

The Illinois Juvenile Collateral Consequences Checklist

A Guide for Understanding the Consequences
of Juvenile Court Involvement

Carolyn E. Frazier
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern University School of Law

ModelsforChange
Systems Reform in Juvenile Justice

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Models for Change

All young people should have the opportunity to grow up with a good education, get a job and participate in their communities. Creating more fair and effective juvenile justice systems that support learning and growth and promote accountability can ensure that every young person grows up to be a healthy, productive member of society.

Models for Change: Systems Reform in Juvenile Justice, a MacArthur Foundation initiative, began by working comprehensively on juvenile justice reform in four states, and then by concentrating on issues of mental health, juvenile indigent defense, and racial and ethnic disparities in 16 states. Through collaboration with the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Models for Change* expanded its reach and its work of replicating and disseminating successful models for juvenile justice reform to 40 states.

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Introduction

The Illinois Juvenile Collateral Consequences Checklist

The purpose of the Illinois Juvenile Collateral Consequences Checklist is to provide attorneys, judges and other juvenile justice professionals with information on the short and long term consequences of juvenile adjudications of delinquency in Illinois. It is the juvenile defense attorney's responsibility, prior to proceeding with an adjudicatory hearing or admissions colloquy, to explain to his or her client these potential future consequences of a finding of guilt in juvenile court. Such consequences, known in the law as "collateral consequences," might take the form of a penalty, disability or disadvantage imposed on an individual as a result of the adjudication. Many collateral consequences apply by operation of law, regardless of whether or not they are specifically included in the judgment or sentence.

This Checklist will be updated periodically to reflect changes in the law. Permission is required to alter the content or form of this publication for any purpose. To obtain permission please contact Carolyn Frazier at 312-503-0093 or c-frazier@law.northwestern.edu.

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

Unlike some other states, Illinois does not have a statute expressly stating that a juvenile adjudication or finding of delinquency shall not be considered a criminal conviction. However, as the Illinois Supreme Court recently noted in *People v. Taylor*, Illinois courts have consistently held that “a juvenile adjudication does not constitute a conviction.”¹ For example, Illinois courts have found that juvenile adjudications are not tantamount to criminal convictions for the following purposes, among others:

- Establishing the offense of escape under Illinois’ escape statute²;
- Assessing a fee against a defendant for an unsuccessful appeal³;
- Imposing an extended-term sentence under 730 ILL. COMP. STAT. 5/5-5-3.2⁴.

This case law provides a strong basis for expanding the legal proposition that a juvenile adjudication is not a criminal conviction into more situations.⁵

2. Who can legally access the records of an individual’s delinquency adjudications?

While conventional wisdom holds that juvenile delinquency records are confidential (i.e. not accessible to anyone but the defendant and the juvenile court), the reality under current Illinois law is that a variety of parties can access information about juvenile adjudications under certain circumstances. Following is a brief overview of when various parties may access such records (please note that this list is not exhaustive; please refer to the statutes cited for further detail):

- **General Public:**⁶ The general public can have access to the name, address, and offense of a minor who is adjudicated delinquent for the following offenses:
 - First degree murder;
 - Attempt to commit first degree murder;
 - Aggravated criminal sexual assault; or
 - Criminal sexual assault.

1. *People v. Taylor*, 850 N.E.2d 134, 176 (Ill. 2006).

2. *Id.* at 182.

3. *In re W.W.*, 454 N.E.2d 207 (Ill. 1983).

4. *People v. Rankin*, 697 N.E.2d 1246 (Ill. App. Ct. 1998).

5. There is at least one instance in Illinois law where the terms “conviction” and “adjudication” are collapsed into one definition for ease of reference. See 730 ILL. COMP. STAT. 150/2 (A)(5).

6. 705 ILL. COMP. STAT. 405/1-8(C)(1).

Additionally, the general public can access the same information when the court finds that the minor was at least 13 years old at the time of the act and the finding of delinquency was based on the minor's commission of:

- An act in furtherance of committing a felony as a member of or on behalf of a criminal street gang;
 - An act involving the use of a firearm while committing a felony;
 - An act that would be a Class X felony or the minor's second or subsequent Class 2 or greater felony offense under the Cannabis Control Act if committed by an adult;
 - An act that would be a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act if committed by an adult;
 - An act that would be an offense under Section 401 of the Illinois Controlled Substances Act if committed by an adult;
 - An act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act; or
 - An act that would be an offense under any other section of the Methamphetamine Control and Community Protection Act if committed by an adult.
- **News media:**⁷ The news media may access information about an adjudication of delinquency upon request to the court, and at the discretion of the judge presiding over the proceedings.
 - **Principal or chief administrator of a school, and or any designated guidance counselor:**⁸ See Question #4 below for more information.
 - **Victims:**⁹ Victims may have access to the name and address of the minor, as well as information about the final adjudication of delinquency.
 - **Law Enforcement Officers and Agencies:**¹⁰ Law enforcement officers and agencies may access dispositional information when essential to performing certain duties.
 - **Judges/prosecutors/probation officers:**¹¹ These court actors may also access dispositional information when essential to performing certain duties.
 - **Authorized military personnel:**¹² No statutory limitation is placed on the military's access to information about juvenile adjudications.

7. 705 ILL. COMP. STAT. 405/1-8(C).

8. 705 ILL. COMP. STAT 405/1-8(F).

9. 705 ILL. COMP. STAT 405/1-8(A)(7).

10. 705 ILL. COMP. STAT 405/1-8(A)(2).

11. 705 ILL. COMP. STAT 405/1-8(A)(3).

12. 705 ILL. COMP. STAT 405/1-8(A)(6).

- **Secretary of State:**¹³ All juvenile adjudications as required by the Illinois Vehicle Code (625 ILCS 5/6-204) are reported to the Secretary of State.
- **Authority of any state/county/municipality considering an applicant for employment with a law enforcement agency, correctional institution, or fire department:**¹⁴ Such authority may review an applicant’s record(s) of juvenile adjudication in order to determine whether the applicant was ever found delinquent, and if so, to examine the records and evidence from such proceedings.

3. Are juvenile court hearings open to the public?

With some exceptions, the general public is excluded from hearings in Juvenile Court.¹⁵

In most circumstances, only the following people may be admitted to a hearing:

- The minor¹⁶
- The minor’s parent, guardian, legal custodian, or responsible relative¹⁷
- The crime victim¹⁸
- The news media¹⁹
- Persons, including representatives of agencies and associations, who the Court finds to have a direct interest in the case or the work of the Court²⁰

A statutory exception to the above rule exists for extended jurisdiction juvenile (“EJJ”) hearings, including designation hearings²¹, trials²², and sentencing hearings²³; the Juvenile Court Act explicitly states that all such EJJ hearings shall be “open to the public.” Although there is no such explicit language in the statute allowing the public to attend discretionary or presumptive transfer hearings, some jurisdictions do open these hearings up to the public on the logic that any hearing that may result in a minor facing adult criminal

13. 705 ILL. COMP. STAT 405/1-8(A)(9).

14. 705 ILL. COMP. STAT 405/1-8(E).

15. 705 ILL. COMP. STAT. 405/1-5(6).

16. 705 ILL. COMP. STAT. 405/1-5(1).

17. *Id.*

18. 705 ILL. COMP. STAT. 405/1-5(6).

19. *Id.*

20. *Id.*

21. 705 ILL. COMP. STAT 405/5-810(2).

22. 705 ILL. COMP. STAT 405/5-810(3).

23. 705 ILL. COMP. STAT 405/5-810(4).

sanctions should be open to the public.²⁴ Finally, some jurisdictions allow public access to trials of youth designated as Habitual or Violent Juvenile Offenders, as such youth are afforded jury trials.²⁵

The Court may, for the minor's safety or protection, prohibit any person or agency in court from disclosing the minor's identity.²⁶

4. How might a juvenile adjudication of delinquency restrict access to primary or secondary education?

Record Sharing Between Juvenile Court and Schools: Illinois law specifically requires the State's Attorney's Office to inform school principals of delinquency adjudications for certain offenses, including:²⁷

- Any crime which would be a felony if committed by an adult;
- Unlawful use of a weapon (720 ILL. COMP. STAT. 5/24-1);
- Unlawful sale or delivery of firearms (720 ILL. COMP. STAT. 5/24-3);
- Unlawful possession of firearms and firearm ammunition (720 ILL. COMP. STAT. 5/24-3.1); and
- Defacing identification marks of firearms (720 ILL. COMP. STAT. 5/24-5).

Record Sharing Between Law Enforcement Agencies and Schools: Under the Illinois School Code, Illinois school districts and local law enforcement agencies have established a reciprocal reporting system to monitor criminal offenses committed by students.²⁸ Further, the School Code mandates that all 1) acts of battery against school personnel²⁹ and 2) "verified incidents" involving drugs and occurring in a school or on school-owned or leased property be immediately reported to local law enforcement.³⁰ As well, the Juvenile Court Act authorizes local law enforcement officers or agencies to share a student's law enforcement records (even those not resulting in court referrals) with school officials, if the officer or agency believes that the student poses an imminent threat of physical harm to students, school personnel,

24. 705 ILL. COMP. STAT. 405/5-805(2)-(3).

25. 705 ILL. COMP. STAT. 405/5-815(d).

26. 705 ILL. COMP. STAT. 405/1-5(6).

27. 705 ILL. COMP. STAT. 405/1-8(F).

28. 105 ILL. COMP. STAT. 5/10-20.14; *see also* 705 ILL. COMP. STAT. 405/1-7(A)(8) (allowing school officials to inspect and copy certain law enforcement records).

29. 105 ILL. COMP. STAT. 5/10-21.7.

30. 105 ILL. COMP. STAT. 5/10-27.1B.

or others present.³¹ It is left up to the discretion of the individual officer or agency to determine when such a threat exists.³²

Expulsions: Information about an adjudication of delinquency, regardless of whether the conduct occurred on or off school grounds, may result in expulsion from school and thereby bar a young person’s access to education. Expulsion is defined by the Illinois School Code as the removal of a student from school for gross disobedience or misconduct for a definite period of time ranging from 11 days to two years.³³ Generally, the length of expulsion is determined on a case-by-case basis.³⁴ However, the School Code requires a minimum one-year expulsion for students who bring any of the following to school, any school-sponsored activity, or an event that bears a reasonable relationship to school: a firearm; knife; brass knuckles or other knuckle weapon; billy club; or any other object if used or attempted to be used to cause bodily harm, including firearm “look alikes.”³⁵

Beyond these statewide guidelines, school districts throughout the state may differ significantly in the disciplinary rules and consequences they impose on their students; thus, minors and their advocates are advised to review the disciplinary code in the district where the minor attends school for more specific information. Finally, it is important to note that when a student has been accused of misconduct, a school does not need an adjudication of delinquency for such misconduct in order to expel the minor from school.

School Transfers: Generally, a student expelled in one public school district will be considered “not in good standing” by any other public school district in the state.³⁶ The student may either be kept out of school while expelled or he or she may be allowed to attend an alternative school, if one is available.

5. How might an adjudication of delinquency restrict access to higher education?

Admissions: A delinquency adjudication does not bar access to higher education in most cases. If the institution’s application asks for the applicant’s arrest history, juvenile arrests must be included. An increasing number of institutions accept the Common Application, which asks whether the applicant has been convicted of a misdemeanor, felony or other crime. The Common Application website is clear that if an

31. 705 ILL. COMP. STAT. 405/1-7(A)(8).

32. *Id.*

33. 105 ILL. COMP. STAT. 5/10-22.6.

34. *Id.*

35. *Id.* Note: the superintendent or school board may modify the length of this one-year term.

36. See, e.g., Illinois State Board of Education Student Transfer Form (ISBE 33-78), available at http://www.isbe.net/recognition/pdf/33-78_student_transfer.pdf.

applicant has a juvenile delinquency adjudication on his or her record, he or she must answer “yes” to this question, unless the adjudication has been sealed or expunged.³⁷ The application then gives the applicant an opportunity to discuss the adjudication, and any lessons that flowed from the experience.

Federal Financial Aid: Adjudication as a delinquent does not bar access to federal financial aid for higher education. A drug-related adjudication will only affect eligibility for federal financial aid if the conviction occurs after the individual reaches the age of 18.³⁸

Housing: It has been practitioners’ experience in Illinois that youth with adjudications of delinquency for sex offenses can be denied (or evicted from) student housing.

6. Can an adjudication of delinquency restrict access to public housing?

A delinquency adjudication can affect eligibility for public housing not only for the delinquent minor, but for his or her family as well. Public housing authorities have the right to evict delinquent minors *and their entire families* because of the minor’s conduct, even if: 1) the minor’s conduct does not result in an arrest or finding of delinquency; 2) the conduct in question does not occur on public housing property; and 3) the leaseholder did not know about the delinquent behavior.³⁹ Further, individuals subject to a term of lifetime registration as a sex offender are not eligible for federal housing assistance.⁴⁰

7. Can an adjudication of delinquency affect driving privileges?

Under Illinois law, a youth’s driving privileges can be impacted in several ways by an adjudication of delinquency. The consequences range from discretionary suspension to mandatory revocation to cancellation of the youth’s driver’s permit or license.

Under the Juvenile Court Act, a judge has discretion, as part of a sentencing order for any adjudication, to suspend a youth’s driving privileges for any period of time up until the youth’s 18th birthday.⁴¹

37. See The Common Application Applicant Support Center, information regarding adjudicated delinquency, available at <https://appsupport.commonapp.org/ics/support/KBAnswer.asp?questionID=778&hitOffset=74+52+45+44+43+32+10+3+2+1&docID=2609>.

38. Judge Kim Clark, *What Happens in Juvenile Court, Doesn’t Always Stay in Juvenile Court – The Myths and Realities About Juvenile Records and Expungements*, MODELS FOR CHANGE (July 15, 2010), <http://www.modelsforchange.net/newsroom/152>.

39. See *HUD v. Rucker*, 535 U.S. 125, 133–136 (2002) (family evicted from Oakland Housing Authority public housing after, *inter alia*, tenant’s grandsons caught smoking marijuana in parking lot of complex); *Camco v. Lowery*, 839 N.E.2d 655 (Ill. App. Ct. 2005) (family evicted from Section 8 housing after leaseholder’s 12-year-old son was arrested for possession of marijuana).

40. 42 U.S.C. § 13663.

41. 705 ILL. COMP. STAT. 405/5-710(1)(a)(vii).

Under the Illinois Vehicle Code, adjudications that trigger a mandatory revocation of driving privileges include, but may not be limited to, the following:

- Adjudications for an offense relating to motor vehicles as listed in Section 4-103 of the Illinois Vehicle Code (625 ILCS 5/4-103)⁴²;
- Adjudications based on an offense determined to have been committed in furtherance of the criminal activities of an organized gang⁴³, if such offense involved a motor vehicle or the use of a driver's license or permit;⁴⁴ and
- Adjudications of sex offenses, as defined in the Sex Offender Registration Act, until the youth registers as a sex offender and provides proof of registration and his/her current address to the Secretary of State.⁴⁵

For any youth under the age of 21, a delinquency adjudication is not required in order for driving privileges to be impacted for underage drug or alcohol use while operating a vehicle. Illinois law sets the legal blood alcohol limit for drivers up to age 21 at 0.00.⁴⁶ If a youth under 21 tests positive for any alcohol or refuses to take the test, the state will suspend driving privileges for a period ranging from three months to two years.⁴⁷ Exception is made only for alcohol that is consumed as part of a religious service or ceremony, or that is an ingredient in a prescribed or recommended dosage of medicine.⁴⁸ Notably, *even if a vehicle is not involved*, any driver under the age of 21 ticketed for alcohol consumption will face a license suspension of 3 months.⁴⁹

Prior to reissuing a suspended license or permit to any youth under the age of 21, the Secretary of State may require the youth to take a driver remedial education course and re-take the driving exam.⁵⁰ Additionally, the Court may require youths adjudicated of drinking and driving to participate in a special program that requires them to visit either: 1) a rehabilitation facility that cares for victims of drunk drivers; 2) a facility that cares for people with advanced alcoholism; or 3) the county coroner's office to observe dead victims of drunk drivers.⁵¹

42. 625 ILL. COMP. STAT. 5/6-205(b)(1).

43. According to the Juvenile Court Act of 1987, the determination of whether an offense was committed in furtherance of the criminal activities of an organized gang is made by the juvenile court judge, who shall make a specific finding to that effect prior to entering a sentencing order. 705 ILL. COMP. STAT. 405/5-710(10).

44. 625 ILL. COMP. STAT. 5/6-205(b)(3). Note: If the adjudication qualifies as gang activity under 705 ILL. COMP. STAT. 405/5-710(10), the court shall order the youth's license or permit to be revoked until his or her 21st birthday, or later if the court deems appropriate. 705 ILL. COMP. STAT. 405/5-710(11).

45. 625 ILL. COMP. STAT. 5/6-201(a)(9).

46. 625 ILL. COMP. STAT. 5/11-501.8(c).

47. 625 ILL. COMP. STAT. 5/6-208.2(a).

48. *Id.* at 5/11-501.8(e).

49. 625 ILL. COMP. STAT. 5/6-206(a)(43).

50. 625 ILL. COMP. STAT. 5/6-206(c-5).

51. 625 ILL. COMP. STAT. 5/11-501.7(a).

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

A delinquency adjudication may affect an individual's ability to enlist in the U.S. military. Authorized military personnel are able to access juvenile court files when necessary for discharge of their official duties.⁵² They are also authorized to inspect and copy law enforcement records that relate to a minor who was arrested or taken into custody before his or her 18th birthday.⁵³ Finally, military personnel will only be able to access social, psychological, or medical records housed at the Juvenile Court in two situations: (1) if there is written consent of the former juvenile or, if the juvenile is under 18 years of age, consent of the juvenile's parent, or (2) a court with jurisdiction orders disclosure.⁵⁴

Each branch of the U.S. military handles juvenile adjudications differently in their screening and eligibility determinations. Some juvenile adjudications can lead to absolute disqualification from service, while others will not bar enlistment as long as the applicant obtains a waiver. Generally, juvenile adjudications are less likely to result in an absolute ban on service than are adult criminal convictions. For the specific and up-to-date rules on how juvenile records impact military enlistment eligibility, please consult the following resources:

- **Army:** *Army Regulation 601-210*, Chapter 4, available at http://armypubs.army.mil/epubs/pdf/r601_210.pdf
- **Navy:** *Navy Recruiting Manual-Enlisted*, Vol. II, available at <http://www.cnrc.navy.mil/publications/1130.8J.htm>
- **Air Force:** *Air Force Instruction 36-2002*, Chapter 1, Enlistment in the Regular Air Force and Attachment 3, Applicants with a Conviction or Adverse Adjudication of an Offense, available at http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2002/afi36-2002.pdf
- **Marines:** *Military Personnel Procurement Manual*, Vol. 2: Enlisted Procurement, Chapter 3, Qualifications for Enlistment, available at <http://www.marines.mil/Portals/59/Publications/MCO%20P1100.72C%20W%20ERRATUM.pdf>

52. 705 ILL. COMP. STAT. 405/5-901(1)(b)(i).

53. 705 ILL. COMP. STAT. 405/5-905(1)(e).

54. 705 ILL. COMP. STAT. 405/5-910(1).

9. How might a juvenile delinquency adjudication affect an individual's employment opportunities?

The majority of employment applications require potential employees to disclose past convictions at some point during the application process. This raises the question of whether a juvenile adjudication is the equivalent of a conviction for employment purposes. As explained in Question #1 above, Illinois does not have a statute explicitly stating that a juvenile adjudication is categorically not a conviction. However, Illinois case law does provide the basis for a strong argument that juvenile adjudications should not be considered the same as convictions for employment purposes, and thus should not have to be disclosed on applications for employment. (See Question #1 for further information on this case law.)

Under the juvenile records confidentiality framework described in Question #2 above, most employers do not have legal access to law enforcement or court records regarding the majority of juvenile arrests or adjudications; thus, their only legitimate source of juvenile record information is the applicant him- or herself. However, some employers are specifically authorized by statute to consider non-expunged (or even expunged) juvenile adjudications in their employment decisions. Such employers include (but are not limited to):

- State/county/local law enforcement agencies;⁵⁵
- Correctional institutions;⁵⁶
- Prosecutor's offices;⁵⁷
- Fire departments;⁵⁸
- The military,⁵⁹ and
- Certain park districts.⁶⁰

Illinois law does have some provisions designed to protect individuals from having expunged records (delinquency and otherwise) improperly used against them in employment decisions. Sources of such statutory protections include:

- **Illinois Juvenile Court Act:** According to the Juvenile Court Act, an *expunged* juvenile record, with few exceptions, cannot be considered by a private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration.⁶¹ Organizations

55. 705 ILL. COMP. STAT. 405/1-8(E); 705 ILL. COMP. STAT. 405/5-915(8)(a)(permitting examination of expunged records).

56. 705 ILL. COMP. STAT. 405/1-8(E); 705 ILL. COMP. STAT. 405/5-915(8)(a).

57. 705 ILL. COMP. STAT. 405/1-8(E); 705 ILL. COMP. STAT. 405/5-915(8)(a).

58. 705 ILL. COMP. STAT. 405/1-8(E).

59. 705 ILL. COMP. STAT. 405/1-8(A)(6).

60. 705 ILL. COMP. STAT. 405/1-7(A)(10).

61. 705 ILL. COMP. STAT. 405/5-915(8)(a).

exempted from this rule include law enforcement agencies, the Illinois Department of Corrections, and State’s Attorneys and other prosecutorial offices.⁶²

- **Illinois Human Rights Act:** The Illinois Human Rights Act states that it is a civil rights violation for an employer to inquire into expunged or sealed arrest or criminal history record information or use such information as a basis to refuse to hire or to differentially treat an employee.⁶³ Although this Act refers specifically to records ordered expunged or sealed under the Criminal Identification Act—which contains expungement and sealing provisions only for offenses committed by adults—its reasoning arguably should apply equally to expunged and sealed juvenile records.

Unfortunately, despite these statutory protections, it has become clear over the past several years that some employers still manage to gain illegal access to juvenile records, and use them illegally—and with seeming impunity—in their hiring decisions.

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

The Illinois Sex Offender Registration Act (SORA) governs Illinois juvenile sex offenses.⁶⁴ A juvenile is required to register as a sex offender if he or she is adjudicated delinquent of an offense that would qualify as a sex offense had an adult committed the act.⁶⁵ Further, if the youth was adjudicated delinquent for a similar offense in another state, he or she must register in Illinois if the offense constituted any of the offenses listed in the Act.⁶⁶ Depending on the nature of the offense, a juvenile’s term of registration is either for 10 years or for life.⁶⁷

The juvenile must register as a sex offender within 3 days of starting school or establishing a residence and also must report any changes of address, school, or employment within 3 days.⁶⁸ Registration includes a current photograph, current address, current place of employment, the juvenile’s telephone number, the employer’s telephone number, school attended, all e-mail addresses, instant messaging and other related Internet identities, a copy of the terms of parole, license plate numbers, the age of the sex offender at the

62. *Id.*

63. 775 ILL. COMP. STAT. 5/2-103. This prohibition against the use of the mere fact of an expunged arrest does not prohibit an employer from obtaining or using other information that indicates that a person actually engaged in the conduct for which he or she was arrested.

64. 730 ILL. COMP. STAT. 150/1.

65. 730 ILL. COMP. STAT. 150/2(A)(5). *See also* 730 ILL. COMP. STAT. 150/2(B), (C) & (C-5) (full list of the offenses requiring registration).

66. 730 ILL. COMP. STAT. 150/2(A)(5).

67. 730 ILL. COMP. STAT. 150/7.

68. 730 ILL. COMP. STAT. 150/3(b).

time of the offense, the age of the victim at the time of the offense, and any distinguishing marks on the body of the sex offender.⁶⁹

Any person who is required to register and violates the requirements is guilty of a Class 3 felony, with any subsequent violation resulting in a Class 2 felony.⁷⁰ Furthermore, any person that violates the registration requirements must serve a minimum of 7 days in the local county jail and pay a minimum fine of \$500.⁷¹

For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a misdemeanor, the minor can petition the court for termination of registration 2 years after the registration was ordered.⁷²

For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a felony, the minor can petition the court for termination of registration 5 years after the registration was ordered.⁷³

The court may terminate registration if it finds that the juvenile poses “no risk to the community by a preponderance of evidence” based upon certain factors,⁷⁴ but the court will not require “the complete absence of any risk” when looking at the factors.⁷⁵

11. Might a juvenile adjudication of delinquency subject a juvenile to inclusion on any other registries in Illinois?

Illinois has a statute known as the Murderer and Violent Offender Against Youth Registration Act.⁷⁶

According to the law, a juvenile who is adjudicated delinquent for committing or attempting to commit an offense that would qualify as a violent crime against youth if committed by an adult must register as an offender.⁷⁷ A full list of the relevant offenses is contained in Section 154/5(b) and (c)(5) of the Act.⁷⁸

A juvenile offender must report in person to the appropriate law enforcement agency within one year from the date of the last registration and every year thereafter and at such other times as the law enforcement agency may request but not to exceed 4 times per year.⁷⁹ An adjudicated juvenile is required to register in person and must provide the required information to authorities within 5 days of moving to a new address

69. 730 ILL. COMP. STAT. 150/3(a).

70. 730 ILL. COMP. STAT. 150/10(a).

71. *Id.*

72. 730 ILL. COMP. STAT. 150/3-5(c).

73. *Id.*

74. 730 ILL. COMP. STAT. 150/3-5(d).

75. *See In re Harold W.*, No. 2-12-1235, 2014 IL App (2d) 121235-U (Apr. 18, 2014).

76. 730 ILL. COMP. STAT. 154/1.

77. 730 ILL. COMP. STAT. 154/5(a)(2).

78. 730 ILL. COMP. STAT. 154/5(b) & (c)(5).

79. 730 ILL. COMP. STAT. 154/30.

or temporarily living somewhere different than the registered address for 5 or more days.⁸⁰ An adjudicated juvenile must register as an adult violent offender against youth within 10 days of reaching the age of 17.⁸¹

A juvenile who is adjudicated delinquent under the statute must register when he or she turns 17 years old, and the juvenile is legally considered as having committed the offense on or after his or her 17th birthday.⁸² The juvenile's registration period of 10 years, if there are no more offenses, starts from the date of the original adjudication.⁸³

A juvenile who is at least 17 years of age at the time of the offense and who is convicted of first degree murder against a person under 18 years of age must register for natural life.⁸⁴ A juvenile who is adjudicated delinquent of first degree murder of an adult is required to register for a period of 10 years after adjudication if not confined to an institution, and if confined, the juvenile must register for 10 years after parole, discharge, or release from the facility.⁸⁵

Finally, a juvenile who becomes subject to registration who has previously been subject to registration under this statute or under the Sex Offender Registration Act must register for natural life.⁸⁶

12. Does a juvenile adjudication of delinquency mandate that the youth submit a DNA sample to be kept by law enforcement?

Any youth adjudicated delinquent or given court supervision under the Juvenile Court Act for an offense classified as a felony under Illinois law or an offense requiring registration under the Sex Offender Registration Act *must* submit a blood, saliva, or tissue sample to the Illinois State Police to be included in a DNA/genetic marker repository.⁸⁷ Additionally, DNA collection is mandatory for those juveniles who are adjudicated delinquent or given court supervision for committing *or attempting to commit* certain specially enumerated offenses.⁸⁸ For all other juvenile offenses that result in an adjudication of guilt or an order of court supervision, a judge *may*, at his or her discretion, order a youth to submit such a sample.⁸⁹

80. 730 ILL. COMP. STAT. 154/10(a).

81. *Id.*

82. 730 ILL. COMP. STAT. 154/5(a)(2).

83. *Id.*

84. 730 ILL. COMP. STAT. 154/5(c-5).

85. 730 ILL. COMP. STAT. 154/5(c-6).

86. 730 ILL. COMP. STAT. 154/40.

87. 730 ILL. COMP. STAT. 5/5-4-3(a).

88. *Id.* A list of these offenses can be found at 730 ILL. COMP. STAT. 5/5-4-3(g).

89. 730 ILL. COMP. STAT. 5/5-4-3(a-5).

All DNA information collected is kept in a single state database, and may additionally be uploaded into a national database or shared with any peace officer of Illinois or the United States, or other authorized states, territories, or foreign countries.⁹⁰ An individual's genetic data is only mandatorily expunged and removed from the database if he or she is granted a pardon or a reversal of conviction based on actual innocence (both adult remedies.)⁹¹ The expungement provisions of the Juvenile Court Act do not expressly mention any right to expunge genetic samples or information collected pursuant to the Illinois DNA Database Law of 2011 (730 ILCS 5/5-4-3).⁹²

13. Other than DNA swabs, what other medical or related procedures can a court order as a result of an adjudication of delinquency?

As part of its sentencing order, a juvenile court has the discretion to order an adjudicated youth to undergo a medical or other procedure to have any tattoos removed from his or her body, if those tattoos symbolize allegiance to a street gang.⁹³ Additionally, when a youth is adjudicated delinquent of almost any sex offense, the court shall order the youth to undergo medical testing to determine whether he or she has any sexually transmitted disease, HIV or AIDS.⁹⁴

14. Can a juvenile adjudication of delinquency affect a person's ability to obtain a license to carry a firearm?

A juvenile adjudication can potentially impact a person's ability to legally obtain a firearm. Firearm purchase, ownership, or possession requires a Firearm Owner's Identification Card.⁹⁵ Under Illinois law, the Department of State Police has the authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card if the Department finds that a person (1) was under 21 years old at the time of issuance and has been adjudicated delinquent, or (2) was a minor at the time of issuance and is subject to a petition filed under Section 5-520 of the Juvenile Court Act of 1987 alleging that the minor is a delinquent for the commission of an offense that if committed by an adult would be a felony.⁹⁶ Additionally, an adult can lose his or her Firearm Owner's Identification Card if he or she was adjudicated a delinquent minor

90. 730 ILL. COMP. STAT. 5/5-4-3(f).

91. 730 ILL. COMP. STAT. 5/5-4-3(f-1).

92. 705 ILL. COMP. STAT. 405/5-915.

93. 705 ILL. COMP. STAT. 405/5-710(1)(a)(ix).

94. 705 ILL. COMP. STAT. 405/5-710(9).

95. 430 ILL. COMP. STAT. 65/2.

96. 430 ILL. COMP. STAT. 65/8.

under the Juvenile Court Act of 1987 for the commission of an offense that if committed by an adult would be a felony.⁹⁷

15. How can a juvenile adjudication of delinquency be sealed?

With limited exceptions, according to the Juvenile Court Act, juvenile records that have not been expunged are considered sealed.⁹⁸ Regardless of being sealed, as discussed above, certain parties have lawful access to the juvenile's court file⁹⁹ and law enforcement records¹⁰⁰ when necessary for the discharge of their official duties.

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

Illinois law allows for an individual to petition for expungement of his or her juvenile law enforcement and court records in the following circumstances:

- Whenever any person reaches the age of 18 or when all juvenile court proceedings against the juvenile are terminated, whichever is later, the person can petition the court to expunge the following juvenile court and law enforcement records:
 - Records relating to arrests that did not result in charges being filed; or
 - Records relating to charges in juvenile court that did not result in a finding of delinquency; or
 - Records relating to charges in juvenile court that resulted in an order of supervision which has been successfully terminated; or
 - Records relating to charges in juvenile court that resulted in a finding of delinquency for a Class B or C misdemeanor or a petty or business offense.¹⁰¹
- Whenever any person reaches the age of 21 or when 5 years have elapsed since all juvenile court proceedings against the youth and/or commitment to the Department of Juvenile Justice were terminated, whichever is later, the person can petition the court to expunge all remaining juvenile

97. *Id.*

98. 705 ILL. COMP. STAT. 405/5-915(5). Note: although the Juvenile Court Act refers to the sealing of records, it does not provide a legal definition of what sealing means. Borrowing from the Criminal Identification Act (which covers expungement and sealing for adult offenses), sealing means to physically and electronically maintain a record, but to make that record unavailable without a court order. *See* 20 ILL. COMP. STAT. 2630/5.2(1)(K).

99. 705 ILL. COMP. STAT. 405/5-901.

100. 705 ILL. COMP. STAT. 405/5-905.

101. 705 ILL. COMP. STAT. 405/5-915(1).

court and law enforcement records, including felony adjudications, but only in the following circumstances:

- The person has not been convicted of any crime since his or her 18th birthday; and
- The records to be expunged do not relate to any incident that resulted in proceedings in criminal court; and
- The records do not relate to adjudications for first degree murder or felony sex offenses.¹⁰²

Illinois law also contains two provisions that allow for certain juvenile records to be expunged without an individual having to file a traditional expungement petition. While both of these provisions have at times been referred to as “automatic” expungement provisions, it is important to note that neither of these laws provide for truly automatic expungement. The provisions operate as follows:

- **705 ILCS 405/5-622:** Provides that any minor charged with a misdemeanor as his or her first offense is eligible for expungement review by the court either upon his or her 18th birthday or whenever the case is closed, whichever is later.¹⁰³ Read with the other expungement provisions in the Juvenile Court Act, the practical impact of Section 622 is that if a youth’s first offense ends in an adjudication of a Class A misdemeanor, the youth doesn’t have to wait until his or her 21st birthday (or later) to expunge this offense from his or her record.
- **705 ILCS 405/5-915(1.5):** Provides for automatic annual expungement of a person’s Illinois State Police records relating to juvenile arrests for most misdemeanors and class 3 and 4 felonies, but only if: 1) the arrest did not lead to court charges; 2) the person to whom the records relate has turned 18; and 3) the person has been free of arrests and charges for at least six months.¹⁰⁴ It is important to note that this provision does not apply to local law enforcement records.

Because neither 705 ILCS 405/5-622 nor 705 ILCS 405/5-915(1.5) provide expungement relief that is nearly as comprehensive as the relief provided by 705 ILCS 405/5-915(1) and 705 ILCS 405/5-915(2), lawyers should always direct their clients to seek the fullest possible expungement of their juvenile records by petitioning the court under these latter provisions.

102. 705 ILL. COMP. STAT. 405/5-915(2). Therefore, adjudications based on first-degree murder and felony sex offenses cannot be expunged. *Id.*

103. 705 ILL. COMP. STAT. 405/5-622. Note: while the statute anticipates this review being triggered by counsel filing a motion within 30 days after the entry of the court’s judgment in the case, jurisdictions have also allowed it to be triggered by the filing of a motion at or near the youth’s 18th birthday.

104. 705 ILL. COMP. STAT. 405/5-915(1.5); 705 ILL. COMP. STAT. 405/5-915(1.8).

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.¹⁰⁵ However, in some cases the behavior underlying a delinquency adjudication can itself be deemed “bad conduct” and thus can trigger harsh immigration penalties, including ineligibility for legal immigrant status and vulnerability to deportation. Actions constituting “bad conduct” include, but are not limited to:

- Drug trafficking (transfer, passage or delivery);¹⁰⁶
- Drug abuse or addiction;¹⁰⁷
- Violation of an order of protection;¹⁰⁸
- Behavior (or a history of behavior) associated with a current or past physical or mental disorder that has posed or may pose a threat to property, safety, or welfare of the individual or others;¹⁰⁹
- Prostitution;¹¹⁰ and
- False claim to U.S. citizenship.¹¹¹

It is important to mention that while most juvenile adjudications do not serve as an absolute bar to receiving immigration benefits, such benefits are discretionary in nature. Thus, a judge *can* consider this information when making a decision whether to grant new or continued legal status to an applicant, if the judge becomes aware of it.

For youth without legal status (sometimes called “undocumented” youth), an additional concern is that involvement in the juvenile justice system clearly places them at risk of detection by federal authorities. If detected, these youth are subject to removal proceedings, regardless of their age. 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

105. *In re Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

106. 8 U.S.C.A. § 1182 (a)(2)(C).

107. 8 U.S.C.A. § 1227(a)(2)(B)(ii); 8 U.S.C.A. § 1182 (a)(1)(A)(iv).

108. 8 U.S.C.A. § 1227(a)(2)(E)(ii).

109. 8 U.S.C.A. § 1182 (a)(1)(A)(iii)(I); 8 U.S.C.A. § 1182 (a)(1)(A)(iii)(II).

110. 8 U.S.C.A. § 1182 (a)(2)(D).

111. 8 U.S.C.A. § 1182 (a)(6)(C)(ii).

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.**

Many young adults who arrived in the United States as children can qualify for limited immigration benefits and a deferral of removal action against them under the immigration policy referred to as Deferred Action for Childhood Arrivals (DACA).¹¹² Juvenile adjudications will not automatically bar someone from DACA relief; however, an attorney should carefully consider his or her client's juvenile record in determining whether to counsel the client to apply for relief under DACA.¹¹³

Failure to adequately counsel one's clients about the potential immigration consequences of criminal charges can have serious repercussions for lawyers. On March 31, 2010, the U.S. Supreme Court issued a landmark decision in *Padilla v. Kentucky*.¹¹⁴ 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.¹¹⁵ For practice advisories on the impact of this decision, and additional resources generally, please visit the website www.defendingimmigrants.org.

18. Can juvenile adjudications impact adult criminal proceedings?

Yes. Adjudications of delinquency under the Juvenile Court Act are admissible in adult criminal proceedings when a court is determining the amount of bail to set, the fitness of a defendant, or a defendant's sentence under the Unified Code of Corrections.¹¹⁶ Evidence of a juvenile adjudication is also admissible in criminal proceedings to impeach a testifying witness.¹¹⁷

Under Illinois sentencing law, any adult sentence may be enhanced because of a defendant's "history of prior delinquency."¹¹⁸ Additionally, when an adult criminal defendant is convicted of a felony and the court finds at sentencing that the defendant was adjudicated delinquent of a Class X or Class 1 felony within the

112. Information about DACA published by U.S. Citizenship and Immigration Services can be found at <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

113. For more information on how juvenile adjudications might be relevant to whether a youth applies for or receives DACA relief, visit the Immigrant Legal Resource Center's website at www.ilrc.org.

114. *Padilla v. Kentucky*, 559 U.S. 356 (2010).

115. *Id.* at 374.

116. 705 ILL. COMP. STAT. 405/5-150(1)(b).

117. 705 ILL. COMP. STAT. 405/5-150(1)(c).

118. 730 ILL. COMP. STAT. 5/5-5-3.2(a)(3).

10 years preceding the adult conviction, the court may use that prior adjudication as reason to impose an extended term sentence under 730 ILCS 5/5-8-2.¹¹⁹ An adult criminal defendant who has previously been adjudicated delinquent of a “violent offense” does not qualify for special second-chance programs such as the Offender Initiative Program or Second Chance Probation.¹²⁰

19. Are there financial burdens placed on adjudicated youth and their families?

Minors who are adjudicated delinquent may be ordered to make monetary (or non-monetary) restitution for their offense.¹²¹ The minor’s parent, guardian, or legal custodian may be ordered to pay some or all of the restitution on the minor’s behalf, pursuant to the Parental Responsibility Law.¹²²

A minor who is placed on probation or conditional discharge shall be assessed a fee of \$50 for each month of probation or supervision ordered by the court, unless the court assesses a lesser amount due to a determination that the minor is unable to pay the full fee.¹²³ The court may order the parent, guardian or legal custodian to pay part or all of this fee on the minor’s behalf.¹²⁴

Additionally, a minor placed on probation may have further financial requirements placed upon him or her, including the requirement to:

- Support his or her dependents;¹²⁵
- Contribute to his or her own support at home or in a foster home;¹²⁶ or
- Pay court costs.¹²⁷

If a minor is found guilty of violating subsection (a-7) of Section 1 of the Prevention of Tobacco Use by Minors Act, he or she may be required to pay a fee for attendance at a smoker’s education or diversion

119. 730 ILL. COMP. STAT. 5/5-5-3.2(b)(7).

120. 730 ILL. COMP. STAT. 5/5-6-3.3(a-2); 730 ILL. COMP. STAT. 5/5-6-3.4(a-1).

121. 705 ILL. COMP. STAT. 405/5-710(4).

122. *Id.*

123. 705 ILL. COMP. STAT. 405/5-715(5).

124. *Id.*

125. 705 ILL. COMP. STAT. 405/5-715(2)(f).

126. 705 ILL. COMP. STAT. 405/5-715(2)(m).

127. 705 ILL. COMP. STAT. 405/5-715(2)(p).

program,¹²⁸ as well as paying a fine of \$25.¹²⁹ For a second violation within one year, a fine of \$50 may be imposed.¹³⁰ For a third or subsequent violation within one year, a fine of \$100 may be imposed.¹³¹

20. Is an individual who has been adjudicated delinquent prevented from voting?

No. A juvenile delinquency adjudication does not bar an individual from being able to vote in Illinois. Further, while Illinois law contains a provision that “a person sentenced to imprisonment shall lose his right to vote until released from imprisonment,”¹³² advocates can argue that this provision does not apply to youth aged 18-21 who are currently incarcerated in an Illinois Department of Juvenile Justice youth facility, as this provision is located in a portion of the law regarding adult convictions.¹³³

21. Can individuals with juvenile adjudications serve on juries?

Under Illinois law, individuals summoned for jury duty must be (1) inhabitants of the county to which they are summoned, (2) 18 years of age or older, (3) free from all legal exception, of fair character, of approved integrity, of sound judgment, well informed, and able to understand the English language, whether in spoken or written form or interpreted into sign language, and (4) citizens of the United States of America.¹³⁴ While this language does not explicitly bar individuals with juvenile records from being summoned, such history may be considered when assessing qualification based on character and integrity. The determination of the qualification of juror is a judicial determination.¹³⁵

128. 705 ILL. COMP. STAT. 405/5-710(12).

129. 705 ILL. COMP. STAT. 405/5-710(12)(a).

130. 705 ILL. COMP. STAT. 405/5-710(12)(b).

131. 705 ILL. COMP. STAT. 405/5-710(12)(c).

132. 730 ILL. COMP. STAT. 5/5-5-5(c).

133. For further information on voting rights, see <https://www.aclu.org/voting-rights>.

134. 705 ILL. COMP. STAT. 305/2.

135. *See, e.g.,* People v. Cole, 298 N.E.2d 705, 713 (Ill. 1973).

22. Can a juvenile adjudication of delinquency affect an individual's ability to visit friends or family incarcerated at Illinois Department of Corrections facilities?

According to the Illinois Department of Corrections Visitation Rules, a proposed visitor with a previous conviction or pending criminal charges may only visit an inmate housed at a DOC facility with the written approval of the Chief Administrative Officer.¹³⁶ Proposed visitors on parole require additional written approval from their parole agent.¹³⁷ Despite no statutory language clearly distinguishing the two, as a general matter a juvenile adjudication is not considered a "criminal conviction."¹³⁸ Regardless, visitors with juvenile adjudications are advised to contact the specific facility they plan to visit as policies vary by location.

136. ILL. DEP'T CORR., Visitation Rules & Information, *available at* <https://www.illinois.gov/idoc/facilities/Pages/VisitationRules.aspx>.

137. *Id.*

138. *See supra* Question #1.

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Systems Reform in Juvenile Justice

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