

Juvenile Adjudications, Selected Collateral Consequences, & Expungement

Although juvenile proceedings are not criminal prosecutions and not synonymous with convictions, juvenile adjudications can have indirect sanctions or adverse results referred to as “collateral consequences.” Given North Carolina’s recently expanded access to juvenile court records in subsequent criminal proceedings and probation settings, providing juvenile clients with information regarding collateral consequences and expunction has become increasingly important. This document provides an overview of selected collateral consequences, as well as information regarding expungement of juvenile records.

School: Notification; Suspension and Expulsion; & Extracurricular Activities

If a petition is filed alleging that a juvenile committed a felony other than a motor vehicle offense, juvenile court counselors are required to notify the school principal. N.C.G.S. § 7B-3101(a)(1). If the court dismisses the petition, modifies or vacates any order or disposition, or transfers the case to superior court for a juvenile alleged or found to be delinquent, the school must be informed as well. N.C.G.S. § 7B-3101 (a)(2); (a)(3); (a)(5).

According to state school board policies, students charged, convicted, or adjudicated of a criminal offense as a result of a delinquency complaint can be suspended or expelled from school. The criminal offense can occur on or off school grounds. The principal can suspend or expel a student charged, convicted, or adjudicated of a criminal offense for a period of time determined appropriate if he or she determines that the student’s continued presence in school would threaten school safety.¹ *Note: There are some protections for juveniles with disabilities.*²

Additionally, schools that are a member of the North Carolina High School Athletic Association are required to prohibit a student adjudicated delinquent for an offense that would be a felony if committed by an adult from participating in extracurricular sports.³

Use of Juvenile Record in Subsequent Juvenile Court Proceedings

Prior juvenile adjudications can be used in subsequent juvenile court proceedings, and may enhance dispositions in such proceedings. For instance, prosecutors may share information in a juvenile’s records with law enforcement, magistrates, and the courts. N.C.G.S. § 7B-3000(b).

Sex Offender Registry

If found to be a danger to the community and adjudicated of either committing or attempting to, conspire to commit, solicit to commit, or aid or abet first-degree rape, second degree rape, first-degree sexual offense, and second degree sexual offense, a juvenile who is at least 11 years old may be ordered to register as a sex offender. N.C.G.S. § 7B-2509; §14-27.2, § 14-27.3; § 14-27.4, § 14-27.5; § 14-208.26(a1); § 14- 208.26-§ 208.32.

¹ This information was combined after reviewing selected school board policies throughout North Carolina.

² See Individuals with Disabilities Education ACT (IDEA), 20 U.S.C. §1400 et seq.

³ See “Eligibility Information” at <http://www.nchsaa.org/pages/685/Rules-Eligibility-Skills-Development-procedures/>.

Once the court makes a finding that the juvenile is a danger to the community, registration information is filed with the sheriff of the county of the juvenile's residence, forwarded to the Division of Criminal Statistics, and entered into the Police Information Network. N.C.G.S. § 14-208.26(b); § 14-208.26(b); § 14-208.31. Information in this file may be released to law enforcement agencies only, and the registration requirement terminates on the juvenile's eighteenth birthday or when the jurisdiction of the court ends, whichever occurs first. N.C.G.S. § 14-208.30.

Driver's License

If a juvenile is adjudicated delinquent, the court can decide that the juvenile may not get a driver's license for as long as the court has jurisdiction over him or her or for a shorter period as determined by the court. N.C.G.S. § 7B -2506(9).⁴

Post-Secondary Education & Federal Student Aid

Based on current research, colleges do not appear to ask about juvenile adjudications, but seem to focus on criminal convictions.⁵

Military Service

Military recruiters will specifically ask about any records of arrest, charges, juvenile court adjudications, traffic violations, probation periods, and dismissed or pending charges or convictions including those, which have been expunged or sealed. Generally, persons convicted of a felony can not be enlisted in the armed forces; however, pursuant to 10 USCS § 504 (a), "the Secretary may authorize exceptions, in meritorious cases...." An applicant may request a moral waiver. Each branch of the military has separate waiver procedures.⁶

⁴ If a juvenile is transferred to superior court for trial as an adult and convicted of drug or alcohol related offenses while driving, the state may revoke or suspend his or her driver's license. N.C.G.S. § 20-17(a)(2); § 20-19; § 20-138.1. Additionally, if transferred to superior court, a juvenile's driver's license may also be suspended or revoked for particular offenses specified in N.C.G.S. § 20-17(a). The suspension or revocation may range from 10 days to a permanent revocation subject to the nature and number of offenses although the state may offer limited driving privileges as granted by the court for purposes pursuant to N.C.G.S. § 20-179.3(a); § 20-19. See "After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records," published by the Legal Action Center.

⁵ When applying for financial aid for college and completing the "Free Application for Federal Student Aid" (FAFSA), prospective students will be asked whether they have been convicted for the possession or sale of illegal drugs for an offense that occurred while receiving federal student aid. 20 U.S.C. § 1091, *Student eligibility, (r) Suspension of eligibility for drug-related offenses*. If there has been such a conviction, the student will be ineligible for federal financial aid for a specific length of time based on whether the offense is a first, second, or third offense, and whether the charge is for a possession or sale of a controlled substance. 20 U.S.C. § 1091, *Student eligibility, (r) Suspension of eligibility for drug-related offenses*. However, convictions will not be considered if they were removed from the record or if they occurred prior to 18 unless the student was tried as an adult. See also www.fafsa.ed.gov for "Free Application for Federal Student Aid" (FAFSA).

⁶ This information is based on a report prepared by the Juvenile Defense Network Youth Advocacy Project/Committee for Public Counsel Services, originally drafted in 2007.

Employment

When applying for a job in North Carolina, an applicant may be asked about whether he or she has criminal convictions, but he or she does not have to provide information regarding juvenile proceedings or juvenile records because juvenile proceedings are not criminal prosecutions.

Immigration

For immigration purposes, juvenile adjudications are not considered convictions, and therefore, a delinquency finding should not result in deportation. However, juvenile adjudications can affect immigration in other ways such as either preventing a finding of “good moral character,” in naturalization cases, or relief from removal in some cases.⁷

Public Assistance

Housing authorities may consider arrests that did not lead to conviction in its admission criteria although rehabilitation is considered in the appeals process. Housing authorities may also bar persons from public housing for a specific length of time depending on whether the conviction in question was for a misdemeanor or felony.⁸

Use of Juvenile Record in Criminal/Adult Court

Prior juvenile adjudications can be used in criminal proceedings, and may enhance penalties in such proceedings. Prosecutors may share information in a juvenile’s records with law enforcement, magistrates, and the courts for pretrial release, plea negotiation decisions, and plea acceptance decisions. N.C.G.S. § 7B-3000(e). The information may be shared when the adjudication was for a felony or an A1 misdemeanor, the juvenile was under 21 at the time of the adjudication, and the adjudication was within 18 months before the juvenile’s 16th birthday or after his 16th birthday. N.C.G.S. § 7B-3000(e). Additionally, an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used against the juvenile in a subsequent criminal proceeding to indicate “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident” under N.C. Evidence Rule 404(b). Adjudications may also be used to prove aggravating factors for felonies and in capital cases if ordered by the court. N.C.G.S. § 7B-3000(f). Therefore, an adjudication of delinquency could possibly affect the verdict and the sentence in a subsequent criminal proceeding.

For juveniles later charged as an adult up to 25 years of age and put on probation, probation officers (POs) at the Department of Correction can access the offender’s juvenile record to assess risk related to supervision. N.C.G.S. §. 7B-3000(e)(1); (f). This means that without getting a

⁷ This information is based on a report titled, “Selected Immigration Consequences of Certain Massachusetts Offenses – Juvenile Adjudications,” written by Dan Kesselbrenner and Wendy Wayne.

⁸ Regarding other forms of public assistance, if a juvenile is transferred to superior court for trial as an adult and convicted of drug-related offenses, that juvenile may be eligible for Temporary Assistance for Needy Families (“TANF”) and food stamps six months after release or 6 months after date of conviction if not in custody if he or she: (1) does not receive subsequent felony convictions or (2) is enrolled in or completes a required substance abuse treatment. N.C.G.S. § 108A-25.2. See “After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records,” published by the Legal Action Center.

court order, the PO can obtain copies of the file if the adjudication was for a felony. N.C.G.S. §. 7B-3000 (e)(1); (f).

Expungement

Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined is permitted pursuant to N.C.G.S. §. 7B-3200. Expunction is the legal process by which a juvenile's prior allegations or adjudications of delinquency or of being undisciplined may be sealed.

Records relating to an offense that would be a Class F, G, H, or I felony or a misdemeanor are eligible for expunction. N.C.G.S. §. 7B-3200 (b)(1). Any person who is 18 years of age and if at least 18 months have elapsed since the person was released from juvenile court jurisdiction may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication. N.C.G.S. §. 7B-3200 (a); (b)(1); (b)(2). The person may not have been subsequently adjudicated delinquent or convicted as an adult of any offense other than a traffic violation. N.C.G.S. §. 7B-3200 (a); (b)(1); (b)(2).

Once a person satisfies the eligibility requirements, the petition must contain, at a minimum, the following:

- ❖ an affidavit by the petitioner stating that he or she has exhibited good behavior since the adjudication and not been subsequently adjudicated delinquent or convicted of an offense other than a traffic violation;
- ❖ verified affidavits of two persons who are not related to the petitioner or each other by blood or marriage, substantiating that they know the character and reputation of the petitioner and that the petitioner's character and reputation are good; and
- ❖ a statement that the petition is a motion in the cause in which the petitioner was adjudicated delinquent or undisciplined.

N.C.G.S. §. 7B-3200(c).

The petition must be served to the district attorney in the district where the adjudication took place, and must include notification of the date of the hearing. The district attorney has 10 days to file an objection. N.C.G.S. §. 7B-3200(c).