenile court for permission to obtain confidential juvenile records and upon request disseminate them in open court
- Anecdotally, juvenile defenders are aware of individuals obtaining juvenile records

USE OF ADJUDICATIONS IN SENTENCING

- Adjudications trigger sentencing enhancements in both state and federal criminal systems
- WIC 707 (b) offenses can constitute “strikes,” which doubles future sentences, and can lead to 25-Life
- Used as a factor in aggravation
- Used in Death Penalty Cases, SVP and for Impeachment
- Juvenile Adjudications qualify under the Federal Armed Criminal Career Act

REGISTRATION

- Adjudications may result in arson, gang and sex offender registration
- Sex offender registration may be relieved by sealing but it is unclear whether relief is provided for honorable discharge (There is no pardon or certificate of rehabilitation for juvenile offenders)
- Gang registration may result in CALGANGS entry and have long lasting effect

SEX OFFENDER TREATMENT

- Compliance with Sex Offender Treatment Programs may result in additional charges being filed due to disclosure of previous acts
- Polygraphs may be administered and in some cases youth may be able to invoke his/her Fifth Amendment privilege—however they may be found non-compliant with the program

DRIVING

- Yes, a sustained petition can affect a young person's eligibility to apply for a driver's license, or may result in the suspension or revocation of driving privileges, depending upon the adjudicated offense.
- Triggering offenses include but are not limited to: driving offenses, alcohol and drug violations, vandalism, truancy, and/or prostitution.
- Some consequences are mandatory, and others are discretionary.

DRIVING, CONTINUED

- Some consequences originate from the court; others are imposed by the Department of Motor Vehicles (DMV) after transmission of court documents; and still others may be imposed by DMV without direct court involvement.
- Juvenile adjudications count as convictions for purposes of driving privileges, Veh. C. § 13105, and there are also a number of separate Vehicle Code provisions specifically directed at juveniles or persons under the age of 21.

IMMIGRATION

- Contact with the juvenile justice system, even without any adjudication of guilt, may lead to referral to federal immigration authorities by local police and probation departments; identification and arrest by immigration authorities for deportation; secure detention without the possibility of release pending the outcome of their removal proceedings; a bar to obtaining legal status in the U.S.; statutory ineligibility or denial of immigration relief; and/or deportation.

IMMIGRATION, CONTINUED

- Most criminal-based grounds triggering deportation or inadmissibility (a bar to obtaining legal status) require a conviction, and under federal immigration laws juvenile adjudications are not considered convictions. **Nevertheless**, arrests and juvenile dispositions may have immigration consequences because **there are some immigration penalties that do not require a conviction** and are triggered simply by “bad acts” or conduct alone. 8 U.S.C. §§1227(a)(2) et seq. and 1182(a) et seq.

IMMIGRATION, CONTINUED

- Offenses constituting “bad acts” include, but are not limited to: drug trafficking (transfer, passage, or delivery); drug abuse or addiction; violation of an order of protection; sexual assault; behavior showing a mental condition that is a threat to self or others, including attempted suicide, torture, or repeated alcohol abuse-related offenses; engaging in prostitution (as the prostitute); or making a false claim of U.S. citizenship

FINANCIAL BURDENS

- Three distinct types of penalties: fines and penalties, restitution and restitution fines.
- Practical reality is that poor families make choices between court obligations and paying fines, restitution and fees
- Many youth feel helpless and this creates a cycle of non-compliance
- Interferes in some cases with obtaining informal diversion
- Parents also face significant financial consequences for costs associated with court and detention

EDUCATION

- Juvenile Adjudications may affect youth's ability to access secondary education---or it may impact the quality of educational services offered
- Suspension, Expulsion may occur
- Referral to Continuation School, Community Day Schools, Independent Studies, etc.
- Education interrupted, lesser quality of education, issues with credits

COLLEGE AND FINANCIAL AID

- Although many college applications do not require disclosure of adjudications, transcripts, etc. may reveal juvenile court involvement
- Some scholarships may be jeopardized
- May impose limits on pre-professional programs due to license restrictions
- Federal or State financial aid is not compromised unless there is an adult conviction while receiving the aid.

EMPLOYMENT

- Significant consequences
- Lack of precision between application language and the law
- Criminal records checks reveal sealed information and employers and licensing agencies receive information that should not be released
- Permanent and life-long consequences

MILITARY

- Adjudications are convictions for purposes of military applications and often require “waivers” depending on the branch of the military and current needs
- The military looks at not only adjudications but also traffic infractions, arrests and dismissed court charges
- Past history of using drugs or alcohol or receiving mental health treatment can affect ability to enlist.

PUBLIC BENEFITS HOUSING

- Adjudications may result in loss of housing or public housing assistance. State and Federal laws have eligibility and termination provisions related to an applicant or tenant's involvement in criminal activity.
- Housing providers obtain information in violation of Section 827.
- Landlords and housing programs wrongly equate contact with the juvenile justice system as “criminal activity” leading to the loss of housing

PUBLIC BENEFITS

- A juvenile adjudication rarely disqualifies a person from receiving most public benefits.
- A person convicted in adult court for drug offenses defined in 21 U.S.C. §802(6) cannot receive CalWORKs, (§11251.3 and 21 U.S.C. §862a(d)(1)), and possibly not receive General Assistance, if part of an otherwise eligible CalWORKS family. §17000 et seq.
- However, aid to families while a youth is detained may be affected
- Issues with medical care in juvenile facilities

FIREARMS

- There are consequences under State and Federal Law
- Under state law the consequence lasts until the age of 30
- This can impact future careers in both law enforcement and the military
 - For instance a battery can have a consequence!!

VOTING & JURY SERVICE

- Adjudications do not impact voting or jury service—however juveniles convicted in adult court face these consequences

TRAVEL

- Probation and Parole conditions can impose limits on Travel
- Even after probation or parole has terminated, travel to foreign countries could be impacted. It is wise to check with the foreign consulate before engaging in travel. In some cases reentry into the U.S. may be delayed or disallowed.
- Gang injunctions can limit youth in certain areas of their own neighborhood and enjoin otherwise lawful conduct.

FOSTER/ADOPTIVE PARENTS

- Prospective foster parents, adoptive parents, relative/kinship caregivers, and their household members are subject to criminal background checks that may reveal unsealed juvenile delinquency records. H&S Code. § 1558 (a); 22 C.C.R. 89219. Potential caregivers can be denied approval for any criminal convictions in the household.
- While juvenile adjudications are not criminal convictions, licenses or approval can be denied on the vaguer grounds that someone in the home has engaged in **conduct** inimical to the health, morals, welfare or safety of either an individual or the general public. (H& S Code. § 1558 (a)(2).)

TERENCE HALLINAN

- As a youth, Terence Hallinan had numerous fighting-related scrapes with the law, and he saw the inside of both Marin County's and San Francisco's juvenile hall on several occasions. Eventually, when he was age 17, one of those fights got him kicked out of Drake High School in San Rafael, and made a ward of the juvenile court. The juvenile court judge ordered young Hallinan removed from Marin County for a period of one year, allowing him to return home from Friday night to Sunday evening to visit his family.

TERENCE HALLINAN

- Hallinan discussed recent legislation that would abolish confidentiality protections for juveniles and, in some cases, forward their juvenile arrest records to colleges to which they are applying for admission. When asked what the implications would have been for him if his juvenile record had been forwarded to U.C. Berkeley or Hastings when he was applying for admission, Hallinan replied, "I guess I'd be a Longshoreman now."

WHERE DO WE GO FROM HERE?

- Re-evaluation of how cases are initially filed
- Re-evaluation of “rehabilitation time”
- Re-evaluation of sealing
- Much stiffer consequences for improper disclosure of juvenile records
- Additional Legislation? What would be the criteria?