

The Florida Juvenile Collateral Consequences Checklist

**A Guide for Understanding the Consequences of
Juvenile Court Involvement**

by The Juvenile Justice Center

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The Florida Juvenile Collateral Consequences Checklist

The purpose of the Florida Juvenile Collateral Consequences Checklist is to provide attorneys, judges, and other juvenile justice professionals with the most current information available on the immediate and long term consequences of juvenile adjudications of delinquency. It is the responsibility of defense attorneys to explain to the clients and their families the consequences of delinquency court prior to proceeding with consent decrees, adjudicatory hearings or admissions colloquies. Collateral consequences include both collateral sanctions and discretionary disqualification. A collateral sanction means a penalty, disability, or disadvantage imposed on an individual as a result of the individual's adjudication or conviction for an offense that applies by operation of law whether or not it is included in the judgment or sentence. A discretionary disqualification means a penalty, disability, or disadvantage that an administrative agency, governmental official, or a court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction or adjudication for an offense.

1 IS A JUVENILE ADJUDICATION OF DELINQUENCY A CRIMINAL CONVICTION?

No. Under Florida law, a delinquency adjudication is not a criminal conviction.

The term "adjudication" means a sentence imposed in juvenile court against a juvenile following a finding of guilt by the judge. Adjudication is not a conviction but is often treated like one. Under Florida law, a juvenile adjudication is not a criminal conviction. FLA. STAT. 985.35(6).

2 WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT EMPLOYMENT OPPORTUNITIES?

An order of adjudication of delinquency by a court shall not operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment. FLA. STAT. 986.35(6). Many employment applications require potential employees to report past 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. FLA. STAT. 985.045(2). This is why it is important to understand and pay attention to the wording of the application. A conviction is not an adjudication.

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:*

Local law enforcement agencies can disclose the name, photograph, address and crime or arrest report for children:

- Charged with Felonies
- Found by a court to have committed 3 or more misdemeanors
- Transferred or direct filed to adult court
- Charged with Traffic offenses.

Additionally, the Florida Department of Law Enforcement has a website where many companies can access information about juvenile records. 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.

Further, certain types of employment may have more stringent requirements and are able to demonstrate the need for the records. For example, employment with the state or municipality may bar persons convicted of drug trafficking or convicted of any felony or first degree misdemeanor “directly related” to the job; a county or municipality (if the job is critical to security or public safety); law enforcement, correctional or other agency that works with children or elderly; the public school system; or a seaport or airport. FLA. STAT. 943.0542 (delinquency adjudication that is not expunged may prevent a person from being considered for entry into nursing schools and teaching programs).

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.

3 ARE JUVENILE ADJUDICATIONS OF DELINQUENCY PUBLIC KNOWLEDGE?

Information relating to the child’s delinquent record is usually kept private from the public because the child is under age 18. However, there are exceptions.

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

- The party seeking the information is the parent, the victim, law enforcement, Department of Juvenile Justice, Department of Corrections and the Justice Administrative Commission. FLA. STAT. 985.045(2).

- Chances are the child was fingerprinted and photographed. The party pays \$23 to FDLE who then disseminates the child's arrest record and charges fingerprinted at the time of arrest and disposition. FLA. STAT. 985.11. A recent case from the First District Court of Appeal has found that the information available on the website should only be for cases where the child has been charged with a felony, found to have committed 3 or more misdemeanors, or is in the adult system; however, since that is recent it is still yet to be determined how it plays out in practice. See *G.G. Florida Department of Law Enforcement*, 97 So. 3d 268 (2012).
- The child's arrest record is not private or confidential if it is not sealed or expunged. Anyone who wants to see it can see it in the following circumstances:

- | | |
|---|---|
| ◆ All felonies | ◆ Those children required to register as sex offenders |
| ◆ 3 or more violations of which would be misdemeanors | ◆ Traffic violations |
| ◆ Transferred to the adult system | ◆ Child found to have committed of any offense that involves the use of a firearm |
| ◆ Direct filed into the adult system | |

FLA. STAT. 985.04-045

- The arrest record does not disappear or go away when the child turns 18.

FDLE juvenile records prior to July 1, 2008, are incomplete. When the case is closed, the child may ask their attorney to get a certified copy of the final disposition of their case. This will help the child explain in the future if anyone asks about their juvenile record.

Information provided to the Department of Juvenile Justice (DJJ) may be kept by DJJ for 25 years. "Criminal history information" includes arrests and dispositions, e.g., acquittals, dismissals, convictions, youthful offender determinations, pardons, probations, and paroles. FLA. STAT. 943.045. Unfortunately, there are no penalties for violating limitations on dissemination.

4 ARE THE HEARINGS IN JUVENILE COURT OPEN TO THE PUBLIC?

- Yes. Courtrooms are open to the public.
- The judge may close any hearing to the public when the public interest or the welfare of the child, in his or her opinion, is best served by so doing.
- Nothing shall prohibit the publication of these hearings!

FLA. STAT. 985.035.

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.

The child may not be able to live with or visit someone who lives in public or Section 8 housing. In addition, the child will not be eligible for food stamps if convicted of trafficking drugs. A delinquency adjudication can affect eligibility for public benefits and housing. Public housing authorities have the right to evict families of delinquent children, even when their delinquent act does not occur on public housing property. See *HUD v. Rucker*, 535 U.S. 125, 133-136 (2002). Further, 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.

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/pdffiles/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 31 attachment 4 (1999), available at <http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2911.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/news/publications/Documents/MCO%20P1100.72C%20W%20ERRATUM.pdf>.
- **Expungement:** 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.

- **Felonies:** Those convicted of felonies are not eligible for the military without special approval from the Secretary of Defense. 10 U.S.C. § 504(a). Depending on the type and number of adjudications, a child may not be able to serve in the military.
- The child cannot serve in the military or become a law enforcement officer if adjudicated delinquent or found guilty of domestic violence (misdemeanor or felony).

7 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 felony offenses in Florida **CANNOT** possess or use, or obtain a license to possess or use a firearm until such person reaches the age of **24 years old**. FLA. STAT. 985.35(7). However, if the child is convicted as an adult, chances are that he/she will never be able to own or possess any type of firearm.

8 WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT DRIVING PRIVILEGES?

In Florida, driving privileges will be suspended for periods ranging from **six months to five years** for a variety of delinquency adjudications (a withhold of delinquency may also require suspension), including:

- Felony Fleeing & Eluding
- Misrepresentation of Age and Possession of Alcohol
- Possession of Drugs/Paraphernalia
- Possession of a Firearm by a Minor
- Offenses Committed with the Use of a Firearm
- Theft of Gasoline in Drive Off
- Indirect Contempt of Court

See Relevant Florida Statutes.

Driving Under the Influence: Juveniles are treated no differently than adults in Florida for driving while under the influence of drugs or alcohol and result in mandatory license suspension. *See N.J.G. v. State*, 987 So. 2d 101 (Fla. 5th DCA 2008).

Other States: Most other states have limitations on driving privileges for these types of delinquency adjudications.

WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGH SCHOOLS OR HIGH-SCHOOL LEVEL TECHNICAL OR TRADE SCHOOLS?

Expulsion from School: An arrest or delinquency adjudication may result in expulsion from school and bar access to high school education as follows:

- **Weapons:** In Florida, any child found in possession of a **firearm or weapon on school property or at a school function will be expelled** under FLA. STAT. 1006.07.
- **False Report:** Children that have made a threat or false report involving the school or school personnel or activity will also be expelled.

The child is expelled from their regular school for a period of no less than 1 year.

The school board may send the child to a disciplinary program or second chance school during the expulsion but is not required to provide schooling. FLA. STAT. 1006.13(3).

Most expulsions are put into effect by school administrators without regard to whether a child has been adjudicated delinquent.

If a child is arrested for a felony or a crime of violence, information about the case **will be sent to the child's school including the principal, the classroom teacher and bus driver.** FLA. STAT. 985.04(4)(a)-(b).

School Transfers: If a child transfers to another school, information about delinquency adjudications will be transferred with the child.

WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGHER EDUCATION, INCLUDING COLLEGES, VOCATIONAL SCHOOLS, TECHNICAL SCHOOLS OR TRADE SCHOOLS?

- **Higher Education:** 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.**
- **State Financial Aid:** A delinquency adjudication does not bar access to Florida Bright Futures. The student cannot have been found guilty of, or entered a plea of nolo contendere to, a felony charge, unless the student has been granted clemency by the Governor and Cabinet sitting as the Executive Office of Clemency. However, the child IS still eligible to apply and may check "I do not agree" to the felony question #34, if the conviction or plea was

removed from his/her record by a court or took place in a juvenile court. For more information see FLA. STAT. 1009.531(1)(e).

- **Federal Financial Aid: 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/faq003.htm>. The Higher Education Act of 1998 (P.L. 105-244) makes students convicted of drug-related offenses ineligible for any grant, loan, or work assistance, and states are powerless to alter this federal legal barrier to student aid. No other class of offense, including violent offenses, sex offenses, repeat offenses, or alcohol-related offenses, results in the automatic denial of federal financial aid.

11 ARE THERE FINANCIAL BURDENS PLACED ON ADJUDICATED CHILDREN AND THEIR FAMILIES?

Children who are found delinquent irregardless of adjudication are required to pay fines and court costs. **Court costs** include:

- \$50 Crimes Compensation Fund
- \$3 for Teen Court
- \$50 for felony and \$20 for misdemeanor for Crime Prevention
- \$65 for Crime Ordinance
- Attorneys' fees

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

- The court may retain jurisdiction over a child and child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise, as provided in FLA. STAT. 985.0301; 985.437(5).
- In some jurisdictions, the child found to be 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 or parent's credit.

Other Costs:

Cost of Supervision: When any child is placed into home detention, probation, or other supervision status with the department, or is committed to the minimum-risk non-residential restrictiveness level, the court shall order the parent of such child to pay to the department a fee for the cost of the supervision of such child. FLA. STAT. 985.039.

- Home Detention/Probation: \$1 a day
- Secure Detention/Commitment: \$5

Some jurisdictions allow a judge to waive court fees due to undue hardship.

12 DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN FLORIDA?

Yes. Individuals adjudicated delinquent within the state of Florida do have to register as sex offenders **(that means the child's name will appear on the internet as a sex offender)** for in the following circumstances and for offenses that occurred after 2006:

If the child is 14 years of age and older and has been adjudicated of:

- Sex battery;
- Lewd battery and the victim was under 12 or the activity involved coercion;
- Lewd molestation, with either the following set of facts:
 - a. Victim is 12-15 years of age and the activity is forced/coerced and involved unclothed genitals.
 - b. Victim is under 12 years of age and the activity involved unclothed genitals.

The child may be able to avoid having to register as a sex offender, if the other person is between 14 and 17 years old; and the judge believes that it was consensual (that the two of them agreed to do it) and without force or coercion. The child may also be able to avoid having to register by resolving the case through a plea to the one of the following charges: Felony Battery, Lewd Conduct or Lewd Exhibition.

Registration as a sex offender publicizes personal information including name, photo, offense(s), address, employment, and school.

If a person who is required to register fails to do so, he/she commits a new crime. Failure to register is a strict liability crime, so no intent is required.

PLEASE BE MINDFUL that even if the juvenile is not required to register for certain offenses in Florida, if the adjudication was for a sex-related or sexually motivated charge as a minor it can result in indefinite, involuntary civil sex offender commitment under **Jimmy Ryce** procedures. The child can then be locked up for a long time in a mental facility even after the completion of the sentence or disposition.

13 DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT?

In Florida and many other states, children found delinquent regardless of the adjudication, of felony offenses, the misdemeanor offenses of stalking (M1), voyeurism (M1), or any attempt to commit these offenses, **are required** to submit a DNA sample. See FLA. STAT. 943.325.

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.

14 HOW CAN A JUVENILE ADJUDICATION OF DELINQUENCY BE EXPUNGED?

Juvenile records do not automatically disappear on a child's 18th birthday.

Juvenile records are automatically expunged at the age of 24. FLA. STAT. Ann. 943.0515(1).

Unless the child is deemed SHO then the record is kept until the age of 26.

If the child picks up charges once they are an adult and adjudicated then the juvenile and adult record becomes merged.

The child will not be able to clean his/her arrest record with the FBI because the FBI does not seal or expunge arrest records.

On the other hand, the child may be able to clean his/her FDLE arrest record depending on what happens in the delinquency case. Depending on the charge and the result of the case, he/she may not be able to ask a judge to wipe out or clean his/her juvenile record (seal or expunge).

For non-diversion cases, the child will not qualify for their record to be sealed/expunged:

- If the child was adjudicated delinquent (as a juvenile) on charges of assault; battery; petit theft; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified personnel; cruelty to animals; arson; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property.
- Even with the delinquency being withheld, the child will not qualify on charges of abuse of an elderly person; domestic violence; aggravated assault/aggravated battery; arson; burglary of a dwelling; carjacking; child abuse or aggravated child abuse; computer pornography involving a child; drug trafficking; hijacking;

home invasion robbery; homicide; illegal use of explosives; kidnapping; lewd, lascivious act on a child; manslaughter; robbery, sexual battery.

The effect of having an arrest: if sealed or expunged, the individual may deny the existence of the record in most circumstances. FLA. STAT. Ann. 943.0585(4) and 943.059(4).

If expunged, the individual may deny the existence of the juvenile record in most circumstances. FLA. STAT. Ann. 943.0585(4).

15 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 years old while completing the terms of his/her treatment, rehabilitation or supervision is permitted to register and vote. He/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/she is in placement.

For the limitations on voting and registration for persons with criminal convictions, go to: <http://aclufl.org/resource/issues/voting-rights>

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/she has been convicted of a crime that could be punishable by more than one year in prison.

17 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.

Bad Conduct: 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/her age.

Padilla v. Kentucky: 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) become 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 Fifth 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.

HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ADULT SENTENCE OF A YOUNG PERSON CONVICTED OF A CRIME AFTER THE AGE OF 18?

Sentencing Enhancements: The juvenile delinquency record triggers sentencing enhancements in both the state and federal criminal systems.

Florida Criminal System:

- The Florida Criminal Punishment Code defines any prior record as any conviction regardless of whether there is a withhold for offenses whether committed by an adult or juvenile.
- Juvenile dispositions of offenses committed by the offender within 5 years before the date of the commission of the primary offense must be scored as prior record.
- Juvenile dispositions of sexual offenses committed by the offender more than 5 years before the date of the primary offense must be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 5 consecutive years.

Federal Sentencing:

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).

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 Justice Center, Barry University School of Law

The Juvenile Justice Center is committed to equality and justice through zealous advocacy for children in the delinquency system. The Center is devoted to improving the quality of representation through training, networking and consulting with law students, public defenders and those in the legal field that represent children. The Center works to create dramatic reform in the juvenile justice field in Florida with an emphasis on improvements in the quality of representation of children in the delinquency system, lasting positive impacts in legislation and a vision that juvenile delinquency representation is a specialized discipline.

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.

Florida Juvenile Indigent Defense Action Network

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

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