

The Pennsylvania Juvenile Collateral Consequences Checklist

by Pennsylvania Juvenile Indigent Defense
Action Network (PA-JIDAN)

ModelsforChange
Systems Reform in Juvenile Justice

Prepared by Pennsylvania Juvenile Indigent Defense Action Network (PA-JIDAN)

The preparation of this document was supported by the John D. and Catherine T. MacArthur Foundation, Juvenile Defenders Association of Pennsylvania (JDAP), and the National Juvenile Defender Center (NJDC).

Permission is required to alter the content or form of this publication for any purpose. To obtain permission please contact Barbara Krier at 717-771-9293, BLKrier@YorkCountyPA.gov or Elton Anglada, President, JDAP, at 267-765-6509, EAnglada@philadefender.org

Second Edition, February 2013



ModelsforChange
Systems Reform in Juvenile Justice

Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through action networks focusing on key issues, in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

The Pennsylvania Juvenile Collateral Consequences Checklist

The purpose of the Pennsylvania Juvenile Collateral Consequences Checklist is to provide attorneys, judges and other juvenile justice professionals with the most current information available on the short term and long term consequences of juvenile adjudications of delinquency. It is the responsibility of defense attorneys to explain to clients and their families the consequences of delinquency adjudications prior to proceeding with consent decrees, adjudicatory hearings or admissions colloquies.

Summary of Pennsylvania Juvenile Collateral Consequences Checklist

- | | |
|---|--|
| 1. Adjudication of Delinquency | A delinquency adjudication is not an adult conviction but is often treated like one. |
| 2. Records Open to the Public | Juvenile records are open to the public if a 12 or 13 year old child is adjudicated delinquent of certain very serious offenses, or if a child who is 14 years old or older is adjudicated delinquent of ANY felony offense. |
| 3. Juvenile Court Open to the Public | Juvenile courts are open to the public if a child is 12 years old and charged with certain very serious offenses or the child is 14 years old or older and charged with ANY felony offense. |
| 4. Employment Opportunities | A child's ability to obtain employment or acquire licenses for certain professions may be hindered by a delinquency adjudication. |
| 5. Public Housing | A delinquency adjudication may affect access to public housing. |
| 6. Access to Schools | Children may be expelled from school for delinquency adjudications for certain offenses, and information about delinquency adjudications will be sent to the next school if they choose to transfer. |
| 7. Access to Higher Education | A delinquency adjudication does not need to be reported on many college applications, and does not bar access to federal financial aid for higher education. |

8. Military	A delinquency adjudication may affect a young person's ability to enlist in the military.
9. Sex Offense Registration	Children who live, work, or attend school in Pennsylvania must register if they were adjudicated delinquent of Rape, Involuntary Deviate Sexual Intercourse, or Aggravated Indecent Assault (or Attempt, Solicitation, or Conspiracy to commit the same) if the underlying offense occurred after the child was 14 years old. Registration requires reporting in-person to the Pennsylvania State Police every 90 days as well as within 72 hours of a change in registration information. Violation of registration laws may result in mandatory minimum jail sentences ranging from three to seven years. An adult or child moving into Pennsylvania with an adjudication from another state for certain sexual offenses may be required to register in Pennsylvania.
10. Immigration Status	A delinquency adjudication can affect a child's immigration status.
11. Driver's License	A child's driving license may be suspended as a result of a delinquency adjudication for certain drug, alcohol and driving offenses.
12. Carrying a Firearm	Children adjudicated delinquent of certain very serious offenses will be prevented from carrying a firearm when they are otherwise legally permitted to do so.
13. Fines, Court Costs and Restitution	Children who are adjudicated delinquent are required to pay fines and court costs and may be required to pay restitution.
14. DNA Samples	Children adjudicated delinquent of felony offenses and some misdemeanor offenses are required to submit a DNA sample to the State DNA Data Base.
15. Adult Sentencing	A juvenile's record of delinquency adjudications for certain offenses can significantly affect sentencing for a criminal conviction as an adult.
16. Jury Service	A young person who turns 18 is able to serve on a jury, despite an adjudication of delinquency for any offense.
17. Voting	A young person who turns 18 is able to register and vote, despite a delinquency adjudication for any offense.
18. Expungement	Juvenile records may be expunged five years after the child's discharge from court supervision, or sooner under certain circumstances. However, children who are adjudicated delinquent on certain sexual offenses are ineligible for expungement.

1. Is a juvenile adjudication of delinquency a criminal conviction?

No. **Under Pennsylvania law, a delinquency adjudication is not a criminal conviction.** 42 Pa. C.S. § 6354(a). However, for many practical purposes, delinquency adjudications are treated like criminal convictions.

2. Are juvenile adjudications of delinquency public knowledge?

Delinquency adjudications become a matter of public record (i.e., anyone can gain access to them), if the following requirements are met:

- The child was 14 years old or older at the time of the offense and the conduct would be considered a felony if committed by an adult; or,
- The child was 12 or 13 years old and the conduct would have constituted one or more of the following offenses if committed by an adult:
 - Murder
 - Voluntary Manslaughter
 - Aggravated Assault (causing Serious Bodily Injury)
 - Arson (F-1)
 - Involuntary Deviate Sexual Intercourse
 - Kidnapping
 - Rape
 - Robbery (inflicting or threatening Serious Bodily Injury)
 - Robbery of a Motor Vehicle

42 Pa. C.S. § 6307(b)(1).

3. Are the hearings in juvenile court open to the public?

Courtrooms are open to the public if the following requirements are met:

- The child was **14 years old or older at the time of the alleged conduct** and the alleged conduct would be considered **a felony** if committed by an adult; or,
- The child was **12 years old or older at the time of the alleged conduct** and the alleged conduct would have constituted one more of the following offenses if committed by an adult:
 - Murder
 - Voluntary Manslaughter
 - Aggravated Assault (causing Serious Bodily Injury)
 - Arson (F-1)
 - Involuntary Deviate Sexual Intercourse
 - Rape

- Robbery (inflicting or threatening Serious Bodily Injury)
- Robbery of a Motor Vehicle
- Attempt or Conspiracy to commit any of the offenses in this paragraph

42 Pa. C.S. § 6336(e).

4. Will a juvenile adjudication of delinquency affect employment opportunities?

A delinquency adjudication “does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.” 42 Pa. C.S. § 6354(a). Many employment applications only ask potential employees to reveal past criminal convictions, which do not include delinquency adjudications. Employers are not barred from considering delinquency adjudications, but, in order to access juvenile court records, employers must demonstrate a legitimate interest and obtain a court order. 42 Pa. C.S. § 6307(a)(7). With respect to adult convictions, records may be considered by an employer to the extent that they relate to qualifications for the position. 18 Pa. C.S. § 9125(b).

Although a delinquency adjudication is not a conviction, it is sometimes in the interest of an applicant to reveal the adjudication to a potential employer.

Employers have ways to access this information. For example, the Administrative Office of Pennsylvania Courts has a website where many counties still post information about juvenile adjudications, making it accessible to potential employers. Leaving a delinquency adjudication out of a job application may appear dishonest to an employer if it is discovered. Whenever possible, delinquency adjudications should be expunged to avoid this dilemma.

Delinquency adjudications may prevent an otherwise qualified candidate from applying for a license to practice many trades and professions in the Commonwealth of Pennsylvania. For example, a delinquency adjudication that is not expunged may prevent a person from being considered for entry into nursing schools and apprenticeship programs. See www.portal.state.pa.us/portal/server.pt/community/licensing/12483 for the licensing requirements for professions in Pennsylvania.

Employment involving work with children or the elderly may trigger a background check by the prospective employer. While a delinquency adjudication is not a conviction, it may be treated as such by a prospective employer. This means an employer may deny employment to a person with a delinquency adjudication. See 42 U.S.C. § 5119. Delinquency adjudications for sex offenses are likely to bar juveniles from working with young children in schools, summer camps and swimming programs. Delinquency adjudications for aggravated assault may bar juveniles from working with the elderly.

5. Will public assistance benefits and public housing be impacted by a juvenile adjudication of delinquency?

A delinquency adjudication can affect eligibility for public benefits and housing.

Public housing authorities have the right to evict families of delinquent children, even if their delinquent conduct does not occur on public housing property. See *HUD v. Rucker*, 535 U.S. 125, 133-136 (2002). Also, anyone subject to a lifetime registration requirement under a state sex offender registration statute is ineligible for federally assisted housing. 42 U.S.C. § 13663. Additionally, many counties and municipalities have residency restrictions that prohibit registered sex offenders from residing within a certain distance from schools, daycares, recreation centers, or bus stops. For more information on this issue, see Question 9.

6. Will a juvenile adjudication of delinquency restrict access to high schools or high-school level technical or trade schools?

A delinquency adjudication may result in expulsion from school and bar access to high school education as follows:

- In Pennsylvania, any child found in possession of **a weapon on school property can be expelled** under Pa. C.S. § 13-1317.2. The superintendent of each school district has the discretion to review each case on an individual basis and can recommend for or against expulsion.
- Most expulsions are put into effect by school administrators without regard to whether a child has been adjudicated delinquent.
- Children who have been expelled in a county of the 1st class (Philadelphia) are frequently transferred to remedial disciplinary schools.
- A child must be given an opportunity to challenge an assignment to a remedial disciplinary school. *D.C. v. School District of Philadelphia*, 879 A.2d 408, 418-19 (Pa. Commw. Ct. 2005).
- If a child is adjudicated delinquent for any offense, information about the case and the disposition will be sent to the child's school. Pa. R.J.C.P. 163.
- A child's school must keep all delinquency information separate from school records. 42 Pa. C.S. § 6341(B.1)(6); Pa. R.J.C.P. 163(D).
- If a child transfers to another school, information about delinquency adjudications will be transferred with the child.

7. Will a juvenile adjudication of delinquency restrict access to higher education, including colleges, vocational schools, technical schools or trade schools?

A delinquency adjudication does not bar access to higher education in most cases. If the institution's application asks for the person's arrest history, juvenile arrests must be included. However, an increasing number of institutions accept the Common Application, which asks whether the person has been convicted of a misdemeanor, felony, or other crime. **This question does not require that the applicant include delinquency adjudications.** See *Juvenile Court Judges' Commission 2008 Juvenile Delinquency Records Handbook and Expungement Guide* at p. 10.

A delinquency adjudication does not automatically bar access to federal student financial aid. A criminal conviction for possessing or selling illegal drugs while the person was receiving federal student grants, loans or work-study can restrict access to financial aid. See 20 U.S.C. § 1091(r); see also *Free Application for Federal Student Aid FAQ* at <http://www.fafsa.ed.gov/help.htm>.

8. Can a young man or young woman enlist in the military if he or she has been adjudicated delinquent of an offense?

A delinquency adjudication may affect an application for military service as follows:

- **A delinquency adjudication is considered a conviction for a criminal offense under Army regulations.** *Army Regulation 601-210*, ch. 4, available at http://www.apd.army.mil/pdf/files/r601_210.pdf.
- **The Air Force, Navy and Marines examine delinquency adjudications on a case-by-case basis.** See *Air Force Instruction 36-2002*, at 34 attachment 3 (1999), available at <http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2002.pdf>; *Navy Recruiting Manual-Enlisted 2-95-2-98* (2002), available at <http://usmilitary.about.com/library/pdf/navrecruit.pdf>; *2 Military Personnel Procurement Manual, MCO P1100, 72C 3-95-3-105* (2004), available at <http://www.marines.mil/portals/59/publications/MCO%20P1100.72C%20V%20ERRATUM.pdf>.

Military recruiters frequently assist young recruits in getting their juvenile records expunged if those records are not lengthy and the juvenile offenses are not extremely serious.

Those convicted of felonies are not eligible for the military without special approval from the Secretary of Defense. 10 U.S.C. § 504(a).

9. Does a juvenile adjudication of delinquency for a sex offense subject a juvenile to registration as a sex offender in Pennsylvania?

Juvenile adjudications of delinquency for certain sexual offenses require children to register as sex offenders. Title I of the Adam Walsh Child Protection and Safety Act, known as the Sex Offender Registration and Notification Act (SORNA) requires each state to implement registration and notification standards for juveniles adjudicated delinquent of certain sex offenses. On December 20, 2012, Pennsylvania's version of SORNA legislation went into effect. SORNA creates a public internet website with registration information (<http://www.pameganslaw.state.pa.us/>). Although the information of juvenile offenders will not be included on the public website, some juveniles will be

subject to strict registration laws. **If a person who is required to register fails to do so, fails to do so in the proper manner, or fails to give accurate information, he/she commits a new crime.** It does not matter if the person intended to break the law, or even knew about the law. If a juvenile violates registration laws, he/she is punishable by mandatory minimum sentences of 3, 5, or 7 years of incarceration

Individuals must register if they meet the following criteria:

- 14 years of age or older at the time the offense is committed
- Adjudicated delinquent on one of the following offenses:
 - Rape (18 Pa.C.S. §3121)
 - Involuntary Deviate Sexual Intercourse (18 Pa.C.S. §3123)
 - Aggravated Indecent Assault (18 Pa.C.S. §3125)
 - Conspiracy, Attempt, or Solicitation to commit any of the above
- Live, work, or attend school in Pennsylvania

And

- Are on court supervision or adjudicated delinquent after December 20, 2012

Individuals registering because of these criteria are referred to as “juvenile offenders” under the statute even though many such registrants will eventually become adults. Under this law, children are required to register certain information with the Pennsylvania State Police. They must report in person to the State Police **every 90 days**. Children are also required to report **any change in registration information** to the State Police in person within 72 hours of the changes. Registration information is very broad, including name, photo, offense(s), address, telephone number, email address, employment, and school.

Any change in residence, even within the same jurisdiction, for 7 or more days (when, for example, a child’s parents share custody or the child’s family goes on vacation) must be reported to the State Police within 72 hours. If a child will be temporarily residing somewhere other than their home county for any reason, they must also register with the sheriff in the county of their temporary residence within 3 days of entering that county. And if a juvenile offender intends to travel abroad, they must notify state police of their travel plans and passport information no less than 21 days prior to travel.

SORNA requires juveniles to register **FOR LIFE**. Someone registering as a juvenile offender may petition to be removed after 25 years if:

- No subsequent convictions for misdemeanors of the 2nd degree or higher of any crime punishable by imprisonment of one year or more
- Successfully completed court-ordered supervision
- Successfully completed treatment program for sexual offenders ordered by and recognized by the juvenile court

Someone entering Pennsylvania to live, work, or attend school with an out of state delinquency adjudication for certain sex offenses may be required to register in Pennsylvania, even if his/her home state did not require registration.

It does not matter how old the person is when he or she entered Pennsylvania, or when the adjudication of delinquency occurred. SORNA also requires anyone who is already registering as a sex offender in any other state to register in Pennsylvania if he/she enters the state to live, work, or attend school (even temporarily).

Each state has different registration laws. Someone who is not required to register by Pennsylvania law may be required to register in other states if he/she **lives, works, or attends school there** – even temporarily. Also, if a person required to register in Pennsylvania **works, goes to school, or moves to another state**, even temporarily, he/she must register in that state. *A Snapshot of Juvenile Sex Offender Registration and Notification Laws* is a useful resource for inquiry into the laws of other jurisdictions. See <http://www.jdap.info/file/snapshot.pdf>.

Even children who do not have to register under SORNA may be required to register under Act 21. 42 Pa. C.S. § 6358. Act 21 subjects individuals adjudicated delinquent for certain enumerated sex offenses to indefinite, involuntary civil sex offender commitment, as well as harsher registration requirements like inclusion on the public website and inability to petition for removal from the registry. For more information on Act 21 and SORNA, see the Juvenile Defenders Association of Pennsylvania’s website at <http://jdap.info>.

10. How will a juvenile adjudication of delinquency affect a young person’s immigration status?

Assessing the immigration consequences of delinquency adjudications is very complicated. The general rule is that prior to entering an admission or proceeding to an adjudicatory hearing, the juvenile defense attorney handling the matter should always seek advice from an immigration attorney with relevant experience. In most cases, a delinquency adjudication in a juvenile court proceeding is not a criminal conviction for immigration purposes and will not trigger immigration consequences.

However, some delinquency adjudications are deemed “bad conduct” and can trigger harsh penalties, including ineligibility for legal immigrant status and vulnerability to deportation.

Offenses constituting “bad conduct” include but are not limited to:

- Drug trafficking (transfer, passage or delivery) (8 USC §1182(a)(2)(C))
- Drug abuse or addiction (8 USC §1182(a)(1)(A)(iv))
- Violation of an order of protection (8 USC §1227(a)(2)(E)(ii))
- Sexual assault or behavior showing a mental condition that poses a current threat to self or others, including attempted suicide, torture, and repeated alcohol abuse-linked offenses (8 USC § 1182(a)(1)(A)(iii))

- Prostitution (8 USC § 1182(a)(2)(D))
- False claim to U.S. citizenship (8 USC §§ 1182(a)(6)(C), 1182(a)(6)(F))

Any child without current legal status, sometimes called an undocumented child, is subject to removal proceedings, regardless of his or her age.

On March 31, 2010, the United States Supreme Court issued a landmark decision in *Padilla v. Kentucky*. **The Court found that criminal defendants must be advised of the immigration consequences of their criminal charges, and that the failure of defense counsel to fully advise the defendant constitutes ineffective assistance of counsel.** For additional resources and practice advisories on the impact of this decision, please visit www.defendingimmigrants.org.

Involvement in the juvenile justice system or the criminal justice system clearly places a child at risk of detection by federal authorities. If Immigration and Customs Enforcement (ICE) becomes aware that a child is subject to removal for lack of legal status, it may file an immigration “hold” or “detainer” with the facility or law enforcement agency that has custody of the child and may take custody upon his or her release. Also, detention facility staff may allow ICE officials to conduct interviews of children without informing their lawyers. **Non-citizen children have the 5th Amendment right to refrain from speaking to ICE officials and signing any forms. Attorneys who represent non-citizen children should advise them against speaking to ICE officials unless they are represented by attorneys with expertise in immigration law.** For additional resources, see www.defendingimmigrants.org.

11. Will a juvenile adjudication of delinquency affect driving privileges?

In Pennsylvania, driving privileges will be suspended for periods ranging from 90 days to three years for a variety of delinquency adjudications, including:

- Purchasing, drinking, possessing alcoholic beverages
- Carrying false identification
- Racing
- Careless driving
- Driving to avoid arrest
- Homicide by vehicle or homicide by vehicle while driving under the influence
- Terroristic threats on school property or at a school-sponsored activity
- Possession, sale or delivery of a controlled substance

75 Pa. C.S. § 1532.

Juvenile adjudications of delinquency for driving while under the influence of drugs or alcohol result in mandatory license suspension. 75 Pa. C.S. § 3804. In addition, the use of alcohol or a controlled substance to a degree that renders the user incapable of safe driving may result in limited or long-term ineligibility for a driver's license. 75 Pa. C.S. § 1503. Notably, a truancy finding in violation of Pennsylvania's compulsory attendance requirements also subjects youth to temporary license suspension or temporary ineligibility for a driving permit. 24 P.S. § 13-1333.

Most other states have similar limitations on driving privileges for these types of delinquency adjudications.

12. Can a juvenile adjudication of delinquency affect the ability of a person to obtain a license to carry a firearm?

Children who have been adjudicated delinquent of certain offenses in Pennsylvania **CANNOT possess or use, or obtain a license to possess or use a firearm when they are otherwise legally permitted to do so.** 18 Pa. C.S. § 6105(c)(7).

Delinquency adjudications for the following offenses result in a **lifetime ban** on access to firearms:

- Murder
- Voluntary Manslaughter
- Aggravated Assault
- Assault by a Prisoner
- Assault by a Life Prisoner
- Kidnapping
- Rape
- Involuntary Deviate Sexual Intercourse
- Arson
- Burglary (threat of violence)
- Robbery (threat of violence)
- Theft by Extortion (threat of violence)

18 Pa. C.S. §§ 6105(b), 6105(c)(7).

A delinquency adjudication for many other offenses results in a ban on access to firearms for 15 years or until age 30, whichever comes first. These include:

- Prohibited Offensive Weapons
- Possession of a Weapon on School Property
- Possession of a Firearm by a Minor
- Unlawful Restraint

- Receiving Stolen Property (RSP), as a second or subsequent felony adjudication for RSP
- Theft, as a second or subsequent felony adjudication for Theft
- Aggravated Indecent Assault
- Intimidation of a Witness
- Stalking
- Robbery of a Motor Vehicle
- Criminal Trespass, as a felony of the second degree

18 Pa. C.S. §§ 6105(b), 6105(c)(8).

13. Are there financial burdens placed on adjudicated children and their families?

Children who are adjudicated delinquent are required to pay fines and court costs. **All children adjudicated delinquent or subject to a consent decree owe \$25 to the Victim Compensation Fund and \$23.50 to the Judicial Computer Fund, regardless of whether the offense would be a misdemeanor or a felony if committed by an adult.**

Depending on the offense, the jurisdiction and the legal circumstances, adjudicated youth may be required to pay fines and restitution. For example:

- In some jurisdictions, the child adjudicated delinquent may be required to personally pay the fines, instead of the parents.
- Children may be required to pay victims for damages and out-of-pocket expenses incurred as a result of delinquent conduct, including insurance deductibles, property damages, and the value of stolen items.
- Unpaid fines and restitution may be ordered by the court, converted into a judgment, and could ultimately damage the child's credit.
- Some jurisdictions allow a judge to waive court fees due to **undue hardship**.

Whenever appropriate, it is the responsibility of the defense attorney to argue that a child does not have the ability to pay a fine or restitution due to age or financial circumstance. See *In re Dublinski*, 695 A.2d 827, 829 (Pa. Super. 1997).

14. Does a juvenile adjudication of delinquency mandate that the child submit a DNA sample that will be kept by law enforcement?

In Pennsylvania, and many other states, children adjudicated delinquent of felony offenses, or the misdemeanor offenses of luring a child into a motor vehicle (M1), indecent assault (M1), or any attempt to commit these offenses, are required to submit a DNA sample. See 44 Pa. C.S. § 2316, 18 Pa. C.S. § 2910, 18 Pa. C.S. § 3126.

The DNA sample is included in the State DNA Data Base and State DNA Data Bank. These samples are taken as soon as possible after a delinquency adjudication.

Expungement of the sample from the State DNA Data Base and State DNA Data Bank is authorized only where the delinquency adjudication has been reversed and dismissed or the DNA profile was included by mistake. 44 Pa. C.S. § 2321(a).

A fee of \$250 is imposed on the child who is adjudicated delinquent to cover collection costs. Courts often waive this fee when it results in **undue hardship** for the child. 44 Pa. C.S. § 2322.

15. How will a juvenile adjudication of delinquency affect the adult sentence of a young person convicted of a crime after the age of 18?

Delinquency adjudications trigger sentencing enhancements in both the state and federal criminal systems. Under the state system, the Pennsylvania Sentencing Guidelines call for longer periods of incarceration for specific juvenile delinquency adjudications. See 42 Pa. C.S. § 2154(2); *Commonwealth v. Billett*, 535 A.2d 1182, 1185 (Pa. Super 1988). **The relevant adult offense need not be a felony to trigger the enhancement.**

However, delinquency adjudications can only be considered the equivalent of prior criminal convictions for purposes of calculating the prior record score when both of the following conditions are met:

- The offense occurred **on or after the juvenile's 14th birthday and**
- There was a **specific finding** by the juvenile court that the delinquency adjudication was for a **felony or one of the following first-degree misdemeanor offenses:**
 - Possessing Instruments of Crime
 - Prohibited Offensive Weapons
 - Use or Possession of Electric or Electronic Incapacitation Device
 - Possession of a Weapon on School Property
 - Possession of a Firearm or Other Dangerous Weapon in a Court Facility
 - Involuntary Manslaughter (child victim)
 - Luring a Child into a Vehicle
 - Indecent Assault (complainant less than 13 years of age)
 - Indecent Exposure (persons present are less than age 16)
 - Endangering the Welfare of Children
 - Dealing in Infant Children
 - Corruption of Minors (of a sexual nature)
 - Unlawful Contact or Communication with a Minor
 - DUI (2nd and subsequent offense)

42 Pa. C.S. §§ 303.6(a)(1), 303.7(a)(4).

A delinquency adjudication for a felony or any of the misdemeanors enumerated above will result in a longer sentence in the state criminal system for an offender **between the ages of 18 and 28**. Delinquency adjudications will lapse, however, if the offender is 28 or older at the time of the current adult offense **AND** the offender is convicted of nothing more than a **summary offense** or **one misdemeanor of the third degree between age 18 and 28**. 42 Pa. C.S. § 303.6(c)(1).

Delinquency adjudications for four-point felonies never lapse. 42 Pa. C.S. § 303.6(c).

They will **ALWAYS** be counted in the prior record score. The four-point felonies are:

- Murder
- Attempt, Solicitation or Conspiracy to commit murder
- A completed (i.e., no conspiracy, solicitation, etc.) crime of violence
- Aggravated Assault (causing Serious Bodily Injury)
- Use of Weapons of Mass Destruction (F-1)
- Rape
- Involuntary Deviate Sexual Intercourse
- Sexual Assault
- Aggravated Indecent Assault
- Arson (F-1)
- Burglary (structure adapted for overnight accommodation where a person is present)
- Robbery (causing or threatening Serious Bodily Injury)
- Robbery of a Motor Vehicle

42 Pa. C.S. § 303.6(c).

In any case, even if they have lapsed at the time of sentencing, a court is permitted to consider prior delinquency adjudications in making sentencing decisions. 42 Pa. C.S. § 303.6(c)(2).

A juvenile adjudication also may enhance a sentence in the federal criminal system. For example, delinquency adjudications count toward the three convictions necessary to impose a mandatory 15-year prison term for a crime committed under 18 U.S.C. § 922 (i.e., crimes relating to the unlawful possession, sale, manufacture or transfer of firearms). See 18 U.S.C. § 924 (e)(2)(B).

16. How will a juvenile adjudication of delinquency affect jury service?

Because a delinquency adjudication is not a conviction, a person adjudicated delinquent may serve on a jury once he/she reaches the age of 18. A citizen may not serve as a juror if he or she has been convicted of a crime that could be punishable by more than one year in prison. 42 Pa. C.S. § 4502.

17. Will a juvenile who has been adjudicated delinquent be allowed to vote?

Yes, because a delinquency adjudication is not a conviction. A young person who turns 18 while completing the terms of his or her treatment, rehabilitation or supervision is permitted to register and vote. He or she may vote regardless of whether the delinquency adjudication is for conduct that would be a felony or a misdemeanor if committed by an adult, and regardless of whether he or she is in placement.

For the limitations on voting and registration for persons with **criminal convictions**, go to: www.aclupa.org/issues/votingissues/votingrightsofexfelons.

18. How can a juvenile adjudication of delinquency be expunged?

Juvenile records do not automatically disappear on a child's 18th birthday. Many juvenile records can be expunged under the following circumstances:

- **Not guilty verdicts** (The Court is required to direct that all records connected to the petition in question be destroyed immediately by law enforcement). 42 Pa. C.S. Sec. § 6341(a).
- **Case dismissals** (Expungement may be requested 30 days after dismissal).
- **Successful completion of consent decrees** (Expungement may be requested six months after completion if there are no charges pending against the child).
- **Successful completion of probation** (Expungement may be requested five years after completion if there are no subsequent convictions or delinquency adjudications and there are no charges pending). 18 Pa. C.S. § 9123.

A juvenile record may also be expunged by court order once a child reaches the age of 18 if the Commonwealth attorney consents to the expungement. The court considers the following factors:

- Type of offense
- The individual's age
- History of employment
- Overall juvenile and criminal history
- Adverse consequences of a denial of the request for expungement

18 Pa. C.S. § 9123(a)(4).

The child's DNA in the State DNA Base and Data Bank will not be destroyed if an expungement is granted.

PLEASE NOTE that individuals adjudicated of SORNA offenses who were 14 years old at the time of the offense are ineligible for expungement. If a child is adjudicated delinquent for Rape, Involuntary Deviate Sexual Intercourse, Aggravated Indecent Assault, or Attempt/Conspiracy/Solicitation for those charges **AND** the child was at least 14 years old at the time of the offense, he/she is not eligible to ever have his or her juvenile record expunged.

National Juvenile Defender Center

The National Juvenile Defender Center (NJDC) was created in 1999 to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. In 2005, the National Juvenile Defender Center separated from the American Bar Association to become an independent organization. NJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime.

NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

Juvenile Defenders Association of Pennsylvania

The Juvenile Defenders Association of Pennsylvania, Inc. (JDAP) was formed in 2006 for the following purposes and with this mission statement:

- To promote quality and ethically mandated representation for all juveniles charged with acts of delinquency in the Commonwealth of Pennsylvania.
- To provide a forum and opportunity to be heard and to organize those persons responsible for the defense of children charged with delinquent acts.
- To coordinate all delinquency defense providers in the Commonwealth and to promote legislative, administrative and judicial change in the Commonwealth to enhance the ethical representation of children charged with delinquent conduct.
- To provide for the resource and training needs of our membership whenever possible to enhance the quality of representation.

Juvenile Indigent Defense Action Network

The Juvenile Indigent Defense Action Network is an initiative to promote change that enhances and strengthens juvenile indigent defense systems. The Network, funded through the MacArthur Foundation's Models for Change initiative, will respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for youth involved in the justice system.

Pennsylvania Juvenile Indigent Defense Action Network

The Pennsylvania Juvenile Indigent Defense Action Network promotes the goals of the Juvenile Indigent Defense Action Network throughout the Commonwealth of Pennsylvania by bringing together stakeholders from all areas of juvenile justice to develop strategies to improve the representation of children in Pennsylvania.

The Pennsylvania Juvenile Indigent Defense Action Network projects include the development of Performance Guidelines for Quality and Effective Juvenile Delinquency Representation, the Pennsylvania Collateral Consequences Checklist, and the Pennsylvania Juvenile Defense Notebook. The Pennsylvania Juvenile Indigent Defense Action Network has also developed recommendations for state funding for indigent juvenile defense, statewide appellate support, training and technical assistance for juvenile defenders.

Acknowledgements

Board Members of the Juvenile Defenders Association of Pennsylvania

Elton Anglada, Esq. - Philadelphia County
Natalie Burston, Esq.- Dauphin County
Lisa Douple, Esq. - Bucks County
Howard Elbling, Esq. - Allegheny County
Jessica Feierman, Esq. - Philadelphia County
Craig Hosay, Esq. - Montgomery County
Robert Listenbee, Esq. - Philadelphia County

Robert L. Marks Jr, Esq. - Montour County
Rhonda McKitten, Esq. - Philadelphia County
Frank McWilson, Esq. - Allegheny County
John Reed, Esq. - Snyder County
Cheryl Sobeski-Reedy, Esq. - Luzerne County
Emily N. Stutz, Esq. - Erie County
Thomas A. Walrath, Esq. - Potter County

This checklist was created with the generous and able assistance of:

Jeneve Mihal-Keczely, Esq., *Principal Author,
Pennsylvania Juvenile Indigent Defense
Action Network Representative (2009-2010)*

Lisa Campbell, Esq., *Co-Author,
Pennsylvania Juvenile Indigent Defense
Action Network Representative (2008-2009)*

Sangeeta Prasad, Esq., *Principal Editor*

Elizabeth Kehoe, *Editor*

Mark Houldin, Esq., *Editor*

Karen Schmidt, *Design*

Evan Chyun, Esq., *Cite Checking*

Caitlin Barry, Esq., *Immigration Specialist*

Peter Thompson, Esq., *Immigration Specialist*

Riya Shah Esq., *Juvenile Law Center,
Expungement Specialist*

Nicole Pittman Esq., *Adam Walsh Act and
SORNA Specialist*

Barbara Krier, Esq., *Pennsylvania Juvenile
Indigent Defense Action Network
Team Member*

Robert Listenbee, Esq.,
*Pennsylvania Juvenile Indigent Defense
Action Network Team Leader*

Honorable Kim Berkeley-Clark,
*Court of Common Pleas, Juvenile Division,
Allegheny County, Pennsylvania Juvenile
Indigent Defense Action Network
Team Member*

Honorable Lori A. Dumas-Brooks,
*Court of Common Pleas, Juvenile Division,
Philadelphia County*

Virginia Mulgrew

Rachael Eisenberg, *Editing*

Jennifer Lutz, Esq.,
Adam Walsh and SORNA Specialist

Nancy MacEoin, Esq.

Megan Perez, Esq.
Editor, Adam Walsh and SORNA Specialist

Adrienne Winney, Esq.

Rhonda McKitten, Esq.
*Pennsylvania Juvenile Indigent Defense
Action Network Team Member*

Harold Jordan, *ACLU-PA*

The Pennsylvania Juvenile Collateral Consequences Checklist will be periodically updated to reflect changes in the law and practice. Please forward questions and comments to:

Barbara Krier, Esq.
*Pennsylvania Juvenile Indigent Defense Action
Network Team Member*

Office phone: 717-771-9293

Email: BLKrier@YorkCountyPA.gov

Rhonda McKitten, Esq.,
*Pennsylvania Juvenile Indigent Defense Action
Network Team Member*

Office phone: 267-765-6719

Email: RMckitten@philadefender.org

ModelsforChange

Systems Reform in Juvenile Justice

An initiative supported by the John D.
and Catherine T. MacArthur Foundation
www.macfound.org