

Selected Collateral Consequence of Juvenile Adjudications in Massachusetts

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1. Sentencing Enhancement

Prior juvenile adjudications can be used to enhance penalties in future cases. There are four reported cases in Massachusetts that address this issue.

Commonwealth v. Foreman, 63 Mass. App. Ct. 801 (2005), fur. app. rev. den. 445 Mass. 1102. The defendant's prior delinquency adjudication for armed robbery qualified for adult sentencing enhancement as an armed career criminal G.L. ch 269 §10G(a). In Foreman the defendant was indicted (as an adult) for possession of a firearm, c. 269 §10(a), and armed career criminal. The Court rejected the defendant's argument that a prior delinquency adjudication does not qualify as a "conviction" since G.L. ch 119 §53 states "[p]roceedings against children . . . shall not be deemed criminal . . ." The Court followed its holding in Furr, that c. 269 §10G incorporates the definition of "violent crime" as defined in c. 140 sec. 121; delinquent acts are included in the definition of "violent crime." The court reasoned that the legislature intended delinquency adjudications, as specified in c. 140 §121, to qualify as a prior "convictions" under the armed career criminal statute.

Commonwealth v. Furr, 58 Mass. App. Ct. 155 (2003). The juvenile was indicted as a youthful offender for armed career criminal. His prior youthful offender adjudications for armed carjacking, kidnapping, armed robbery, and assault and battery by means of a dangerous weapon were used as predicate offenses under G.L. c. 269 §10G, armed career criminal.

Commonwealth v. Connor C., 432 Mass. 635 (2000) The juveniles prior delinquency adjudication for possession of firearm (G.L. c. 269 §10 (a) was considered a conviction and juvenile could indicted as a youthful offender for possession of a firearm, subsequent offense (c. 269 § 10(d)).

Commonwealth v. Valiton, 432 Mass. 647 (2000). The defendant's prior admission, on a delinquency charge, for operating a motor vehicle under the influence of alcohol, was used as a predicate for operating under the influence, second offense in adult court. When the juvenile admitted, for the first time in juvenile court, he was ordered to receive counseling and an evaluation at an alcohol treatment center. When the defendant was charged with operating under the influence, second offense, in adult court, the court held that his prior "treatment" was tantamount to him being assigned to an alcohol

¹ February 2007, updated July 2007.

education, treatment or rehabilitative program and therefore he could be subjected to the enhanced penalty

2. School Suspension and Expulsion

Students charged with a felony, as a result of a delinquency complaint or criminal complaint can be suspended from school. G.L. c. 71 § 37H ½. The felony does not have to occur on school grounds, during school days, or school hours. The principal or headmaster can suspend a student charged with a felony “for a period of time determined appropriate,” if he/she determines that the “students’ continued presence in school would have a substantial detrimental effect on the general welfare of the school.” Before a student can be suspended, under § 37H ½, the principal or headmaster must provide the student with written notice of the charges and the reasons for the suspension. If the principal/headmaster makes a determination to suspend the student, the student must be provided with written notice of his/her right appeal along with the procedures for appealing. Appeals are made to the superintendent of schools. An appeal must be made in writing and “no later than five calendar days following the effective date of the suspension.” The appeal of the suspension shall be heard within 3 calendar days of the request. At the hearing the student has a right to counsel and may present oral and written testimony. The superintendent shall make a decision on the appeal within 5 calendar days of the hearing.

Students convicted of a felony or adjudicated delinquent of a felony can be expelled from school pursuant to G.L. c. 71 § 37H ½. The principal or headmaster can expel a student if he/she determines that the “students continued presence in school would have a substantial detrimental effect on the general welfare of the school.” The requirements for written notice and the appeal process is the same for expulsions as it is for suspensions. If a student is expelled under § 37H ½, the school district is not required to provide educational services.

Students who are suspended or expelled can appeal the superintendent’s decision to the superior court on a Motion for a Preliminary Injunction.

Students can also be excluded from school for violating a school rule. G.L. c. 71 § 37 H requires all school districts to publish policies regarding conduct of teachers and students. These policies shall include disciplinary proceeding assuring due process, standards and procedures for suspensions and expulsions (including students with special needs), disciplinary measures for cases involving possession of illegal substances, weapons, use of force, vandalism or violation of students’ civil rights. All districts must have student handbooks which include:

- a) notice that a student may be expelled from the school or school district for possession of a dangerous weapon or controlled substance, on school premises or at school sponsored or school related events;

b) notice that a student may be expelled for assaulting a principle, assistant principal, teacher, teacher's aide, or other educational staff on school premises or school sponsored or school related events;

c) if a student is charged with violating any of the above two, he/she shall receive written notice and an opportunity to be heard. The student may have representation and present evidence and witnesses. The hearing is before the principal.

d) the principal can decide to suspend rather than expel;

e) students who are expelled shall have the right to appeal to the school superintendent. Notification of appeal must be made ten days from date of expulsion. Students have the right to counsel at this hearing and the appeal shall to be limited to the whether the student violated the provisions of the statute;

f) if a student is expelled no school or school district in the Commonwealth has to admit the student or provide educational services. If an expelled student applies to another school or school district, a request for the reasons for the expulsions can be made and the school shall provide a written statement of the reasons for the expulsions.

Students on an Individualized Education Plan (IEP) have some protections under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400 et seq.

20 U.S.C. §1401– definitions

20 U.S.C. §1414 – evaluations, eligibility determinations, individualized education programs, and educational placements

20 U.S.C. §1415(j) – right to stay put

20 U.S.C. §1415(k) – interim alternative setting, manifestation determination

Federal regulations: 34 C.F.R. Part 300

Massachusetts regulations: 603 CMR 28.00

The Federal and State regulations, as well as state laws can be accessed at: <http://www.doe.mass.edu/lawsregs/>

3. Military Service

A person who has been convicted of a felony can not be enlisted in the armed forces. 10 USCS § 504 (a). However, “the Secretary concerned may authorize exceptions, in meritorious cases, for ... persons convicted of felonies.” Id. Every branch of the military

will check for criminal records and applicants must answer questions regarding their criminal history when applying. Each branch of the military has procedures for waivers.

The army and the army reserve regulations can be found at AR-601-210 (you can “google” the cite). The army will do criminal history checks and obtain information from juvenile correctional facilities on all applicants. AR-601-210 (2-11). Juvenile adjudications can exclude one from the army, however, a waiver can be requested. Chapter 4 of AR-601-210 addresses what conduct can be waived and the procedures for obtaining a waiver.

The Air Force also conducts criminal record checks, including juvenile records and has a process for obtaining waivers. Disqualification because of moral character is addressed in AFRS136-2001- 2.16. The Air Force Recruiting Procedures can be accessed on-line at <http://afrecruiting.com/RSOC/>.

Regulations for the Marine Corp Reserve can be access on-line at <https://www.marines.usmc.mil/RS/CRC/MPPM.pdf>

Some offenses will make one ineligible for the Navy. A conviction is not necessarily required; the Navy will look to whether an applicant actually committed the offense, rather than a court disposition. For enlistment purposes, the Navy classifies offenses into four areas: (1) minor traffic violations, requires a waiver for six or more violations, (2) minor non-traffic violations/minor misdemeanors, requires a waiver for three or more violations, (3) non-minor misdemeanors, requires a waiver for one or more violations, (4) felonies, requires a waiver for one or more violations. Felony waivers are extremely rare.

See: <http://usmilitary.about.com/od/navyjoin/a/navcrime.htm>

Department of Defense Directive 1304.23 - Acquisition and Use of Criminal History Record Information for Military Recruiting Purposes

3.1. Criminal History Record Information (regarding juvenile or adult arrest, citation, or conviction). The offense involved; name, social security number, and age of the person involved; dates of arrest, citation, or conviction, if any; place of the alleged offense; place of arrest and assigned court; and disposition of the case.

3.2. Criminal Justice System. Federal, State, county, and local government law enforcement agencies; courts and clerks of courts; prosecuting attorneys (e.g., district attorneys, U.S. attorneys); and other Government Agencies authorized to collect, maintain, and disseminate criminal history record information.

Department of Defense Directive 1304.26 - QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION (selected portions)

E2.2.7. Moral Character. Persons entering the Armed Forces should be of good moral character. The underlying purpose of moral character enlistment standards is to minimize entrance of persons who are likely to become disciplinary cases or security risks or who disrupt good order, morale, and discipline. The Military Services are responsible for the defense of the nation and should not be viewed as a source of rehabilitation for those who have not subscribed to the legal and moral standards of society at large. Moral standards of acceptability for service are designed to disqualify the following categories of persons:

E2.2.7.1. Individuals under any form of judicial restraint (bond, probation, imprisonment, and/or parole).

E2.2.7.2. Those with significant criminal records. Section 504 of reference(c)prohibits any person who has been convicted of a felony from being enlisted in any of the Armed Forces. The Secretary concerned may authorize exceptions in meritorious cases.

E2.2.7.2.1. Persons convicted of felonies may request a waiver to permit their enlistment. The waiver procedure is not automatic and approval is based on each individual case, including consideration of the individual's adjustment to civilian life.

E2.2.7.2.2. In processing waiver requests, the Military Services shall require information about the "who, what, when, where, and/or why" of the offense in question; and a number of letters of recommendation from responsible community leaders; such as school officials, ministers, and law enforcement officials, attesting to the applicant's character or suitability for enlistment.

E2.2.7.4. Those who have exhibited antisocial behavior or other traits of character that may render them unfit to associate with military personnel.

4. Expungement/Sealing of Records

Juvenile Court judges do not have the authority to expunge juvenile probation records. Commonwealth v. Gavin G., 437 Mass. 470 (2002). After his case had been dismissed in juvenile court Gavin G. moved to have his probation record expunged and all data relating to the case maintained by the police department expunged. The SJC held that there is no statutory authority allowing juvenile court judges to expunge probation records.

Juvenile Court judges have authority to order the expungement of police records regarding the arrest of a juvenile. Police Commissioner of Boston v. Municipal Court of the Dorchester District, 374 Mass. 640 (1978).

Juvenile court record entries can be sealed pursuant to G.L. c. 276 § 100B. One with juvenile court entries must file a form furnished by the Commissioner of Probation requesting that the court record to be sealed. “The commissioner shall comply with such request provided (1) that any court appearance or disposition including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; (2) that said person has not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding three years; and (3) said form includes a statement by the petitioner that he has not been adjudicated delinquent or found guilty of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding three years.” Id. “[T]he commissioner shall report such sealed delinquency record to inquiring police and court agencies only as “sealed delinquency record over three years old” and to other authorized persons who may inquire as “no record”. The information contained in said sealed delinquency record shall be made available to a judge or probation officer who affirms that such person, whose record has been sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed subsequent to sealing of such record. Said information shall be used only for the purpose of consideration in imposing sentence.” Id.

5. Driver’s License

Youth between the ages of 16½ and 18 are eligible for a Junior Operator’s License (JOL) and must comply with certain conditions. Information specifically on JOL can be accessed on line at: <http://www.mass.gov/rmv/jol/index.htm>. Youth who have a JOL may not operate a motor vehicle between the hours of 12:00 a.m. and 5:00 a.m. unless accompanied by a parent or legal guardian. M.G.L. c. 90 §8. If a youth violates this rule she can be charged with operating a motor vehicle without a license, which is a criminal violation.

Overview of JOL Law:

Requirement	Current Law
Minimum Age to Obtain a Learner's Permit	16
Minimum Age to Obtain a Junior Operator's License	16 ½
Minimum Requirements for first-time licensees 18 years and older	Learner's Permit Road test
Requirements of basic driver's education (Changes effective 9/01/07)	30 hours classroom instruction 6 hours of behind the wheel training 6 hours in car observation of another student driver
Requirements of supervised driving to obtain a junior operators license (*Changes effective 9/01/07)	12 hours supervised by a parent, guardian, or designee over 21 Submittal of a certified statement to the RMV
Junior operator passenger restriction	Passenger restriction during the first six months of junior operator licensure NO passengers under 18, unless accompanied by another licensed driver 21 or older with 1 year or more driving experience, occupying front passenger seat Passenger restriction not applicable to junior operator's immediate family members (parents and siblings)
Junior operator night driving restriction	Restricts driving from 12:30 AM-5:00 AM for duration of junior operator licensure, unless accompanied by parent/guardian. Primary enforcement 1:00 AM-4:00 AM

PERMIT HOLDERS - JOL Violations and Penalties - Changes Effective March 31, 2007			
Violation	1st Offense	2nd Offense	3rd Offense
Unaccompanied by a Licensed Driver G.L. c. 90 § 8B	60 day suspension \$100 reinstatement Reapply for Permit	180 day suspension Driver Attitudinal Retraining Course \$100 reinstatement fee Reapply for Permit	1 yr. suspension \$100 reinstatement fee Reapply for Permit
Drag Racing G.L. c. 90 §17B	1 yr. suspension Driver Attitudinal Retraining Course & SCARR Reapply for Permit \$500 reinstatement fee	3 yr. suspension Driver Attitudinal Retraining Course & SCARR Reapply for Permit \$1000 reinstatement fee	3 yr. suspension Driver Attitudinal Retraining Course & SCARR Reapply for Permit \$1000 reinstatement fee
Time Restriction Violation 12 am - 5 am G.L. c. 90 §§10, 8B	60 day suspension \$100 reinstatement fee Reapply for Permit	180 day suspension Driver Attitudinal Retraining Course \$100 reinstatement fee Reapply for Permit	1 yr. suspension \$100 reinstatement fee Reapply Permit
Speeding G.L. c. 90 §§ 17, 17A, 18	90 day suspension \$100 reinstatement fee Reapply for Permit	1 yr. suspension \$100 reinstatement fee Reapply for Permit	1 yr. suspension \$100 reinstatement fee Reapply for Permit

LICENSE HOLDERS - JOL Violations and Penalties - Changes Effective March 31, 2007			
Violation	1st Offense	2nd Offense	3rd Offense
Passenger Restriction G.L. c. 90 § 8, 10	60 day suspension \$100 reinstatement fee	180 day suspension Driver Attitudinal Retraining Course \$100 reinstatement fee	1 yr. suspension Driver Attitudinal Retraining Course Full Exam \$100 reinstatement fee
Time Restriction Violation 12:30 am-5 am G.L. c. 90 § 8, 10	60 day suspension \$100 reinstatement fee	180 day suspension Driver Attitudinal Retraining Course \$100 reinstatement fee	1 yr. suspension Driver Attitudinal Retraining Course Full Exam \$100 reinstatement fee
Operating to Endanger / Recklessly or Negligent G.L. c. 90 §24	180 day suspension \$500 reinstatement	1 yr. suspension Full exam \$500 Reinstatement	1 yr. suspension Full exam \$500 Reinstatement
Drag Racing G.L. c. 90 §17B	1 yr. suspension Driver Attitudinal Retraining Course & SCARR Full Exam \$500 reinstatement fee	3 yr. suspension Driver Attitudinal Retraining Course & SCARR Full Exam \$1000 reinstatement	3 yr. suspension Driver Attitudinal Retraining Course & SCARR ² Full Exam \$1000 reinstatement
Speeding G.L. c. 90 §§ 17, 17A, 18	90 day suspension Driver Attitudinal Retraining Course & SCARR \$500 reinstatement fee Full Exam	1 yr. suspension Driver Attitudinal Retraining Course & SCARR \$500 reinstatement fee Full Exam	1 yr. suspension Driver Attitudinal Retraining Course & SCARR \$500 reinstatement fee Full Exam

<http://www.mass.gov/rmv/dmanual/driversmanual.pdf>

The registry of motor vehicle has the authority to suspend or revoke a person's license where the operator has violated a motor vehicle law and the registrar believes "that continuing operation by such holder is and will be so seriously improper as to constitute an immediate threat to the public safety." M.G. L. c. 90 § 22.

A JOL will be suspended for 180 days for a first offense and one year for a second offense for the following adjudications: OUI, OUI with Serious Bodily Injury, Operating to Endanger, Leaving the Scene of an Accident, Drinking from an Open Alcohol Container, Unauthorized Use of a Motor Vehicle, Reckless/Negligent Operation, Loaning or Allowing Another to Use Your License or Permit and Motor Vehicle Homicide. See G.L. c. 90 § 24P. (This additional suspension applies to cases in which the operator did not receive an additional suspension for failing or refusing a breath test).

For persons under the age 18:

- Breathalyzer refusal: minimum of 3 year license suspension
- Breathalyzer failure: license suspension for 30 days for failure plus 1 year for OUI conviction

² SCARR – State Courts Against Road Rage

- 1 year suspension may be reduced to 180 days for participation in an approved alcohol education program

Convictions for offenses that arise out of the use, operation or theft of a motor vehicle can lead to a license suspension for a period of years; this also applies to JOL. One's license can also be suspended for defacing real or personal property. The table listing the offenses and the length of suspension can be found at: <http://www.mass.gov/rmv/dmanual/driversmanual.pdf> , p.68.

One's license can be suspended, from 90 days to one year, for youth under the age of 21 who buy or have someone buy alcohol for them; or possess, carry, or transport alcohol, unless accompanied by a parent or guardian. The suspension period is 180 days for buying or attempting to buy alcohol, if under age 21. G.L. c. 138 §34C, Drivers Manual, April 2007, p. 77

A conviction for having a false or altered license or ID card (G.L. c. 90 §24B) carries a suspension or loss of license of one year. According to the Registry of Motor Vehicle Driver's Manual, there does not have to be a conviction in order for one's license to be suspended for this offense. Drivers Manual, April 2007, p. 77

Conviction for any drug offense will result in a suspension from one to five years. G.L. c. 90 §22. The duration of suspension for particular offenses can be found at 540 CMR §20.03.

6. Federal Student Financial Aid - 20 USC § 1091 et. seq.

Drug convictions will affect one's eligibility for federal financial aid. However, according to the 2007-2008 Drug Conviction Worksheet, drug convictions that occurred before the student reach age 18, unless tried as an adult, do not count as convictions. The worksheet can be accessed at: <http://www.fafsa.ed.gov/>.

§ 1091. *Student eligibility.*

(r) *Suspension of eligibility for drug-related offenses.*

(1) *In general. 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 any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:*

If convicted of an offense involving:

The possession of a controlled substance: Ineligibility period is:

<i>First offense</i>	<i>1 year</i>
<i>Second offense</i>	<i>2 years</i>
<i>Third offense</i>	<i>Indefinite</i>

The sale of a controlled substance: Ineligibility period is:

<i>First offense</i>	<i>2 years</i>
<i>Second offense</i>	<i>Indefinite</i>

(2) Rehabilitation. A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if--

- (A) the student satisfactorily completes a drug rehabilitation program that--*
- (i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and*
 - (ii) includes two unannounced drug tests; or*
- (B) the conviction is reversed, set aside, or otherwise rendered nugatory.*

(3) Definitions. In this subsection, the term "controlled substance" has the meaning given the term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

7. Youthful Offender

A prior commitment to the Department of Youth Services is one of the elements necessary for indictment as a youthful offender.

"Youthful offender", a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen. G.L c. 119 § 52

8. Adjudications can be Used for Impeachment Purposes

Delinquency adjudications can be used for impeachment purposes in subsequent delinquency and criminal proceedings to the same extent as prior adult convictions. G.L. c. 119 §60

9. **Sex Offender Registration - G.L. c.6, §178C-P** – for a more in-depth analysis of the sex offender registry law go to: <http://www.youthadvocacyproject.org/jdn.htm>, and click on “Practice Guides”

Children adjudicated delinquent or youthful offender, for certain sex crimes must register with the Sex Offender Registry Board (SORB). Children adjudicated delinquent or youthful offender can seek **relief from registration** from the court, pursuant to §178E(e) and (f), in two ways:

- (1) if the juvenile has been sentenced to a period of confinement, the Commonwealth can move in writing ; the motion must specifically state reasons for the request for relief from registration. §178E(e) ; or
- (2) If the juvenile is not sentenced to immediate confinement, “the court shall, within 14 days of sentencing, determine whether the circumstances of the offense in conjunction with the offender's criminal history indicate that the sex offender does not pose a risk of re-offense or a danger to the public.” If this standard is met, the court may relieve the juvenile from registration. §178E(f).

Pursuant to sections (e) and (f) of § 178E, a juvenile who has been determined to be a sexually violent predator or is otherwise subject to a minimum of lifetime registration requirements pursuant to c. 6 § 178D, is **ineligible** for relief from registration.

Under Roe v. Attorney General, 434 Mass. 418 (2001) and G.L. c. 6, §178C-F, J and K, if a youth is adjudicated delinquent or a youthful offender for a sex offense (as defined in G.L. c.6, §178C) they must provide SORB with the following information:

- (1) their home and work addresses; and
- (2) the names and addresses of any institution of higher learning where they work, plan to work, attend or plan to attend; and
- (3) any “secondary addresses” where the offender lives, abides, lodges or resides for either 14 or more days (in the aggregate) per calendar year OR 4 days per month (consecutive or non consecutive), including out of state address.

There is no public dissemination of mail-in registration information, however, the information is shared with local police.

All offenders are entitled to an evidentiary hearing prior to any public dissemination of registration information.

10. Probation for Sex Offense – Global Positioning System (GPS) Device

Any person, , including juveniles, who are on probation for an offense “listed within the definition of "sex offense", a "sex offense involving a child" or a "sexually violent offense", as defined in section 178C of chapter 6, “must wear a GPS as a term of their probation. G.L. c. 265 § 47. This statute authorizes the Commissioner of Probation to establish “geographic exclusion zones” from which the probationer is excluded, which includes “but not limited to, the areas in and around the victim's residence, place of employment and school and other areas defined to minimize the probationer's contact with children, if applicable.”

11. DNA - G.L ch 22E §1-15

Anyone adjudicated as a youthful offender for a crime that would be punishable by imprisonment in state prison, if committed by an adult must submit a DNA sample for inclusion in the Massachusetts DNA database G. L. c. 22E § 3. Refusal to submit said sample is a crime (six months in the house of corrections or \$1000 fine) c. 22E §11.

12. Sexually Dangerous Person - G.L. c. 123A §1 – 16

Delinquency and youthful offender adjudications for “sexual offenses” are considered convictions for the purpose of this statute. G.L c. 123A § 1.

"Sexually dangerous person", any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

Notification to District Attorney and Attorney General: DYS must notify, in writing, the district attorney and attorney general of a juvenile, in their custody, who has been convicted of a sexual offense, regardless of what they are currently committed on. Notice is to be given six months prior to release.

DYS shall also identify youth who have a high likelihood of meeting the criteria for a sexually dangerous person and give notice of their release to the district attorney and attorney general. When the district attorney or attorney general determines that the

juvenile in DYS custody is likely to be a sexually dangerous person, they can file a petition, in superior court, alleging that the person is sexually dangerous. When the petition is filed in court must determine if there is probable cause. At the hearing the person shall have the following rights: 1) legal representation, 2) present evidence on own behalf, 3) cross examine witnesses, and 4) view and copy all petitions and reports in the courts file. A person can be temporarily committed to the treatment center if he/she is scheduled to be released from custody prior to the probable cause determination. One can move for relief from said commitment. c. 123A §12.

13. Immigration

“Juvenile adjudications are not considered convictions for immigration purposes. A delinquency finding on a deportable offense, therefore, will not cause a juvenile to be deported. There is a possibility that youthful offender convictions may be considered convictions for immigration purposes (there is no published decision by a court or the Board of Immigration Appeals analyzing the Massachusetts youthful offender statute).”

“Juvenile adjudications, however, can cause other immigration consequences. They can be used to prevent a finding of “good moral character,” which is a requirement for naturalization and for certain forms of relief from removal. Juvenile adjudications on crimes of violence that would be considered felonies in adult court may also affect benefits under the Family Unity Act.” Dan Kesselbrenner, Wendy Wayne, “Selected Immigration Consequences of Certain Massachusetts Offenses – Juvenile Adjudications.”

14. Federal Sentencing Guidelines

In United States v. Booker, 125 S. Ct. 738 (2005) the Supreme Court held that the Federal Sentencing Guidelines are not mandatory , however, they are advisory and the sentencing court is required to consider the guideline ranges. See also, 18 USCS § 3553.

Juvenile Adjudications can be used to enhance sentencing under the sentencing guidelines, USSG §4A1.2. Definitions and Instructions for Computing Criminal History:

(d) Offenses Committed Prior to Age Eighteen

(1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under §4A1.1(a) for each such sentence.

(2) In any other case,

(A) add 2 points under §4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) add 1 point under §4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).

Commentary:

7. Offenses Committed Prior to Age Eighteen. Section 4A1.2 (d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this provision applies to all offenses committed prior to age

15. Employment

When applying for a job in Massachusetts, an applicant does not have to provide every bit of information about ones' criminal history and an employer is not allowed unfettered inquiry into an applicant's criminal history. G.L. c. 151B § 4(9) defines the scope of an employers right to obtain such information from an applicant. Under this statute, an employer may not obtain information, about:

(i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or

(ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or

(iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.

Proceedings in juvenile court "shall not be deemed criminal proceedings," under G.L. c 119 § 53 and juvenile adjudications are not considered criminal convictions. Department of Youth Services v. A Juvenile, 384 Mass. 784 (1981).

16. Criminal Offender Record Information (CORI)

G.L. c. 6 § 167 "...Criminal offender record information shall be limited to information concerning persons who have attained the age of seventeen and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of seventeen; provided, however, that if a person under the age of seventeen is adjudicated as an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration."

A CORI is not a public record, however, judges, probation, corrections, the department of youth services, the parole board, the sentencing commission, and local and state governments that the board allows, have access to said records. G.L. c. 6 § 168A.

By statute, various organizations have access to CORI, they include: criminal justice agencies, other agencies and individuals required to have access to such information by statute, any organization or person where it has been determined that the public interest in disseminating the information outweighs the privacy and security interest, and those agencies where the legislature has allowed access. G.L. c. 6 § 172.

Juvenile arrest and conviction data are available to:

- The Department of Social Services and the Department of Youth Services for evaluating all foster and adoptive homes. c. 6 § 172B
- Agencies authorized to establish paternity and establishing, modifying, or enforcing child support obligations c. 6 § 172D.
- The Office of Child Care Services c. 6 § 172F
- Operators of children's camp c. 6 § 172G

Relevant Code of Massachusetts Regulations regarding CORI and juveniles:

- CORI does not include information concerning youth under age 17 unless prosecuted under the youthful offender statute 803 CMR 2.04
- *"Computer terminal access to CORI shall be limited to certified criminal justice agencies, unless such access is otherwise authorized by the CHSB. Computer terminal access to CORI, or to any other data contained on CJIS, shall be used by law enforcement or criminal justice personnel and otherwise authorized persons only for a criminal justice purpose in the performance of their official duties and responsibilities. Such CJIS data shall include, but not be limited to, CORI, juvenile records, and any and all information as provided via the Registry of Motor Vehicles, the National Law Enforcement Telecommunications System, the Interstate Identification Index, the Court Activity Record Information file*

(including the civil restraining order file), Corrections information, and Parole information. All such personnel or authorized persons shall be subject to a criminal record background check and will sign an agreement of non-disclosure on forms provided by the Criminal History Systems Board.” 803 CMR 3.07

17. Public Housing

Since CORI reports do not include adjudications of youth under the age of 17 unless prosecuted as a youthful offender, 803 CMR 2.04, housing authorities or subsidized landlord will not have this information. However, if a housing authority or subsidized landlord learns of a juvenile adjudication or pending case, they can use this to deny public housing. Additionally, there are other means in which one’s criminal activities can exclude them from public housing.

Any person who is subject to lifetime sex offender registration is ineligible for federal public housing.

42 USCS § 13663:

(a) In general. Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(d) Opportunity to dispute. Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

Under federal law, a person can be denied admission into public housing if it is determined that a household member is currently engaged in or has engaged in during a reasonable time before the admission decision, any of the following behavior:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

24 CFR 5.855(a)

This project is supported by Grant # 2005-JF-FX 0055 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice to the Massachusetts Executive Office of Public Safety Programs Division and subgranted to the Committee for Public Counsel Services. Points of view in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice or the Massachusetts Executive Office of Public Safety Programs Division.