# JUVENILE SEX OFFENDERS:
## From Investigation to Disposition

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APAAC Training Center
Phoenix, Arizona

# DISPOSITIONAL MANDATES

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Distributed By:

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## Juvenile Dispositions

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## So the juvenile was found delinquent.

- Now what?

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## Tell the judge why the juvenile needs what you are recommending.

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## Psychosexual Evaluations and Risk Assessments

- A sexual risk assessment will give more diagnostic information (i.e. the results of several assessments) but will not provide a psychiatric diagnosis. *RTC's
- A psychosexual evaluation will provide a psychiatric diagnosis with less sexual diagnostic information.

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## 8-341.01 Residential treatment services

- A. If at a disposition hearing or a subsequent hearing the court orders a delinquent juvenile or incorrigible child to receive residential treatment services, other than psychiatric acute care services as defined in section 8-271, the placement **must be supported by a written psychological, psychiatric or medical evaluation recommending residential treatment services**. The court may waive the written evaluation for good cause shown.

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## 8-341.01

- B. If the court orders a child to receive residential treatment services, the court shall find by **clear and convincing evidence** that both:
- 1. The child **requires residential treatment** services to address the child's behavioral, psychological, social or mental health needs.
- 2. Available alternatives to residential treatment services were considered, but that residential treatment services are the **least restrictive alternative.**

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## Psychosexual Evaluations and Risk Assessments

- Several diagnostic tools "measure" sexual risk:
- ABEL – measures arousal to children
- J-SOAP II, J-SORRAT, and ERASER all measure risk to reoffend
- PHASE Sexual Attitudes Questionnaire, and Adolescent Cognitions Scale – measure cognitive distortions or deviant attitudes
- Adolescent Sexual Interest Cardsort – measures what juvenile is aroused to

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## Actuarials

- J-SOAP II, J-SORRAT, and ERASER all measure risk to reoffend, but…
- general characteristics of sex offenders and are not "scientific" evidence

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Psychology Dictionary

*World's Most Comprehensive Online Psychology Dictionary*

A B C D E F I J K L M N O P R S T U W Y

### What is ACTUARIAL RISK ASSESSMENT?

Written by Pam MS, NCSP | Fact checked by Psychology Dictionary staff

a mathematically measured prediction of the potential of a person who will present a danger to other people or have interaction in select actions, like destructive behavior, inside a chosen time frame. As opposed to scientific risk assessment, it depends upon information from specific, measurable factors, like age or sex, that have been authenticated as predictors and utilizes numerical analyses and formulations to assess the likelihood of risky or destructive behavior,

ACTUARIAL RISK ASSESSMENT: "Actuarial risk assessments are often performed on prisoners being released or paroled."

## Your disposition recommendation…what to consider?

- Number of victims
- How prolonged was the offending?
- Male and female victims? Or only one gender?
- Stranger victim or known victim?
- Any "grooming" behavior?
- Does the juvenile show any insight into his or her offending behavior?

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- The juvenile's background (other sex offenders in the home?)
- Other potential victims? (e.g., access to younger siblings, other younger children)
- Pornography
- Computer/ smartphone usage issues
- Attempts to contact victim
- Arson
- Animal abuse
- Drug issues
- Other weird issues

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## Sex offender treatment or "boundaries" counseling?

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## Polygraphs?

- *Jacobsen v. Lindberg*, 225 Ariz. 318 (App. 2010) addresses whether sex offenders can be required to take polygraphs as part of probation. The case seems to indicate that a defendant must specifically invoke his rights—and have the right to do so—in order to argue that he/she is exempt from polygraphs. (i.e., it is a narrow exception, and most defendants do not use it properly.)

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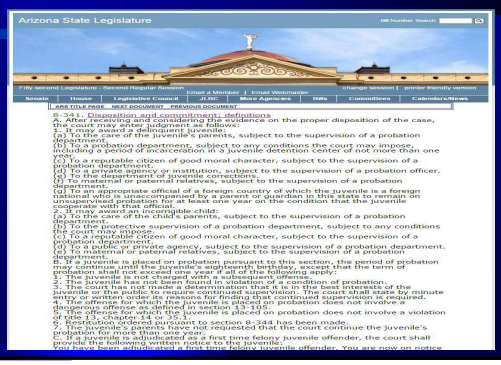
## Felony warnings




## 8-341

- Tells court the options for dispositions.

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## 8-341(C)- First Time Felony Warning

- C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

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## 8-341(C)- First Time Felony Warning

- You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

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## 8-341(E)- Repeat Felony Warning

- You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

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## But…8-341(F)

- F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise permitted.

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## HIV testing

### 8-341(O)

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

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## HIV testing

- 2 ways under 8-341(O):—
- First way: If the act may have involved significant exposure as under 13-1415 or if the act would be a “sexual offense” (See 8-341(V)(3). (HIV testing only)
- 8-341(V)(3): "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

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## HIV testing

- 13-1401(A):
- "Oral sexual contact" means oral contact with the penis, vulva or anus.
- "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
- "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

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## HIV, back to 8-341(O):

- the act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense
- At victim's request or request of victim's guardian
- the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus.

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## 8-341(O)

- Second way: If the act committed would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. (Testing can be ordered under 13-1415…i.e., test for different diseases too)

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## 8-341(O)

- This second way requires 1) if by adult would have been a sex offense OR the court finds sufficient evidence to indicate that significant exposure occurred.

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## 8-341(O)

- What might be sufficient evidence?
  - Factual basis for a plea?
  - Police report?
  - Victim impact statement?
  - No case law defining how

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## But…

- State need not prove, … that human immunodeficiency virus (HIV) testing of juvenile sex offender and disclosure of the information is necessary; necessity for disclosure has been determined as legislative judgment. *State v. Superior Court In and For County of Maricopa* (App. Div.1 1996) 187 Ariz. 411, 930 P.2d 488, review denied.

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## 8-341(O) vs. 13-1415

| 8-341(O) | 13-1415 |
|---|---|
| -presence of the human immunodeficiency virus | -human immunodeficiency virus<br>-Chlamydia<br>-Genital herpes<br>-Gonorrhea<br>-Syphilis<br>-Trichomonas |

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| 8-341(O) | 13-1415 |
|---|---|
| "The legislature drafted A.R.S. § 8–241(N) to permit testing in a broader range of cases, and we have concluded that testing in the event of potential exposure to the perpetrator's bodily fluids withstands Fourth Amendment scrutiny, even if such exposure does not rise to the defined level of "significant exposure."" State v. Superior Court In and For County of Maricopa (App. Div.1 1996) 187 Ariz. 411, 930 P.2d 488, review denied. | "The court, within ten days, shall determine if sufficient evidence exists to indicate that significant exposure occurred." A.R.S. §13-1415(B) |

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## 13-1415

- A. A **defendant**, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.

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## 13-1415

- Duty is on us!
- "The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes."

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## DNA

- Pursuant to A.R.S. 13-610(O), the juvenile shall submit to DNA testing for law enforcement purposes.

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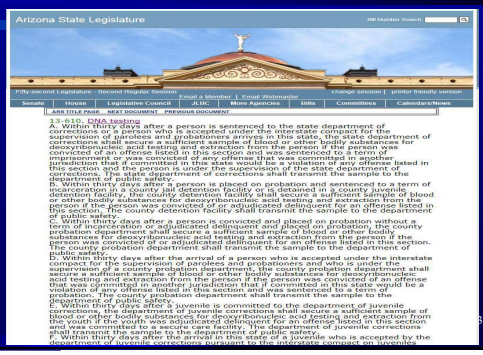
## DNA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Fifty-second Legislature - Second Regular Session

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13-610. DNA testing

A. Within thirty days after a person is sentenced to the state department of corrections or a person who is accepted under the interstate compact for the supervision of parolees and probationers arrives in this state, the state department of corrections shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section and was sentenced to a term of imprisonment or was convicted of any offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and the person is under the supervision of the state department of corrections. The state department of corrections shall transmit the sample to the department of public safety.

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration or adjudicated delinquent and placed on probation, the county detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

D. Within thirty days after the arrival of a person who is accepted under the interstate compact for the supervision of parolees and probationers and who is under the supervision of a county probation department, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and was sentenced to a term of probation. The county probation department shall transmit the sample to the department of public safety.

E. Within thirty days after a juvenile is committed to the department of juvenile corrections, the department of juvenile corrections shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the youth if the youth was adjudicated delinquent for an offense listed in this section and was committed to a secure care facility. The department of juvenile corrections shall transmit the sample to the department of public safety.

F. Within thirty days after the arrival in this state of a juvenile who is accepted by the department of juvenile corrections pursuant to the interstate compact on juveniles

## A.R.S. §13-610(O)

O. This section applies to persons who are:
1. Convicted of any felony offense.
2. Adjudicated delinquent for any of the following offenses:
(a) A violation or an attempt to violate any offense in chapter 11 of this title, any felony offense in chapter 14 or 35.1 of this title or section 13-1507, 13-1508 or 13-3608.
(b) Any offense for which a person is required to register pursuant to section 13-3821.
(c) A violation of any felony offense in chapter 34 of this title that may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.
(d) A violation of any felony offense that is listed in section 13-501.
3. Arrested for a violation of any offense in chapter 11 of this title, a violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense as defined in section 13-706 that is a dangerous offense.

## Fines

- PURSUANT TO A.R.S. 12-116.07, "IN ADDITION TO ANY OTHER ASSESSMENT OR RESTITUTION, IF A PERSON IS CONVICTED OF OR ADJUDICATED DELINQUENT FOR A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705 OR SEXUAL ASSAULT, THE COURT SHALL ORDER THE PERSON TO PAY AN ASSESSMENT OF FIVE HUNDRED DOLLARS."

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## Various Treatment Options

- Probation (standard)
- Juvenile Intensive Probation
- ADOJC

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## 8-350.01. Youth sex offenders; treatment

- A. If the court or the adult or juvenile probation department places a sex offender in a sex offender treatment program, the treatment provider or, if the treatment is provided by the state department of corrections or the department of juvenile corrections, the state department of corrections or the department of juvenile corrections shall place the offender in a treatment program with similar offenders of a similar age and developmental maturity level, if group treatment is prescribed by the treatment provider.
- B. A mental health treatment program that a sex offender is required to participate in by a court, an adult or juvenile probation department, the state department of corrections or the department of juvenile corrections:
- 1. Shall comply with the professional code of ethics from the association for the treatment of sexual abusers.
- 2. Shall not include the use of images that are in violation of title 13, chapters 35 and 35.1.
- C. For the purposes of this section, "sex offender" means a person who is twenty-one years of age or younger who is adjudicated delinquent for or convicted of an offense that involves a violation of title 13, chapter 14 or 35.1 and that does not involve the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

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## 8-350.01. Youth sex offenders; treatment

- Place the juvenile in a treatment program with similar offenders of a similar age and developmental maturity level, if group treatment is prescribed by the treatment provider.
- Don't show porn in treatment

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## Sex Offender Registration

- PURSUANT TO A.R.S. SECTION 13-3821(D), THE JUVENILE MAY BE REQUIRED TO REGISTER AS A SEX OFFENDER UNTIL THE AGE OF TWENTY-FIVE.

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## Community Notification

- . COMMUNITY NOTIFICATION MAY BE ORDERED PURSUANT TO § 13-3825(J).

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## Violations of Probation

- Is there a violation?
- Kicked out of treatment?
- Failed a polygraph?

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## State v. Eccles, 179 Ariz. 226 (1994)

- Defendant Michael Eccles was told that one of his conditions of probation included that he must "waive any and all rights," including the right not to incriminate himself. *Id*. at 227. Eccles was informed that "refusal to follow any of these instructions would be a violation of your conditions of probation, and can result in a revocation of probation, and imposition of a prison sentence." Id. Thus, the court noted that such a waiver was prohibited, in keeping with *Minnesota v. Murphy*, 465 U.S. 420, 104 S.Ct. 1136 (1984).

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## Jacobsen v. Lindberg, 225 Ariz. 318, 238 P.3d 129 (App. 2010)

- "Jacobsen may assert the privilege against self-incrimination as to polygraph questions that may incriminate him. The trial court should apply the guidelines set out by the supreme court in Eccles in determining which questions are properly objectionable." Id. at 323.

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## What if the juvenile asks to be exempted from all polygraphs?

- Juvenile no longer has a right against self-incrimination with regard to the allegations to which he pled or the remaining counts were dismissed per the plea agreement.
- No right against self-incrimination as to counts for which he was adjudicated *unless on appeal
- No Fifth Amendment privilege with regard to sexual thoughts, fantasies or behaviors for which there is no possible crime that could be prosecuted

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## Jacobsen v. Lindberg, 225 Ariz. 318, 321, 238 P.3d 129, 133, citing Eccles, 179 Ariz. at 228-29, 877 P.2d at 801-802

- "[W]e do not hold that a defendant may not incriminate himself; to avoid doing so he must assert the privilege at the appropriate time."
- "[T]he defendant's probation cannot be revoked for a valid assertion of the privilege against self-incrimination. We emphasize the word valid. . . The polygraph examination may explore a defendant's background and actions that are not incriminatory, or a defendant may choose not to exercise his full rights. In either case, the polygraph may still be given."

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## A.R.S. §13-4066 Privileged communications; sex offender treatment; exception

- A. Any statement that is made by a person who undergoes sex offender treatment that is ordered by the court or that is provided by the state department of corrections to a person who is convicted of an offense listed in chapters 14 or 35.1 of this title and any evidence that results from that treatment is not admissible against the person in any criminal or juvenile delinquency proceeding unless the person consents, except that the statement or evidence may be used pursuant to rule 404(b) and (c), ARE.

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## A.R.S. §13-4066 Privileged communications; sex offender treatment; exception

- B. This section does not apply if there is a reasonable belief that the person has committed a new violation of chapter 14 or 35.1 of this title during the course of the person's treatment. A treatment provider who complies with this subsection does not violate any privilege established by law.

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## 8-341(N)

- N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn.

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## 8-341(N)

- The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:
- 1. The person is not progressing toward treatment goals.
- 2. The person terminates treatment.
- 3. The person commits a new offense after reaching eighteen years of age.
- 4. Continued treatment is not required or is not in the best interests of the state or the person.

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## 8-348. Setting aside adjudication

8-348. Setting aside adjudication; application; release from disabilities; exceptions
A. Except as provided in subsections C and D of this section, a person who is at least eighteen years of age, who has been adjudicated delinquent or incorrigible and who has fulfilled the conditions of probation and discharge ordered by the court or who is discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individual treatment plan may apply to the juvenile court to set aside the adjudication. The court or the department of juvenile corrections shall inform the person of this right at the time the person is discharged. The person or, if authorized in writing, the person's attorney, probation officer or parole officer may apply to set aside the adjudication. A copy of the application shall be served on the prosecutor.
B. If the court grants the application, the court shall set aside the adjudication and shall order that the person be released from all penalties and disabilities resulting from the adjudication except those imposed by the department of transportation pursuant to section 28-3304, 28-3306, 28-3307 or 28-3308. Regardless of whether the court sets aside the adjudication, the adjudication may be used for any purpose as provided in section 8-207 or 13-501 and the department of transportation may use the adjudication for the purposes of enforcing the provisions of section 28-3304, 28-3306, 28-3307 or 28-3308 as if the adjudication had not been set aside.
C. A person may not apply to set aside the adjudication if the person either:
1. Has been convicted of a criminal offense.
2. Has a criminal charge pending.
3. Has not successfully completed all of the terms and conditions of probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individual treatment plan.
4. Has not paid in full all restitution and monetary assessments.
D. This section does not apply to a person who was adjudicated delinquent for any of the following:
1. An offense involving the infliction of serious physical injury as defined in section 13-105.
2. An offense involving the use or exhibition of a deadly weapon or dangerous instrument as defined in section 13-105.
3. An offense in violation of title 13, chapter 14.
4. An offense in violation of section 28-1381, 28-1382, 28-1383 or 28-3473.
5. A civil traffic violation under title 28, chapter 3.

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## 8-348 Setting Aside Adjudication

- Does NOT apply to sex offense adjudications, etc.
- At least age 18
- No criminal convictions
- No pending criminal charge
- Successfully completed all probation conditions/ terms or ADOJC treatment plan per 41-2820.

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## 8-349 Destruction of Records

8-349. Destruction of juvenile records; electronic research records
A. A person who has been referred to juvenile court may apply for destruction of the person's juvenile court and department of juvenile corrections records.
B. If the records concern a referral or citation that did not result in further action or that resulted in diversion, placement in a community based alternative program or an adjudication for an offense other than an offense listed in section 13-501, subsection A or B or title 28, chapter 4, the person shall file an application with the juvenile court and shall serve a copy of the application on the county attorney in the county in which the referral was made. The person shall certify under oath that all of the following apply:
1. The person is at least eighteen years of age.
2. The person has not been convicted of a felony offense or adjudicated delinquent for an offense that would be an offense listed in section 13-501, subsection A or B or title 28, chapter 4.
3. A criminal charge is not pending.
4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
5. All restitution and monetary assessments have been paid in full.
C. The juvenile court may order the destruction of records under subsection B of this section if the court finds all of the following:
1. The person is at least eighteen years of age.
2. The person has not been convicted of a felony offense.
3. A criminal charge is not pending.
4. The person was not adjudicated for an offense listed in section 13-501, subsection A or B or title 28, chapter 4.
5. The person successfully completed all of the terms and conditions of probation or was discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
6. All restitution and monetary assessments have been paid in full.
7. The destruction of the records is in the interests of justice.
8. The destruction of the records would further the rehabilitative process of the applicant.
D. If the records concern a referral that resulted in an adjudication of delinquency for an offense not subject to subsection B of this section the person shall file the application with the juvenile court and shall serve a copy of the application on the county attorney in the county in which the referral was made. The person shall certify under oath that all of the following apply:
1. The person is at least twenty-five years of age.
2. The person has not been convicted of a felony offense.
3. A criminal charge is not pending.
4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
5. All restitution and monetary assessments have been paid in full.

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## 8-349. Destruction of juvenile records

- If a sex offense (or some others), must certify under oath:
- 1. The person is at least twenty-five years of age.
- 2. The person has not been convicted of a felony offense.
- 3. A criminal charge is not pending.
- 4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
- 5. All restitution and monetary assessments have been paid in full.

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## Thank you!


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