



COLORADO JUVENILE DEFENDER CENTER
===== WE BELIEVE IN YOUTH =====

**TO PLEA
OR NOT TO PLEA?
NEGOTIATING YOUR CLIENT'S
FUTURE AND LOOKING AHEAD TO
ENSURE YOUR CLIENT CAN
EXPUNGE AND DEREGISTER**

JUVENILE RECORDS IN COLORADO

Juvenile Records and Information

- ▣ 19-1-300s
- ▣ 19-1-302: Legislative Declaration
 - Recognizes that information is “highly sensitive” and carries a “risk of stigma”
 - BUT: “absolute confidentiality of such information may result in duplicated services...and...may put other members of the public at risk of harm.
- ▣ A lot of information is disclosed in the name of sharing information to serve kids and/or protect the public.

Information Sharing

- ▣ C.R.S. §19-1-303
 - Allows judicial department, agencies, schools, law enforcement, to share information with each other.
 - Generally requires a “need to know for the acquisition, provision, oversight, and referral of services and support.”
 - Special provisions for the exchange of information between schools and law enforcement/courts/prosecution.

Who can see juvenile delinquency records?

- ▣ C.R.S. § 19-1-304
 - 17 named parties can view court records without a court order
 - Including:
 - ▣ Juvenile, guardian, attorney, GAL
 - ▣ Probation, DYC, DHS, law enforcement, DOC, CBI
 - ▣ Court
 - ▣ Victim
 - ▣ Researchers employed by the state
 - ▣ School — principal and school superintendent
 - ▣ Department of Education for teacher licensing

Who can see juvenile delinquency records?

- ▣ C.R.S. § 19-1-304
 - Court records: any other person having a legitimate interest in the proceedings, with consent of the court.

Who can see juvenile delinquency records?

- ▣ C.R.S. § 19-1-304
 - Separate provisions for
 - ▣ Probation records
 - ▣ Law enforcement records
 - ▣ Parole records
 - Similar limited access

Juvenile records in practice

- ▣ CBI keeps a “juvenile rap sheet”
- ▣ Are not supposed to be available to public in CoCourt
 - But youth and adults report that juvenile arrests and charges are coming up on background checks.

CONSEQUENCES OF JUVENILE RECORDS

Juvenile Records can have Devastating Lifelong Consequences

- ▣ Juvenile records may affect a youth long after they have completed their sentence.
- ▣ For an in depth guide on the wide range of consequence see “The Consequences of Adjudication” on Colorado Public Defender website.



Employment Consequences

- ▣ No Colorado law prohibits discrimination by private employers based on a juvenile history.



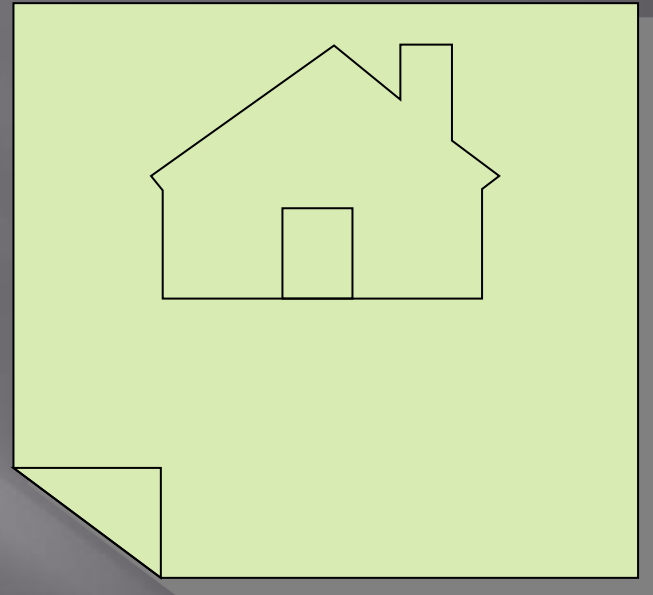
Education Consequences

- Many colleges, for example the University of Colorado, specifically ask about juvenile adjudications on the college application.
- Record may also have implications at current school



Other possible consequences

- Housing
- Public benefits
- Possession or Purchase of a firearm

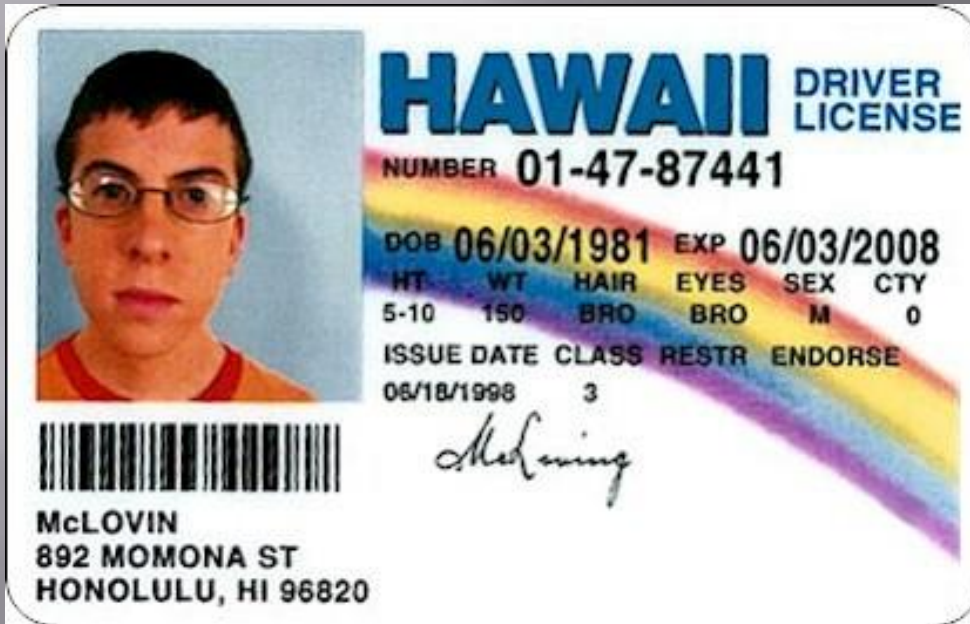


Military

- Moral criteria
- Moral waiver



Other possible consequences



▣ Licenses

▣ Child Welfare System

▣ Immigration

FAILED POLICIES, FORFEITED FUTURES

A Nationwide Scorecard
on Juvenile Records



Juvenile
Law advancing the rights and
well-being of children in jeopardy
Center

JUVENILE RECORDS

A National Review of
State Laws on Confidentiality,
Sealing and Expungement



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Juvenile Records Expungement Scores



80-100%



60-79%



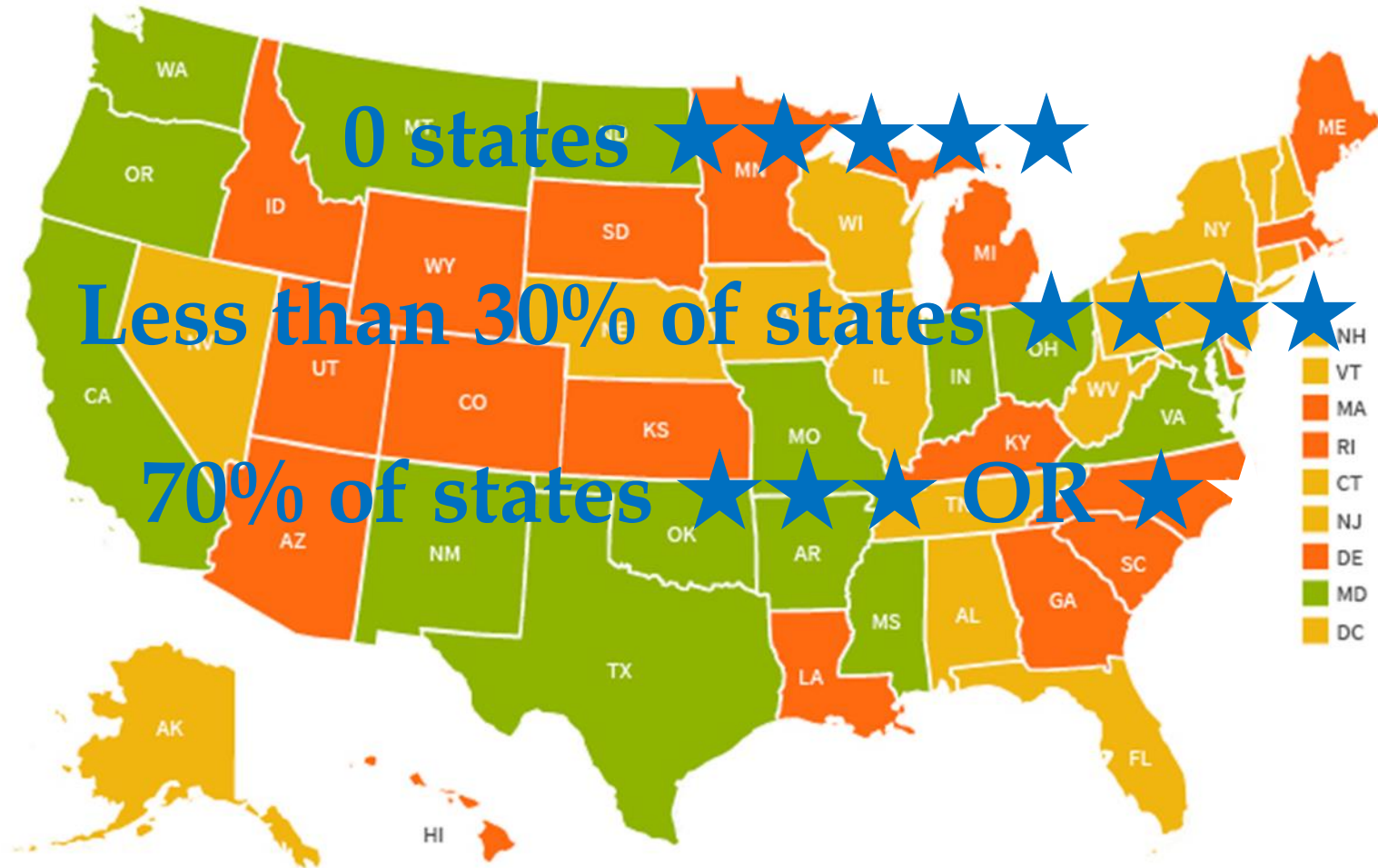
40-59%



20-39%



0-19%



Juvenile Law Center scored each state on the following criteria:

- ▣ Availability of sealing or expungement
- ▣ Records that are Subject to Sealing and/or Expungement
- ▣ Offenses excluded from Expungement and/or Sealing
- ▣ Sealing or Expungement Automatic or Requires Initiation by Individual or Entity
- ▣ Notification of Eligibility for Sealing or Expungement
- ▣ Timing of Eligibility for Record Sealing or Expungement
- ▣ Fees for Expungement or Sealing
- ▣ Sanctions Imposed for Failure to Comply with Sealing or Expungement Law

Life on the Juvenile Registry and Deregistration



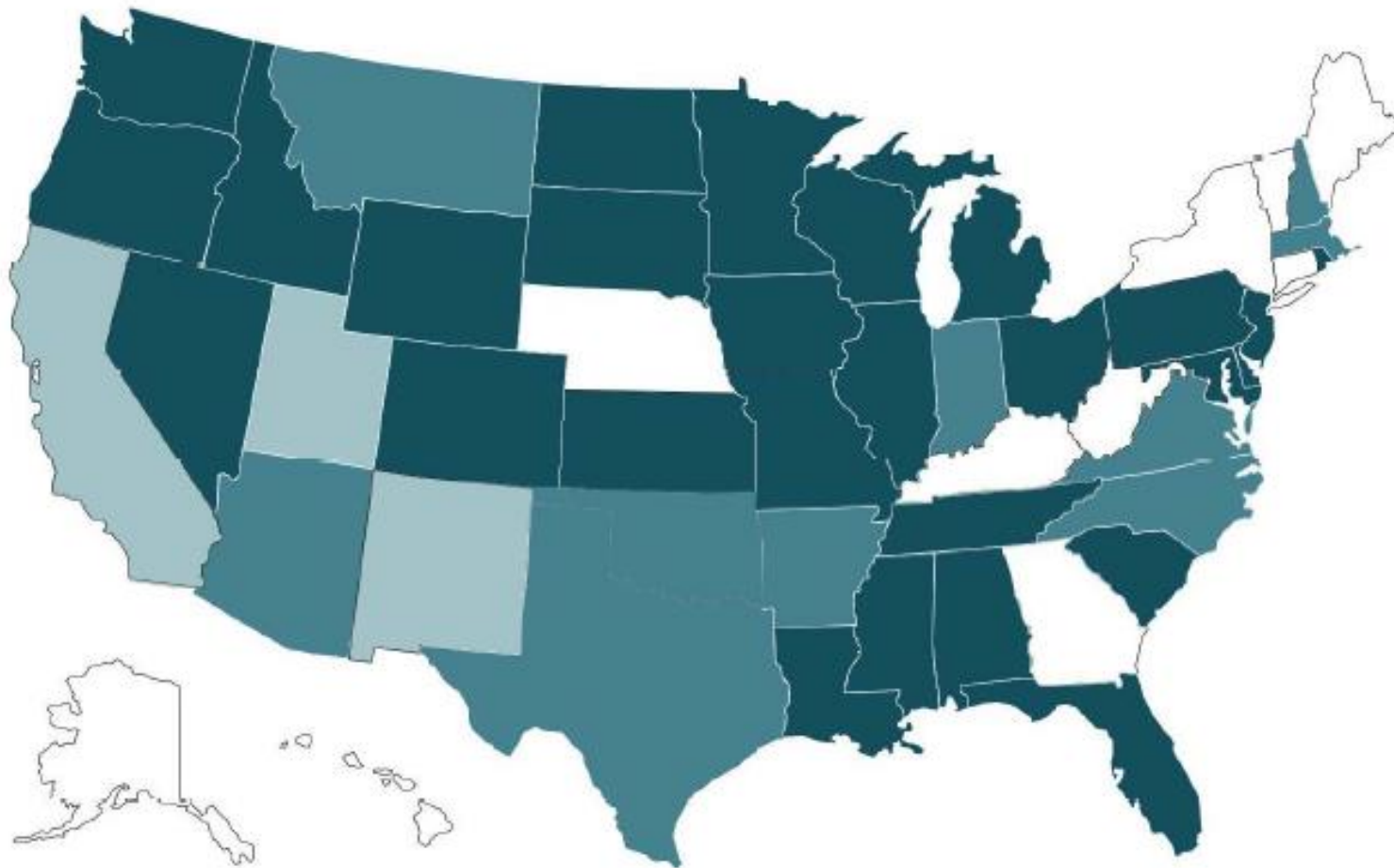
SMART SUMMARY

MARCH 2015

***Prosecution, Transfer, and Registration of
Serious Juvenile Sex Offenders***

States that require registration

Map 3: Registration of Serious Juvenile Sex Offenders



**SMART
Summary:
Prosecution,
Transfer and
Registration
of Serious
Juvenile Sex
Offenders.
March 2015**

☐ No Registration ☐ Hybrid ☐ Discretionary ☐ Mandatory



HUMAN
RIGHTS
WATCH

RAISED ON THE REGISTRY

The Irreparable Harm of Placing Children on Sex Offender Registries
in the US

Stigma

“Sex Offender registration is slow death by humiliation.”

- ▣ In Colorado, juvenile registry is not posted by the state on the internet.
- ▣ But many private entities make the registration information available online.
- ▣ If the youth is prosecuted as an adult, subject to adult registration requirements.

Stigma

- ▣ Registry is publically available from CBI
 - Anyone can get the entire statewide list for \$25.
- ▣ Local law enforcement agencies keep separate lists
 - Some include pictures of registrants as young as 12.
- ▣ Police may come to the house at any hour to “check” on the registrant, in full view of neighbors.

Suicide

“There is no redemption, no forgiveness. You are never done serving your time. I wish I were executed because my life is basically over.”

- ▣ 281 youth offenders and 15 family members
- ▣ 84.5% reported negative psychological impacts
- ▣ 19.6% had attempted suicide

Violent Vigilante Attacks

- ▣ 52% experienced violence or threat of violence

Barriers to Education

- ▣ Special “plan” or “contract” may lead to push out
- ▣ Expulsion
- ▣ Applications may ask about adjudications



Inability to find work and housing

- ▣ Criminal background check
- ▣ Kentucky study: 45% reported loss of housing or inability to find housing.
- ▣ Wisconsin study: 83% had trouble finding and/or maintaining housing.

Fees and Costs



- ▣ C.R.S. § 16-22-108(7)(a)
 - Up to \$75 initial
 - Up to \$25 annually/quarterly
 - Can be waived for indigent persons.
 - May not charge for updates.

“If you don’t pay, they re-arrest you and convict you for failure to register.”

Onerous and Confusing Registration Requirements

- ❑ Must register within five days of a move (or release).
 - C.R.S. § 16-22-108(1) and (3).
- ❑ Required to register annually (or more often).
 - C.R.S. § 16-22-108(1)(b).
- ❑ May have to register in more than one home (joint custody).
 - C.R.S. § 16-22-108(1)(c).
- ❑ Must register if spending even two weeks in another home.
 - C.R.S. § 16-22-105(3).
- ❑ Must deregister if moving out of state.
 - C.R.S. § 16-22-108(4)(A)(II).
- ▶ If convicted of child sex crime, must register all email addresses, instant messaging identifies, chat room identifiers.
 - ▶ C.R.S. § 16-22-108(2.5)(a).
- ▶ If lacking a fixed residence, must report every three months.
 - ▶ C.R.S. § 16-22-109(3.5)(c).

Further Prosecution

- ▣ If youth fail to meet these changing and complicated requirements, they may be charged criminally.
- ▣ **Failure to Register convictions will appear on public background checks and cannot be sealed or expunged.**



Consequences without justification

- ▣ Children adjudicated of sex offenses are not likely to reoffend:
 - Dr. Elizabeth LeTourneau: 2 events out of 222 youth.
 - Professor Franklin E. Zimring: Over 92% of juveniles adjudicated of a sex offense did not commit another sex offense.
 - Other studies: recidivism rates between 4-10% for youth.

Consequences without justification

- ▣ Identifying the wrong people — people who are actually **not** likely to commit another sexual crime — hurts instead of helping.
 - False sense of security
 - Waste of valuable resources



EXPUNGEMENT ELIGIBILITY

Considerations for Expungement

No Waiting Period

Outcome	Waiting Period
Charged with a prostitution offense where client was sold, exchanged, bartered, leased, or coerced	None
Found not guilty at trial	None
ENTIRE petition was dismissed by the prosecutor	None
Client successfully completed diversion, a deferred adjudication, or an informal adjustment	None (eligible when completed)

Expungement Waiting Periods

Outcome	Waiting Period
Law enforcement contact	One year
Successfully completed probation	One year (from completion)
Committed	Three years (from completion, including parole)
Sentenced as a repeat or mandatory juvenile offender	Five years (from completion)

Expungement Disqualifications: Later Convictions

- Subsequent felony (as an adult or juvenile); or
- Subsequent misdemeanor crime involving domestic violence, unlawful sexual behavior, or possession of a weapon (as an adult or juvenile); or
- Pending felony, misdemeanor, or juvenile charge.

Other Expungement Disqualifications

- Client was sentenced as an aggravated juvenile offender or violent juvenile offender; or
- Client was charged and sentenced as an adult; or
- Client was found guilty of a charge that involved unlawful sexual behavior; or
 - Successful completion of a d/a does not disqualify!
- Client has failed to pay court ordered restitution.

Expungement Standard Court Must Find:

- Client has been rehabilitated to the satisfaction of the court, and
- Expungement is in the best interest of petitioner and community.

Negotiating the Future Expungement

What you can do

1. Bargain for something that can be expunged
 - Avoid aggravated or violent juvenile offender;
 - Avoid sex charge (including plea to facts that involve unlawful sexual behavior);
 - If you must plea to a sex charge, get a deferred;
 - Avoid the subsequent felony;
 - Avoid the subsequent misdemeanor crime involving domestic violence, unlawful sexual behavior, or possession of a weapon.

What you can do

2. Bargain for something that can be expunged sooner

- Avoid mandatory and repeat offender (increases wait period to five years).
- Use expungement as a bargaining tool to shorten probation sentences.
- Use expungement as a bargaining tool to shorten commitment period.
- Discuss expungement waiting periods with you sentenced client — get buy in!

3. Litigate Restitution!

DEREGISTRATION ELIGIBILITY

Waiting Period: Successfully Completed Sentence

- ▣ If your client successfully completed a juvenile sentence, he/she DOES NOT HAVE TO WAIT.
- ▣ After successful completion, your client is IMMEDIATELY eligible to petition to get off the registry.

Waiting Periods: “Unsuccessful Completion”

Charge	Waiting Period (from end of sentence)
Misdemeanor offense other than unlawful sexual contact	Five Years
Class 4, 5, or 6 felony, or misdemeanor unlawful sexual contact	Ten Years
Class 1, 2, or 3 felony	Twenty Years

Disqualifications

- After the case that requires the client to register, client was found guilty (as an adult or a juvenile) of a crime that involves unlawful sexual behavior ; *or*
- Client was found to be a sexually violent predator (SVP); *or*
- You are arguing that client was “successful” and client has a pending prosecution in which he/she is accused of facts that involve unlawful sexual behavior; *or*
- Client has more than one conviction or adjudication for unlawful sexual behavior and is currently 18 or older. (See *People v. Atencio*, 219 P.3d 1080 (Colo. App. 2009)).

Court Must Consider:

- The court shall consider whether the person is likely to commit another offense involving unlawful sexual behavior.
- The court will base its decision on recommendations from:
 - the person's probation or parole officer
 - the person's treatment provider, and
 - the prosecuting attorney, and
 - the recommendations in the PSI (presentence investigation report).
- The court will also consider any written or oral testimony submitted by the victim of the offense.

Negotiating the Future Deregistration

Law to know when plea bargaining

- ▣ 16-22-103 (2)(a): Must register if convicted of unlawful sexual behavior or of another offense the underlying factual basis of which involves unlawful sexual behavior.
- ▣ 16-22-103 (2)(c)(II): If a person is originally charged with unlawful sexual behavior (or underlying factual basis of unlawful sexual behavior) the court may accept a plea agreement to an offense that does not constitute unlawful sexual behavior only if:
 - The district attorney stipulates that the underlying factual basis of the offense to which the person is pleading guilty does not involve unlawful sexual behavior; or
 - The person admits that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior.

Law to know when plea bargaining

▣ 16-22-103 (4)

- Applies registration law to:
 - ▣ any person who receives a disposition or is adjudicated a juvenile delinquent based on the commission of any act that may constitute unlawful sexual behavior, or
 - ▣ who receives a deferred adjudication based on commission of any act that may constitute unlawful sexual behavior.

Law to know when plea bargaining

- ▣ 16-22-103(5)(a) allows court to exempt youth from registration if:
 - The person was younger than eighteen years of age at the time of the commission of the offense; and
 - The person has not been previously charged with unlawful sexual behavior; and
 - The offense, as charged in the first petition filed with the court, is a first offense of either misdemeanor unlawful sexual contact or indecent exposure, and
 - The person has received a sex offender evaluation from an SOMB evaluator, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community, and
 - The court makes written findings of fact specifying the grounds for granting such exemption.

Law to know when plea bargaining

▣ 16-22-103(5)(a) Exemption

- Can be done by defense motion or court's own motion.
- Court must determine that the registration requirement would be unfairly punitive and that exempting the person from the registration requirement would not pose a significant risk to the community.
- Based on the totality of the circumstances.
- *People In the Interest of J.O.*, 2015COA119 (August 27, 2015).

What you can do in plea bargaining

- ▣ Avoid plea to sexual offense and plea to unlawful sexual behavior facts.
- ▣ Ask for exemption if pleading to first time unlawful sexual contact or indecent exposure.
- ▣ Complete diversion or deferred to avoid a conviction — avoid the split plea.
 - Adjudication results in no expungement.
- ▣ Avoid a second conviction, even in the same case.
 - *People v. Atencio*, 219 P.3d 1080 (Colo. App. 2009).

HOW TO FILE A PETITION

Process to Petition for Expungement

- JDF 302 Petition for Expungement of Records
- JDF 303 Notice of Hearing
- JDF 304 Order of Expungement of Records
- Self addressed stamped envelopes (if required by clerk) for agencies listed in the 303
- CJDC files a memorandum in support
- Hearing
- MAIL THE ORDER
- (Can only file one time per year).

Forms available online:

http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=157

How to File a Deregistration Petition

- Mail JDF 472 Notice of Intent to Discontinue Registration to law enforcement and DA, certified mail return receipt requested
- Obtain little green cards (proof of receipt)
- JDF 460 (Checklist for Petition)
- JDF 461 (Petition to Discontinue SO Registration)
- JDF 462 (Notice of Hearing)
- JDF 463 (Proposed Deregistration Order)
- JDF 472 with Original Green Cards attached
- Self addressed envelopes (if required by the clerk)
- CJDC files memorandum in support

How to File a Deregistration Petition

- ▣ Send out Notice of Hearing
 - Receive notice of hearing (JDF 462) from the Court
 - Mail certified mail, return receipt requested, with a copy of the petition (JDF 461) to DA that obtained adjudication and DA in county where client is registered.
- ▣ File notice of hearing
 - Receive little green cards
 - File JDF 479 with original green cards attached

How to File a Deregistration Petition

- ▣ Hearing
- ▣ Mail out the Order
 - Obtain certified copies
 - Mail to
 - ▣ Law enforcement agency or agencies
 - ▣ CBI
 - ▣ DA or DAs
 - ▣ Other relevant parties
 - Schools?
 - Private record searchers?
 - DMV?

Out of State Adjudications

- ▣ Similar process, different set of forms:
 - JDF 472 (notice of intent to petition)
 - JDF 460 (checklist)
 - JDF 473 (petition)
 - JDF 474 (notice of hearing)
 - JDF 475 (proposed order)
 - JDF 479 (Proof of mailing of notice of hearing)
- ▣ \$224.00 Filing fee. Motion to file without payment can be filed (JDF 205) with order (JDF 206).

What type of information should be included in a petition for expungement or deregistration?

- ▣ *Goal is to make the judge realize that the person is more than just a case number*
- ▣ *Because expungement and deregistration are discretionary it is important to go beyond just the basic paperwork.*

WHAT CAN PROFESSIONALS DO TO HELP POST- DISPOSITION

What you can do

- ▣ Set up client for success.
- ▣ Advise your client!
 - If they are eligible now, to deregister or expunge they should do it NOW!
 - Date of eligibility
 - What they can do to prepare

What can you do to help a youth with a petition?

- ▣ Encourage youth to get involved in pro-social activities and help youth collect documentation (certificates, news articles, group pictures).
- ▣ Help the youth collect other positive documents (grades, proof of employment, letters of support)
- ▣ Give a copy of the file to the youth (or a digital copy such as a CD) when the youth has completed all requirements/finished program
- ▣ Keep contact information for all the professionals and court personnel in the case.

What can you do to help a client with a petition?

- ▣ Retain records! Reevaluate your record destruction policy.
- ▣ File proof of completion of treatment, successful probation, good behavior, etc. in the court file.
- ▣ File proof that you support expungement/deregistration in the court file.

What can you do to help a youth with a petition?

Letters of Support

- ▣ Highlight to the court why this child should not be subjected to the harms of being on the registry and/or should have their records sealed, how this child is not a risk to the community, how they have shown rehabilitation, and other positive qualities or actions of the child
- ▣ Assist the youth with getting letters of support from CASA workers, diversion, probation, or parole officers, therapists, social workers, case managers, etc.

What can you do to help a youth with a petition?

- ▣ Reach out to the youth at the end of the waiting period to remind them to expunge/deregister
- ▣ Help the youth understand the process and fill out the paperwork
- ▣ Refer the youth for legal help
- ▣ Provide relevant documents directly to any attorney for faster filing

Additional Resources

- ▣ Colorado Juvenile Defender Center Website
 - www.cjdc.org
- ▣ Juvenile Law Center Website
 - www.jlc.org
- ▣ Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S., Human Rights Watch
 - <http://www.hrw.org/reports/2013/05/01/raised-registry>
- ▣ The Consequences of Adjudication, Sanctions Beyond the Sentence for Juveniles Under Colorado Law, Colorado State Public Defender
 - http://pdweb.coloradodefenders.us/index.php?option=com_content&view=article&id=199&Itemid=161
- ▣ Juvenile Law Center, *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records*
 - www.jlc.org/juvenilerecords
- ▣ SMART Summary March 2015
 - <http://www.smart.gov/pdfs/SMARTSummary.pdf>



COLORADO JUVENILE DEFENDER CENTER

== WE BELIEVE IN YOUTH ==

CJDC WANTS TO HELP!

CJDC may be able to represent clients for free.

Also, refer your client's muni cases to CJDC!

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