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# Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records

A Survey of Law and Policy in  
Delaware, Virginia, North Carolina and Florida

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## **Executive Summary**

This report concentrates on the issue of juvenile delinquency adjudications, the collateral consequences of delinquency adjudications, and the process for expungement of juvenile adjudication records in Delaware, Florida, North Carolina, and Virginia. This report does not address general criminal convictions (which includes youthful offenders treated by the courts as adults), because of the fundamental differences between juvenile adjudications and criminal convictions.

The goal of the juvenile justice system is to reform, not punish, juveniles. This goal gives judges more latitude in fashioning a sentence for juveniles than they would have for an adult. In addition to punishment for the act, judges can require juveniles seek assistance in the form of counseling or treatment. Juvenile court also offers protections in the form of closed hearings and the fact records of the proceedings are not made available to the public. In each of the target states, adjudications are not considered convictions and juveniles are not considered criminals. The consequences of being adjudicated delinquent, while significant, are much less severe than being convicted guilty.

The differences between the adult and juvenile court system is reflected in the expungement process for each. It is generally much easier and relatively quicker to get an adjudication expunged than a conviction. Even so, there are very real consequences to a juvenile adjudication. A juvenile arrest or adjudication can result in an immediate impact on school attendance, driving privileges, and access to public housing. The severity of the impact varies by state but may result in negative consequences in all areas.

As a general rule, schools are notified of juvenile arrests and adjudications by law enforcement agencies. In most instances the school's code of conduct allows the student to be disciplined in school for conduct that occurs outside of school hours and off of school grounds. Discipline can take the form of suspension, expulsion, or alternative school placement, any of which can affect the quality of the student's education and impact access to higher education opportunities.

The impact of the discipline taken by the school continues to affect the student when he applies to colleges. Although the student does not have a criminal conviction (which would require disclosure), many college applications ask for information regarding any disciplinary action taken by a school and require details regarding the incident. Questions like these often lead to the dissemination of otherwise protected information regarding juvenile adjudications.

Public housing authorities can also take action against a juvenile or the family of a juvenile that was arrested or adjudicated delinquent. HUD regulations allow the local housing authority to terminate assistance to the entire family if any member of the household is a participant in drug-related or violent criminal activity. Each local housing authority can enact additional rules and policies of its own. Due to this practice, it is not unusual for an authority to have a rule where the actions of one family member or guest affect all the occupants of a unit. The result is that if a juvenile is arrested or adjudicated his entire family can be evicted from public housing or removed from the Section 8 program.

Non-citizens may experience additional collateral consequences. An arrest or adjudication is not considered a conviction and will not result in automatic deportation. Even so, some local officials take it upon themselves to notify federal authorities when a non-citizen is taken into custody. The adjudication could also come up during the naturalization process and work against the demonstration of good moral character.

None of the four states studied requires administrators of the juvenile justice system to notify juvenile offenders or their guardians of the collateral consequences of juvenile records or of the opportunity to expunge those records. In each of the states, a youth could have many interactions with the administrators of the juvenile courts, including his attorney, and not learn the potential ramifications of juvenile delinquency adjudications or that some relief may be available through the expungement process.

The following chart compares the expungement process in the four target states and looks at what information remains after the expungement:

	<b>Automatic Expungement?</b>	<b>Expungement process</b>	<b>All data destroyed?</b>	<b>Expunged records accessible?</b>
<b>Delaware</b>	No; 3 year waiting period. Exceptions for service in the armed forces and if never adjudicated delinquent.	Submit petition.*	Yes. However, there is a presumption the state may keep a record.	Yes: To law enforcement officers for purposes of investigating felony crimes and applications for employment at law enforcement agencies.
<b>Florida</b>	Yes; at age 24 or 26, depending on crime.	If want to expunge prior to automatic, petition to the court must include a certificate of eligibility from the Dept. of Law Enforcement.*	Record destroyed by all criminal justice agencies with the exception of the Dept. of Law Enforcement, which retains a confidential copy of the record. Agencies can keep a notation that the record was expunged.	Yes, if: Apply for employment with a criminal justice agency, is a defendant in a criminal prosecution, petitions to have records sealed, applies for admission to The Florida Bar, seeks to work with an agency serving children, the disabled, or the elderly, or seeks employment at a seaport.
<b>North Carolina</b>	No; must be 18 years old and at least 18 months past the adjudication.**	Submit petition to the court.* Also provide 2 affidavits from unrelated individuals attesting to person's good character.	No. Fingerprints and photographs are not included in expungement.	Yes: If testifying as a witness, he may be examined regarding expunged record and record may be used for impeachment if testifying in his own defense.
<b>Virginia</b>	Yes; if at least 19 years old and 5 years have passed since last hearing. DMV records destroyed at 29 years old.	If not automatically expunged, can petition the court.	Data in the Central Criminal Records Exchange destroyed. Presumably a record is retained by the state.	Yes: to law enforcement agencies for employment application or pending criminal investigation, if investigation will be jeopardized without access to record.

\* - Copy available in Appendix.

\*\* - In NC, youth are prosecuted as an adult after 16<sup>th</sup> birthday.

There are several key conclusions to draw from the survey of these four states:

- States should implement “Know Your Rights” policies, mandating notification of juveniles of both the scope and impact of potential collateral consequences of delinquency adjudication, as well as providing detailed information regarding the opportunity and process for expunging juvenile records.
- States should adopt policies that provide for the automatic expungement of juvenile adjudication records, with the goal of having such records expunged as early as possible. Many states that currently have automatic expungement delay the process long enough that an individual will likely have already been negatively impacted by the existence of the records by the time of the expungement.
- States should adopt policies and procedures to simplify and expedite the expungement process. Given the general lack of available legal representation to assist with expungement, states should ensure that interested individuals are able to navigate the process independently.
- State Bar Associations, attorneys, law schools and youth advocacy organizations should be encouraged and supported in developing pro bono projects and other programs to provide education around the impacts of juvenile adjudications and direct assistance in pursuing expungement of juvenile records.
- State legislative changes should be pursued to further limit the use, disclosure, or access to juvenile records, especially related to access to higher education. Many college and university applications currently include questions that require the applicant to reveal information that is otherwise protected as a juvenile record.
- Given the fundamental differences between the juvenile and the general criminal justice systems, and the intended protections and inherent rehabilitative nature of the former, additional legislative and judicial changes should be adopted to maximize the opportunities for youth to stay in the juvenile justice systems and not be moved into the criminal courts.

North Carolina, which prosecutes youth sixteen and older as adults, is a pointed example of this final point. There is no chance for individuals to remain in the juvenile justice system after age 16, and the results of this can be devastating. Advocates should seek statutory changes to limit or restrict circumstances which subject youth to be transferred to adult court, including revising age cut-offs.

## Introduction

Collateral consequences of juvenile records can be severe and far reaching. This report analyzes the impacts of juvenile delinquency adjudications for youthful offenders in Delaware, Florida, North Carolina, and Virginia. The policies in each state differ regarding adjudications, possible collateral consequences of such adjudications, and the process for expungement of juvenile delinquency records. In light of these differences, each state is addressed separately.

A common theme among all four states examined however, is that although juvenile delinquency adjudications are not considered criminal convictions, they can have a lasting impact on the youthful offender. Youths with a juvenile record suffer significant hardships and there few laws or policies to mitigate the collateral consequences, which impact education, the ability to keep and to obtain a driver's license, employment, and access to some public benefits.

Typically, juveniles do not learn about these barriers until they experience them directly. Current laws do not require any party in the juvenile justice system to inform juveniles of the possible consequences that result from arrests and juvenile delinquency adjudications.

There is also very little information about expungement provided to affected youth and very little assistance available to assist with the expungement process. Public defenders are not generally available, and as a result individuals must hire private representation or attempt to navigate the process themselves.

Information regarding the frequency of juvenile expungement is not easily obtainable if tracked at all. Anecdotal information indicates very few individuals petition the court for expungement. This is reinforced by the fact few attorneys are involved in expungement and very little case law regarding the process.<sup>1</sup>

In each state some crimes result in juveniles being transferred to adult court and treated as adults. When a juvenile is convicted as an adult the protections associated with the juvenile justice process are lost. In these cases, the arrest and conviction information will be public knowledge. The expungement process for juvenile adjudication records, on which this research is focused, will not apply.<sup>2</sup>

Immigration consequences should also be considered. A juvenile delinquency adjudication is not considered a conviction under federal immigration statutes and therefore should not result in automatic deportation. Although not required, it is the practice of some local officials to notify federal authorities when a non-citizen is taken into custody. The arrest or adjudication of a juvenile could also impact the finding of "good moral character" if the individual seeks citizenship.

For purposes of this analysis, "expungement" generally refers to the expungement of a juvenile adjudication record. In most states there is a separate, and much more restrictive process for the expungement or sealing of adult criminal records. In light of this greater burden, it is even more important that youthful offenders be adjudicated as juveniles if possible.

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<sup>1</sup> Allan E. Komela, Annotation. *Expungement of Juvenile Court Records*, 71 A.L.R.3d 753 (2010).

<sup>2</sup> Convictions requiring registration on the sex offender registry fall into this category. The rules regarding the sex offender registry are complicated. Convictions of this kind are difficult if not impossible to have expunged. Due to that fact, information regarding these types of convictions was not addressed.

## DELAWARE

### Understanding the Justice System

Delaware's three Family Courts have jurisdiction over juvenile delinquency proceedings.<sup>3</sup> Delaware Code ("Code") defines a "delinquent child" as a person less than eighteen years of age who commits an act which, if committed by an adult, would constitute a crime.<sup>4</sup>

Similar to other states, juvenile delinquency adjudication is not considered a conviction and the youths should not be considered criminals.<sup>5</sup> Juvenile delinquency proceedings are not criminal but civil proceedings.<sup>6</sup> The Code states juvenile delinquency proceedings should focus on the interest of the child with the intention to rehabilitate the juvenile.<sup>7</sup>

Delaware Code allows several instances where the state can proceed against the juvenile as an adult.<sup>8</sup> This can occur when the child is charged with a serious felony, is a repeat offender, or when mandated by the General Assembly.<sup>9</sup>

In these specified instances, prior to the case being transferred from Family Court, a preliminary hearing can be requested by either party to determine whether sufficient facts warrant proceeding.<sup>10</sup> If a case is transferred to the Delaware Superior Court or other appropriate court for trial as an adult, there is still a possibility the case could be returned to Family Court.<sup>11</sup> The return to Family Court is considered on a case by case basis.<sup>12</sup> The seriousness of some charges will bar a return of the case to Family Court.<sup>13</sup>

A juvenile can be prosecuted as an adult in several additional situations. One is when he is found not amenable to the Family Court's rehabilitative processes.<sup>14</sup> If the appropriateness of Family Court is questioned, the court will hold a hearing to determine whether the child is or is not amenable to Family Court's rehabilitative processes.<sup>15</sup>

A juvenile is prosecuted as an adult if it has been previously determined that the child is not amenable to the rehabilitative process of Family Court or the child has applied to move a case from Superior Court to Family Court in the past.<sup>16</sup> Each of these instances results in Superior Court having

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<sup>3</sup> DEL. CODE ANN. tit. 10, §§ 921(1), (2), (10) (2010). *See also* Hughes v. State, 653 A.2d 241, 243 (1994) ("Since its inception in 1945, the Family Court has been conferred almost exclusive jurisdiction over those under the age of eighteen charged with violations of State law.").

<sup>4</sup> DEL. CODE ANN. tit. 10, § 901 (2010).

<sup>5</sup> DEL. CODE ANN. tit. § 1009(h) (2010).

<sup>6</sup> *See* Hughes v. State, 653 A.2d 241, 244 (Del. 1994).

<sup>7</sup> DEL. CODE ANN. tit. 10, § 1002 (2010).

<sup>8</sup> *See, e.g.*, DEL. CODE ANN. tit. § 1010 (2010).

<sup>9</sup> DEL. CODE ANN. tit. § 1010(a) (2010).

<sup>10</sup> DEL. CODE ANN. tit. 10, § 1010(b) (2010).

<sup>11</sup> *Id.*

<sup>12</sup> DEL. CODE ANN. tit. 10, § 1011(a) (2010).

<sup>13</sup> DEL. CODE ANN. tit. 11, § 1447 (2010).

<sup>14</sup> DEL. CODE ANN. tit. 10, § 1010(a)(2) (2010).

<sup>15</sup> DEL. CODE ANN. tit. 10, § 1010(c)(2) (2010).

<sup>16</sup> DEL. CODE ANN. tit. 10, § 1010(c)(3) (2010).



jurisdiction over the individual in all future cases. The final situation is when a child over fifteen years old is charged with a felony-level offense while attempting to escape from certain juvenile facilities.<sup>17</sup> In each situation a hearing is held to determine whether to transfer the case to Superior Court.<sup>18</sup>

### **Notification of Collateral Consequences of Juvenile Records**

The Delaware Code does not require administrators of the juvenile justice system to notify juvenile offenders or their guardians of any collateral consequences of juvenile records or the opportunity for expungement of those records. A youth could have many interactions with the juvenile court administrators, including his attorney, and not learn the potential ramifications of juvenile delinquency adjudication or that some relief may be available through the expungement process.

### **Treatment of Juvenile Delinquency Records**

Although Delaware Code indicates that juvenile delinquency adjudications are not convictions, the records for children are treated similarly to those of an adult. Under Delaware Code, the Family Court or pertinent law enforcement entity will release the name and address of the youth and the name of the youth's parents for a felony-level offense, when a child, regardless of age, is arrested, convicted, or acquitted, or for Class A misdemeanors, for a child aged thirteen to seventeen who is arrested, convicted, or acquitted, upon request by the media.<sup>19</sup>

In Delaware, criminal history record information includes findings of juvenile delinquency and adult criminal information.<sup>20</sup> This means that information regarding juvenile delinquency adjudications falls under the rules concerning dissemination of criminal history record information.<sup>21</sup>

The State Bureau of Identification stores criminal history records information, which includes various data about arrests, charges, and dispositions of cases.<sup>22</sup> The Code indicates that criminal records are closed to public scrutiny<sup>23</sup> but there are defined exceptions outlining when the State Bureau of Identification may release criminal history record information (CHRI) and what information can be disseminated to the indicated entities.<sup>24</sup> Entities that could be allowed to access CHRI include criminal justice agencies, individuals with a personal record, attorneys and state public defenders, and entities authorized by law, including researchers, media, and governmental agencies with user agreements allowing access or with statutory mandate. The broad exceptions to the rule allow a great number of people access to juvenile delinquency adjudication records.

### **Sealing and Expunging Juvenile Delinquency Records**

Juveniles who were adjudicated delinquent or charged with delinquency may attempt to have their arrest records and criminal history information expunged by petitioning Family Court. Delaware Code states that the expungement of a juvenile record results in destruction of the entire file including

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<sup>17</sup> DEL. CODE ANN. tit. 10, § 1010(e) (2010).

<sup>18</sup> *Id.*

<sup>19</sup> DEL. CODE ANN. tit. 10, § 1063(b) (2010).

<sup>20</sup> DEL. CODE ANN. tit. 11, § 8502(4) (2010); DEL. CODE ANN. tit. 11, § 8602(2) (2010); DEL. CODE ANN. tit. 11, § 8502(7) (2010); DEL. CODE ANN. tit. 11, § 8602(4) (2010).

<sup>21</sup> *See generally* DEL. CODE ANN. tit. 11, § 8513 (2010).

<sup>22</sup> *Id.*

<sup>23</sup> DEL. CODE ANN. tit. 29, § 10002(g)(4) (2010).

<sup>24</sup> *See generally* DEL. CODE ANN. tit. 11, § 8513 (2010).

fingerprints and photographs.<sup>25</sup> Discretion remains with the courts to determine if they will grant the petition.

Expungement of a juvenile record is allowed in two situations. The first situation is when three years have passed from the date of the delinquency adjudication, and there have been no additional adjudications against the youth.<sup>26</sup> Subsequent adult offenses could be considered a subsequent adjudication and bar the expungement of juvenile record.<sup>27</sup> The second situation is when the youth was charged or arrested but the charges were dismissed, dropped, disposed of through arbitration, or otherwise disposed of without the child being adjudicated delinquent.<sup>28</sup>

Not all juvenile records can be considered for expungement. The Delaware Code does not allow the expungement of juvenile delinquency records of adjudications for second degree murder, first degree arson, or first degree burglary.<sup>29</sup>

A person seeking to expunge their record must obtain private representation or represent themselves as the Delaware Public Defender's Office does not represent juvenile expungement cases.

A person with a juvenile adjudication record generally must wait three years before bringing a juvenile expungement petition, provided that the juvenile has not had a subsequent adjudication.<sup>30</sup> The three year waiting period is waived if the individual is seeking the expungement in order to enlist in the U.S. armed forces.<sup>31</sup> The waiting period also does not apply if the charges brought did not result in the individual being adjudicated delinquent.<sup>32</sup> A sample petition for expungement of a juvenile record can be found on the Delaware Family Court website and is included in the Appendix.<sup>33</sup>

The Delaware Code provides judges with guidance on determining whether to grant petitions for expungement. The Code indicates if there is no objection and no reason not to grant the expungement, it may be granted.<sup>34</sup> In cases in which juveniles were not adjudicated delinquent, the judge should consider the best interest of the child and the State when making the determination regarding the petition.<sup>35</sup> A judge may consider many factors, including the seriousness of the juvenile offense, any psychological evaluations of the petitioner, the petitioner's age at the time of the juvenile offense, and the petitioner's reason for requesting the expungement.<sup>36</sup>

Statutory language indicates that an expunged record will be completely destroyed and therefore not be available for access.<sup>37</sup> Nevertheless, the Delaware Code addresses the when expunged criminal

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<sup>25</sup> DEL. CODE ANN. tit. 10, § 1001(a) (2010). See also DEL. CODE ANN. tit. 10, § 1001(b) (2010).

<sup>26</sup> DEL. CODE ANN. tit. 10, § 1001(a) (2010).

<sup>27</sup> *Diaz v. State*, 2010 WL 1028725, at \*1 (Del. 2010).

<sup>28</sup> DEL. CODE ANN. tit. 10, § 1001(b) (2010).

<sup>29</sup> DEL. CODE ANN. tit. 10, § 1001(c) (2010).

<sup>30</sup> DEL. CODE ANN. tit. 10, § 1001(a) (2010).

<sup>31</sup> *Id.*

<sup>32</sup> DEL. CODE ANN. tit. 10, § 1001(b) (2010).

<sup>33</sup> The Family Court of the State of Delaware, *Form 282: Petition for Expungement of Juvenile Record*, available at <http://courts.delaware.gov/forms/download.aspx?ID=387>.

<sup>34</sup> DEL. CODE ANN. tit. 10 § 1001(c) (2010).

<sup>35</sup> DEL. CODE ANN. tit. 10, § 1001(b) (2010).

<sup>36</sup> See e.g., *State v. Fisher*, 901 A.2d 120 (Del. 2006); *In the interest of A.W.M.*, 2005 WL 3662341 (Del. Fam. Ct. 2005).

records may be disclosed. The rules permit disclosure of expunged records to law enforcement officers for the purposes of investigating felony crimes and applications for law enforcement agencies.<sup>38</sup> It is unclear if this provision relates to expunged juvenile delinquency records as well. Juvenile records are not considered criminal records by definition and so may not be included in this exception.<sup>39</sup> Currently there is not a statute or case law that directly addresses the issue, but one may conclude that the state retains at least one copy of the expunged record.

### **Employment Opportunities**

Juvenile delinquency adjudication information may be accessed by certain entities for employment purposes. There are broad rules in the Delaware Code outlining when the State Bureau of Identification may distribute CHRI and what information it can distribute.<sup>40</sup> Juvenile delinquency adjudications fall within the Code's definition of CHRI.<sup>41</sup> The specific circumstances in which the Bureau is permitted to distribute certain CHRI for employment purposes vary depending on the type of employment.

Employers without a statutory mandate for criminal history information are not likely to be able to obtain juvenile delinquency adjudication information. Delaware Code states the Bureau may provide information pertaining to the identification and conviction data of any person to agencies and individuals for the purpose of employment."<sup>42</sup> As discussed previously, juvenile delinquency adjudications are not considered convictions so the information should not be released pursuant to this Code provision.<sup>43</sup>

The policy is different for employment in professions with a statutory mandate for criminal history record information. For these entities, the Bureau may forward a report of the individual's entire criminal history record information when the individual is seeking employment or licensure in a field in which it is statutorily required.<sup>44</sup> The entity must properly request the information and include a copy of the individual's fingerprints as well as other required information.<sup>45</sup>

A broad range of categories of employment mandate disclosure of the applicant's entire criminal history record, including public school employment,<sup>46</sup> child care employment,<sup>47</sup> employment in a nursing

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<sup>37</sup> The Code describes the relief available for juvenile expungement petitions as follows:

- DEL. CODE ANN. tit. 10, § 1001(a) (2010): [A]n order directing an expunging from the records of all evidence of such adjudication upon the status of any such child and the *destruction* of all indicia of arrest including fingerprints and photographs . . ." (This Code language is included in the discussion of no-subsequent-adjudication cases.)
- DEL. CODE ANN. tit. 10, § 1001(c) (2010): "[A]n order may be granted directing the Clerk of the Court to expunge from the records all evidence of such adjudication . . . further directing that all indicia of arrest including fingerprints and photographs be *destroyed*."

In addition, the sample petition on the Family Court of the State Delaware website lists relief that a petitioner can request of the Court. This includes: "indicia of arrest, fingerprints, photographs and police records..." (Family Court of the State of Delaware, Petition for Expungement of Juvenile Record, <http://courts.delaware.gov/forms/download.aspx?ID=387> (last visited October 19, 2010).)

<sup>38</sup> DEL. CODE ANN. tit. 11, § 4376(b) (2010).

<sup>39</sup> DEL. CODE ANN. tit. 10, § 1009(h) (2010).

<sup>40</sup> See generally DEL. CODE ANN. tit. 11, § 8513 (2010).

<sup>41</sup> DEL. CODE ANN. tit. 11, § 8502(4) (2010); DEL. CODE ANN. tit. 11, § 8602(2) (2010); Del. CODE. ANN. tit. 11, § 8502(7) (2010); DEL. CODE ANN. tit. 11, § 8602(4) (2010).

<sup>42</sup> DEL. CODE ANN. tit. 11, § 8513(c) (2010).

<sup>43</sup> DEL. CODE ANN. tit. 10, § 1009(h) (2010).

<sup>44</sup> DEL. CODE ANN. tit. 11, § 8527(a) (2010).

<sup>45</sup> *Id.*

<sup>46</sup> DEL. CODE ANN. tit. 11, § 8571(a) (2010).

home or similar facility,<sup>48</sup> and employment with home health service provider.<sup>49</sup> Applications for licenses and certifications which require a check of the applicant's entire criminal history record include a nursing license,<sup>50</sup> a nursing home administrator license,<sup>51</sup> an ambulance attendant and emergency medical technician certification,<sup>52</sup> or an emergency medical technician-paramedic certification.<sup>53</sup>

When completing applications for jobs and licenses, juveniles should answer truthfully, keeping in mind that juvenile delinquency adjudications are not considered convictions.<sup>54</sup> This allows an individual to truthfully answer they do not have prior criminal convictions. As previously noted however, depending on the situation, the entity may be able to access the individual's entire criminal history record information which could contain information regarding juvenile delinquency adjudications.

### **Collateral Consequences Affecting Elementary & Secondary Education Students**

Juvenile delinquency charges, adjudications, criminal charges, or convictions can affect an individual's elementary or secondary education. The consequences may vary depending on whether the incident precipitating the charges occurred on or off school grounds.

Crimes committed on school grounds can have immediate consequences. If police find probable cause to believe a child committed a crime at school the student must be immediately suspended and referred to alternative services.<sup>55</sup> This includes holding a parent conference to review the child's placement and determination of the appropriate nature and duration of alternative services. Crimes considered felonies, misdemeanors, or violations trigger this response, as well as conduct which would be considered a felony, misdemeanor, or violation if it had been committed by an adult.<sup>56</sup> A youth found with a weapon in a safe school and recreation zone must be expelled for a minimum of 180 days although this may be modified by the local school board on a case-by-case basis.<sup>57</sup>

Conduct that occurs off school grounds can also be considered for disciplinary action by school officials if the act threatens the health and safety of those in school.<sup>58</sup> Schools have been allowed to discipline students for off school drug purchases and acts which could be interpreted as threatening students.<sup>59</sup>

Many times schools find out about students' out of school crimes through the Delaware Attorney General (AG). The AG reports any serious crimes committed off school grounds directly to school

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<sup>47</sup> DEL. CODE ANN. tit. 31, § 309(d) (2010).

<sup>48</sup> DEL. CODE ANN. tit 16, § 1141(c) (2010); DEL. CODE ANN. tit 16, § 1141(h) (2010).

<sup>49</sup> DEL. CODE ANN. tit. 16, § 122(o)(6) (2010).

<sup>50</sup> DEL. CODE ANN. tit. 24, § 1928 (2010); DEL. CODE ANN. tit. 24, § 1929 (2010).

<sup>51</sup> DEL. CODE ANN. tit. 24, § 5208(a) (2010).

<sup>52</sup> DEL. CODE ANN. tit. 16, § 6712 (a) (2010).

<sup>53</sup> DEL. CODE ANN. tit. 16, § 9809A(a) (2010).

<sup>54</sup> DEL. CODE ANN. tit. 10, § 1009(h) (2010).

<sup>55</sup> DEL. CODE ANN. tit. 14, § 4112(d)(1). (2010).

<sup>56</sup> DEL. CODE ANN. tit. 14, § 4112(a)(1) (2010).

<sup>57</sup> DEL. CODE ANN. tit. 11, § 1457(j)(5) (2010).

<sup>58</sup> CHARLES RUSSO, REUTTER'S LAW OF PUBLIC EDUCATION, 740 (2004).

<sup>59</sup> See, e.g., *Colonial School District, Student Code of Conduct, Student/Parent Responsibilities & Rights, 2009-2010*, 4, <http://www.colonial.k12.de.us/docs/code%20of%20conduct%202009-2010%20ENGLISH%20for%20pdf.pdf> (last visited October 21, 2010); *Laurel School District, Handbook of Regulations, Rights, and Responsibilities, 2009-2010*, 14, [http://www.laurel.k12.de.us/board/09-10\\_Handbook\\_of\\_Regs.pdf](http://www.laurel.k12.de.us/board/09-10_Handbook_of_Regs.pdf) (last visited October 21, 2010).

superintendents.<sup>60</sup> Some schools indicate in their student code of conduct that these off school crimes will be subject to the same disciplinary actions as crimes committed on school grounds.<sup>61</sup>

Students wishing to challenge their punishment must appeal to the local school board, which has the authority to review any controversies relating to student suspensions or expulsions.<sup>62</sup> Students may then appeal the decision to the Delaware State Board of Education. It is more difficult for a student to get relief at this level as the state board will overturn the local board's decision only if it was "contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary or capricious."<sup>63</sup>

Access to state higher education can be negatively affected by juvenile delinquency adjudications as well. Several applications for state higher education in Delaware request information about the applicant's criminal history. If the application inquires about convictions, individuals do not need to indicate information regarding juvenile delinquency adjudications. However, information regarding adjudications is sometimes disclosed nonetheless, through application questions regarding school discipline.

Both Delaware State University<sup>64</sup> and University of Delaware<sup>65</sup> inquire as to if the applicant has ever been suspended or expelled from school. If the applicant answers affirmatively, he must provide the dates and specific circumstances of each incident. Candidly fulfilling this requirement could result in disclosing information regarding a juvenile arrest or adjudication.

### **Collateral Consequences to Public Benefits & Privileges**

Several public benefits and privileges can be negatively affected by adjudications. The privilege of obtaining or keeping a driver's license may be directly and quickly impacted. Other consequences, such as potential issues with becoming a foster parent or adopting, could arise many years later.

Obtaining or keeping a driving license or permit may be severely impacted by a juvenile delinquency adjudication. Upon adjudicating a juvenile delinquent, Delaware code allows the Family Court to order the Motor Vehicle Division of the Department of Transportation to revoke or suspend the individual's driving privileges, postpone the individual's eligibility to obtain driving privileges, or attach all traffic, alcohol, and/or drug adjudications on the individual's driving record for up to four years.<sup>66</sup>

If the youth is adjudicated delinquent for driving under the influence (DUI), Family Court is required to revoke or suspend the child's driving privileges until the youth turns twenty-one.<sup>67</sup> There is one exception to this revocation or suspension. If after six months the individual completes a

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<sup>60</sup> Delaware Attorney General website, <http://attorneygeneral.delaware.gov/schools/campfelon.shtml> (last visited June 20, 2010).

<sup>61</sup> Christina School District, *Student Code of Conduct, Student Rights and Responsibilities, Grades Kindergarten through 12th, School Year 2009-2010*, 61, <http://www.christina.k12.de.us/CodeOfConduct/0910/pdf/EN.pdf> (last visited October 21, 2010).

<sup>62</sup> DEL. CODE ANN. tit. 14, § 1058 (2010).

<sup>63</sup> *Id.*

<sup>64</sup> Delaware State University, *Application for Undergraduate Admission*, 4, [http://www.desu.edu/sites/default/files/ug\\_admission\\_app.pdf](http://www.desu.edu/sites/default/files/ug_admission_app.pdf) (last visited October 21, 2010).

<sup>65</sup> University of Delaware, *2010 Freshman Application for Undergraduate Admission*, 6, <http://www.udel.edu/admissions/pdf/Application2010-fnl.pdf> (last visited October 21, 2010).

<sup>66</sup> DEL. CODE ANN. tit. 10, § 1009(c)(12). (2010).

<sup>67</sup> DEL. CODE ANN. tit. 10, § 1009(f) (2010).

rehabilitation and education course and is able to show a critical need for the driving privileges, the court may grant restricted driving privileges.<sup>68</sup>

Juveniles adjudicated delinquent for driving without a license will not be able to obtain a driver's permit or a driver's license until one year from the date of the adjudication or until the juvenile turns seventeen, whichever is later.<sup>69</sup>

Under the Delaware Code, an investigation must be conducted into any individual interested in becoming prospective adoptive and foster parents.<sup>70</sup> The Delaware Department of Services for Children, Youth and their Families determines the suitability of prospective parents after reviewing their entire criminal history record, which could include juvenile delinquency adjudications.<sup>71</sup> Under Delaware regulations, any convictions for sexually-related offenses or offenses against children are a bar to adoption.<sup>72</sup>

Perhaps most significantly, an individual with a juvenile record can disqualify his household from public housing. The local housing authorities are required to screen applicants for federally assisted housing, including performing a criminal history background check.<sup>73</sup> Federally assisted housing bans anyone from admission who is subject to a lifetime sex offender registration requirement.<sup>74</sup>

Local housing authorities may also prohibit admission to public housing or Section 8 subsidy programs if any household member has, or is currently engaged in, drug-related or violent criminal activity or criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.<sup>75</sup> The local housing authority only has the ability to obtain adult criminal conviction records.<sup>76</sup> The housing authority is unlikely to access juvenile records as they may only be obtained by court order.<sup>77</sup>

A juvenile already living in public housing that is arrested or adjudicated could terminate the family's participation in the public housing or Section 8 subsidy program. Public housing authorities have the right to evict families of delinquent children if the household member engages in criminal activity that is violent, drug-related, or "threatens the health, safety or right to peaceful enjoyment of other residents and persons" living within the vicinity of the premises.<sup>78</sup> This applies regardless of where the delinquent conduct occurs and it does not matter if the other tenants had knowledge of the activity.<sup>79</sup>

**NOTE:** the above-described collateral consequences related to public housing are based on HUD regulations, and thus apply equally in all the states discussed in this report. While there may be minor variation in the specific enforcement protocols utilized by local housing authorities subject to these regulations, these critical impacts will not be restated for each state subsequently discussed.

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<sup>68</sup> DEL. CODE ANN. tit. 10, § 1009(f)(1) (2010).

<sup>69</sup> DEL. CODE ANN. tit. 10, § 1009(g) (2010).

<sup>70</sup> See generally DEL. CODE ANN. tit. 13, § 904(e) (2010); DEL. CODE ANN. tit. 13, § 912(b)(2) (2010).

<sup>71</sup> DEL. CODE ANN. tit. 31, § 309(d) (2010).

<sup>72</sup> 9-300-301 Del. Reg. § 6.0 (2010).

<sup>73</sup> 24 C.F.R. § 5.903(a) (2010); 24 C.F.R. § 960.204(a)(4) (2010).

<sup>74</sup> 24 C.F.R. § 5.856 (2010).

<sup>75</sup> 24 C.F.R. § 960.203(c) (2010); 24 C.F.R. § 960.204 (2010); 24 C.F.R. § 982.307 (2010).

<sup>76</sup> 42 U.S.C.A. § 1437d(q)(1) (West 2010); 42 U.S.C.A. § 1437d(s) (West 2010); 24 C.F.R. § 5.903 (2010).

<sup>77</sup> 42 U.S.C.A. § 1437d(q)(1)(C) (West 2010); see "Treatment of Juvenile Records" discussion *supra*.

<sup>78</sup> 42 U.S.C.A. § 1437d(l)(6) (West 2010); 24 C.F.R. § 966.4(l)(5)(iii) (2010); 24 C.F.R. § 982.551(l) (2010); 24 C.F.R. § 982.552(c)(1)(i) (2010); 24 C.F.R. § 982.553(b) (2010).

<sup>79</sup> *Id.*

## VIRGINIA

### Understanding the Justice System

Virginia criminal offenders are considered juveniles if the offender is under 18 years old at the time of the offense.<sup>80</sup> Virginia's Juvenile and Domestic Relations District Courts (JDR courts) handle the juvenile cases. The JDR courts are broken up into jurisdictions by county or city.<sup>81</sup> The JDR court may sentence an individual over eighteen years old for a crime committed prior to the individual's eighteenth birthday. In such cases the court may impose the sentence applicable to adults for such violations, but it may not exceed the sentence for a Class 1 misdemeanor.<sup>82</sup> If an individual turns twenty-one years old and prosecution for a juvenile offense has not occurred, the individuals will be tried as an adult.<sup>83</sup>

Virginia Code defines a "delinquent child" as a child who has committed a delinquent act, or an adult who has committed a delinquent act prior to his eighteenth birthday, unless the juvenile court has terminated jurisdiction by transferring the case to circuit court.<sup>84</sup> A "delinquent act" is defined as the commission of any act designated a crime under the law of the Commonwealth, federal law, or an ordinance of any city, county, town, or service district, including some violations of a court order, and transportation or possession by a juvenile of a firearm.<sup>85</sup> Proceedings against juveniles in the JDR courts are civil, not criminal.<sup>86</sup> Virginia Code indicates that a finding of delinquency does not impose the civil disabilities ordinarily imposed by conviction for a crime.<sup>87</sup> Although not considered a criminal conviction, there are serious collateral consequences to a juvenile adjudication.

In some cases juveniles can be tried as adults in circuit court. There are four prerequisites that must be met before a case is eligible for transfer: the youth must be at least fourteen years old at the time of the offense,<sup>88</sup> adequate notice of the charges must be provided to the youth and his parents,<sup>89</sup> the juvenile court judge or grand jury must find probable cause that the youth committed the offense,<sup>90</sup> and the youth must be competent to stand trial.<sup>91</sup> Competency is presumed but can be challenged in JDR court before the case is transferred to circuit court.<sup>92</sup>

Virginia Code lists several ways for a juvenile to be transferred from JDR court to circuit court. These are legislative certification, prosecutorial certification, judicial discretion transfer, direct indictment, and waiver of juvenile court jurisdiction.

Legislative Certification occurs when a juvenile is charged with one of the acts the state has identified for transfer to circuit court: capital murder, first or second degree murder, murder by lynching, or aggravated malicious wounding.<sup>93</sup> The juvenile has a preliminary hearing in JDR court to determine if

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<sup>80</sup> VA. CODE ANN. §16.1-228(6).

<sup>81</sup> VA. CODE ANN.. §16.1-228, 241.

<sup>82</sup> VA. CODE ANN. §16.1-284.

<sup>83</sup> VA. CODE ANN. §16.1-241, 242.

<sup>84</sup> VA. CODE ANN. §16.1-228.

<sup>85</sup> *Id.*

<sup>86</sup> *Lewis v. Commonwealth*, 214 Va. 150, 153, 198 S.E.2d 629, 632 (1973).

<sup>87</sup> VA. CODE ANN.. §16.1-308.

<sup>88</sup> VA. CODE ANN. §16.1-269.1.

<sup>89</sup> VA. CODE ANN. §16.1-263, 264.

<sup>90</sup> VA. CODE ANN. §16.1-269.1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

the four prerequisites for transfer have been met.<sup>94</sup> If the prerequisites are met, the juvenile is automatically certified and the case sent to circuit court for the juvenile to be treated as an adult.

Prosecutorial Certification occurs if the juvenile is charged with one of many applicable felonies. The prosecutor can request a preliminary hearing in JDR court. If the four prerequisites for transfer are met and probable cause is found, the case is certified to circuit court.<sup>95</sup>

Judicial Discretion Transfer applies for any crime that does not fall under the prior two categories but would be considered a felony if committed by an adult. The prosecutor asks the JDR court judge to transfer the juvenile to circuit court.<sup>96</sup> A report is submitted to the judge indicating factors he must consider, including age, seriousness or offense, prior juvenile record, mental capacity, and a recommendation from the probation officer regarding whether the case should be transferred.<sup>97</sup>

A full hearing is held in JDR court with evidence from both sides.<sup>98</sup> After the hearing, a judge determines if the case should remain in juvenile court or be transferred to circuit court.<sup>99</sup> Transfer decisions made at the discretion of the JDR court may be appealed.<sup>100</sup>

Virginia Code allows the attorney for the Commonwealth to seek direct indictment in the circuit court on the offense if the juvenile court does not find probable cause. This option is a bypass to the judge's ruling in the judicial discretion transfer.<sup>101</sup>

The final way a case can be transferred from JDR court to circuit court is if the juvenile waives juvenile court jurisdiction. This can be done if the juvenile is at least fourteen years old, charged with an offense that would be a felony if committed by an adult and he has the written consent of counsel.<sup>102</sup>

If a juvenile's case is transferred to circuit court, he is tried in the same manner as adults but may be sentenced by the judge instead of a jury.<sup>103</sup> Judges may sentence youth transferred to circuit court to either juvenile or adult sentences.<sup>104</sup> Virginia Code indicates that if the juvenile is convicted in circuit court, the JDR court shall not have jurisdiction over any subsequent offenses committed by that juvenile or any pending allegations of delinquency that had not been disposed of by the juvenile court at the time of the criminal conviction. If the juvenile is not convicted in circuit court, jurisdiction over that juvenile is returned to the juvenile court for any future alleged delinquent or criminal behavior.

### **Notification of Collateral Consequences of Juvenile Records**

The Virginia Code does not require administrators of the juvenile justice system to notify juvenile offenders or their guardians of the collateral consequences of juvenile records. A youth could have many

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<sup>94</sup> Robert E. Shepherd, Jr., *Legal Issues Involving Children*, 30 U. RICH. L. REV. 1467, 1477 (1996).

<sup>95</sup> VA. CODE ANN. §16.1-269.1(D).

<sup>96</sup> VA. CODE ANN. § 16.1-269.1(A).

<sup>97</sup> The transfer report provides details related to each of the factors courts must consider under VA. CODE ANN. § 16.1-269.1(A).

<sup>98</sup> *Id.*

<sup>99</sup> VA. CODE ANN. §16.1-269.1(A)(4).

<sup>100</sup> Shepherd. *supra* note 94, at 1477.

<sup>101</sup> *Id.*

<sup>102</sup> VA. CODE ANN. §16.1-270.

<sup>103</sup> VA. CODE ANN. §16.1-272(A).

<sup>104</sup> *Id.*



interactions with juvenile court administrators, including his attorney, and not learn the ramifications of a juvenile adjudication.

Most juvenile records in Virginia are automatically expunged after a period of time has passed. For those records that are not automatically expunged, there is no requirement to inform the juvenile offenders or their guardians of the opportunity to apply for expungement of those records.

A defendant must know the direct consequences of a guilty plea in order to enter a knowing and voluntary guilty plea.<sup>105</sup> “Direct consequences are defined as “those having a ‘definite, immediate and largely automatic effect on the range of the defendant’s punishment.’”<sup>106</sup> Conversely, there is no requirement to notify the juvenile of any collateral consequences even in order to enter a guilty plea in a delinquency adjudication.

### **Treatment of Juvenile Delinquency Records**

In some cases, prior juvenile adjudications can trigger harsher punishments in sentencing for circuit court convictions. Under Virginia Code some juvenile adjudications are considered during sentencing for later criminal convictions. Specifically, the penalty for driving while intoxicated with a prior conviction<sup>107</sup> and possession of firearms by a convicted felon, both can include consideration of juvenile adjudications.<sup>108</sup>

Harsher sentencing can also apply through the discretionary sentencing guidelines. Virginia Code indicates that “previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.”<sup>109</sup> The Code allows juries to also consider juvenile records in sentencing by mandating that the prosecutor present the defendant’s prior criminal history including juvenile adjudications.<sup>110</sup>

The collection of DNA, fingerprints, and photographs is another collateral consequence of having a juvenile record. DNA is routinely collected for felonies and felony-type offenses. DNA samples must be given by any juvenile fourteen years old or older who is adjudicated delinquent of a crime that would be a felony if committed by an adult.<sup>111</sup> The DNA is stored by the Department of Forensic Science for the same time and manner that adult samples are stored.<sup>112</sup>

Fingerprints and photographs are also collected for felony and felony-type offenses. Virginia’s Central Criminal Records Exchange (CCRE) maintains reports on all felonies, felony-type offenses, and most Class 1 and 2 misdemeanors.<sup>113</sup> Whether a report is required to be made to CCRE depends on the crime, not the age of the offender. Juveniles adjudicated delinquent of an offense that requires the CCRE

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<sup>105</sup> *Brady v. United States*, 397 U.S. 742, 748, 755 (1970); *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365 (4<sup>th</sup> Cir. 1973).

<sup>106</sup> *Bryant v. Cherry*, 687 F.2d 48, 50 (4<sup>th</sup> Cir. 1982), quoting *Cuthrell*, (475 F.2d at 1366).

<sup>107</sup> VA. CODE ANN. §18.2-270.

<sup>108</sup> VA. CODE ANN. § 18.2-308.2.

<sup>109</sup> VA. CODE ANN. § 17.1-805.

<sup>110</sup> VA. CODE ANN. § 19.2-295.1.

<sup>111</sup> VA. CODE ANN. § 16.1-299.1.

<sup>112</sup> *Id.*

<sup>113</sup> VA. CODE ANN. §16.1-299(B). Subsection C of §19.2-390 of the Virginia’s code lists the offenses requiring reports to the CCRE.

to maintain a report must have a report made regardless of the juvenile's age.<sup>114</sup> The reports contain copies of fingerprints and information regarding the disposition of the case among other information.<sup>115</sup>

CCRE maintains juvenile records separately from the adult records. Records containing the fingerprints and photographs of juveniles must be destroyed after sixty days if a petition or warrant is not filed.<sup>116</sup> Additionally, if a juvenile is found not guilty of the offense or if the case results in a disposition that does not require the records, CCRE must destroy the records within six months.<sup>117</sup>

In some cases a juveniles' arrest data could be made public. Generally, juvenile law enforcement records are open to the public only when the child is at least fourteen years old and has been charged with a violent juvenile felony.<sup>118</sup> All other juvenile law enforcement records are not open to the public and must be maintained in a confidential manner to prevent them from being disclosed.<sup>119</sup>

A chief of police or sheriff may share information regarding juvenile suspects or charges against a juvenile with a school principal but if he chooses to do so, he has a duty to also inform the school principal of the final disposition of the case.<sup>120</sup>

JDR Court maintains paper and electronic files for all juvenile offenders in their independent database system in addition to the files maintained at each courthouse.<sup>121</sup> It is difficult to determine who can access juvenile arrest and court records as the law frequently changes. The legislature of Virginia often takes up the issue the confidentiality of juvenile records. To determine the current state of the law, check the Virginia Code for exceptions to the confidentiality of juvenile records.

In general, juvenile court files are considered confidential and access to the files is limited.<sup>122</sup> Virginia statutes identify specific entities that may access juvenile court records including: the parties to the proceedings and their attorneys;<sup>123</sup> the judge, probation officers and court staff involved in the hearing;<sup>124</sup> any agency providing services for a juvenile that is ordered or requested by the court;<sup>125</sup> any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court;<sup>126</sup> any attorney for the Commonwealth, local pretrial services or community-based probation officer, or state adult probation or parole officer for the strictly limited purposes of preparing a pretrial investigation report, presentence report, discretionary sentencing guidelines worksheets, post-sentence investigation report, or preparing for any transfer or sentencing hearing;<sup>127</sup> and the Office of the Attorney General, for all criminal justice activities otherwise permitted.<sup>128</sup>

Once a final disposition has been made, the clerk of the court is required to notify the superintendent of schools of the outcome of the case. The superintendent is also allowed to request

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> VA. CODE ANN. §16.1-299(C).

<sup>117</sup> *Id.*

<sup>118</sup> VA. CODE ANN. § 16.1-301(A).

<sup>119</sup> *Id.*

<sup>120</sup> VA. CODE ANN. § 16.1-301(B).

<sup>121</sup> VA. CODE ANN. §16.1-305(A)(5).

<sup>122</sup> VA. CODE ANN. §16.1-300, -302, -305.

<sup>123</sup> VA. CODE ANN. §16.1-305 (A)(3).

<sup>124</sup> VA. CODE ANN. § 16.1-305(A)(1).

<sup>125</sup> VA. CODE ANN. § 16.1-305(A)(2).

<sup>126</sup> VA. CODE ANN. § 16.1-305(A)(4).

<sup>127</sup> VA. CODE ANN. § 16.1-305(A)(5).

<sup>128</sup> VA. CODE ANN. § 16.1-305(A).

additional information regarding the case including terms of release from detention, court dates, and terms of any disposition orders entered by the court.<sup>129</sup> The release of this information does not violate existing confidentiality provisions.<sup>130</sup>

### **Expunging Delinquency Files or Records**

Virginia has an automatic process whereby the court records of juvenile proceedings are automatically destroyed if the juvenile is nineteen years old or older and five years have passed since the last hearing in any case involving the juvenile.<sup>131</sup> Records reported to the Department of Motor Vehicles are destroyed automatically when the juvenile reaches twenty-nine years old.<sup>132</sup> The automatic destruction of records pertains only to cases where the individual was tried as a juvenile; automatic destruction does not occur if the juvenile was fourteen years of age or older and found guilty of a felony delinquent act or is found guilty of a felony in circuit court.<sup>133</sup> If the juvenile is convicted of a felony or adjudicated delinquent for an act that requires a report to the CCRE, there is no automatic expungement of the juvenile record in the CCRE.<sup>134</sup>

If a person's juvenile record does not fall into the categories of those automatically destroyed, the person may petition the court to have juvenile records expunged. Expungement will be considered only if the individual was acquitted, in the case of a *nolle prosequi* (decision to cease further prosecution), or the charges were "otherwise dismissed."<sup>135</sup> Furthermore, under these limited circumstances, a person seeking expungement need not wait five years. The court shall enter the order of expungement if the petitioner has no prior criminal record and the arrest was for a misdemeanor unless good cause is shown by the Commonwealth why the motion should not be granted. In all other situations, the court must deny the petition, with the exception of a finding by the court "that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner."<sup>136</sup>

There is limited access to an expunged record. A court may review the expunged record "upon a verified petition filed by the attorney for the Commonwealth alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record."<sup>137</sup> No other access to the expunged record is authorized.

By law applicants cannot be required by employers, educational institutions, or state and local government officials to disclose information regarding an expunged record on an application for employment, admission, licensure, permitting, registration, or for any other government services.<sup>138</sup> Virginia Code goes on to state that, "an applicant need not, in answer to any question concerning any

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<sup>129</sup> Virginia Acts of Assembly, 2010 Session, Chapter 525, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0525+pdf>.

<sup>130</sup> *Id.*

<sup>131</sup> VA. CODE ANN. §16.1-306(A).

<sup>132</sup> *Id.*

<sup>133</sup> VA. CODE ANN. §16.1-307; 1993 Va. Op. Atty. Gen. 101.

<sup>134</sup> VA. CODE ANN. § 16.1-299.

<sup>135</sup> VA. CODE ANN. §19.2-392.2(A).

<sup>136</sup> VA. CODE ANN. §19.2-392.2(F).

<sup>137</sup> *Id.*

<sup>138</sup> VA. CODE ANN. §19.2-392.4(A).

arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.”<sup>139</sup>

Once a record is expunged, the individual is afforded protections to keep information regarding the adjudication from being disclosed. A significant problem with the automatic expungement process however, is that it comes too late for many people. By the time the record is expunged the individual’s life has often been negatively impacted by the existence of the juvenile delinquency record. An individual likely has applied to colleges or sought employment prior to having the record expunged. In many instances, information regarding the juvenile adjudication may have been disclosed on applications.

### **Employment Opportunities**

In general, access to juvenile records is limited and could not be accessed by an employer.<sup>140</sup> Juvenile adjudications are not considered criminal convictions so the record does not need to be revealed on applications requesting information about convictions.<sup>141</sup> There are limited circumstances under which an employer may obtain information about juvenile court involvement.

Criminal records are available regarding juveniles adjudicated delinquent on adult felony crimes or tried as adults. These records are open to the public unless the judge has ordered the record remain confidential to protect either a juvenile victim or juvenile witness. The employer may file a form with the CCRE to request the criminal records with the prospective employee’s written consent.<sup>142</sup>

There is a special exception to the confidential nature of juvenile records with respect to employment with businesses and organizations providing care to children, the elderly and the disabled. These employers may request a national criminal background check on prospective employees.<sup>143</sup> The employer will be notified if the individual has been convicted of any of the thirty felonies or two misdemeanors covered by the background check regardless of age at the time of the offense.<sup>144</sup> Conviction of one of the listed crimes disqualifies the individual from working in this type of employment.<sup>145</sup>

Employers cannot view juvenile records that have been expunged. Also, the employer cannot require the applicant to disclose criminal records that have been expunged.<sup>146</sup> Expunged juvenile records are treated as though the incident did not occur.<sup>147</sup>

Individuals should always tell the truth on employment applications. Generally applications only ask about convictions, not arrests. Juvenile delinquency findings are not considered convictions and should not be disclosed if the application requests information about convictions. If an individual is asked about his arrest record and that record has been expunged, he need not include any information regarding the record.<sup>148</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> VA. CODE ANN. §16.1-300, 301; VA. CODE ANN. § 16.1-305; VA. CODE ANN. § 19.2-389.1.

<sup>141</sup> VA. CODE ANN. §16.1-308.

<sup>142</sup> VA. CODE ANN. §19.2-389. For the forms used by employers, see <http://www.vsp.state.va.us/FormsPublications.shtml>.

<sup>143</sup> VA. CODE ANN. §19.2-392.02.

<sup>144</sup> VA. CODE ANN. §63.2-1719; Va. Code Ann. § 63.2-1726.

<sup>145</sup> VA. CODE ANN. §19.2-392.02.

<sup>146</sup> VA. CODE ANN. §19.2-392.4 (A).

<sup>147</sup> VA. CODE ANN. §16.1-306(E).

<sup>148</sup> VA. CODE ANN. § 19.2-392.4 (A).

### **Collateral Consequences Affecting Elementary & Secondary Education Students**

Complaints or charges brought against a juvenile can affect the individual's elementary or secondary education. In Virginia, intake officers are required to notify the school division's superintendent of a juvenile's charges if those charges would be a felony if committed by an adult, regardless of where the crime is committed.<sup>149</sup>

If charges are brought against a juvenile involving weapons, alcohol, drug offenses, or intentionally injuring another, the school may be allowed to place the student in an alternative education program without an adjudication of guilt.<sup>150</sup> If a student has certain types of charges pending, JDR courts are authorized to require a student to attend an alternative education program.<sup>151</sup> Additionally, a student may be suspended for up to ten days pending a decision to place the student in an alternative program if he is charged with certain offenses.<sup>152</sup>

If a juvenile is adjudicated delinquent or admits to committing a crime, there are additional potential impacts on his elementary or secondary education. Under Virginia Code, a student can be placed in an alternative education program if the student is found guilty or not innocent of an offense related to homicide, weapons or firearms, felonious assault, criminal sexual assault, controlled substances, arson, burglary, robbery, criminal street gang activity or recruitment, alcohol, or any crime that resulted or could have resulted in injury to another.<sup>153</sup>

As mentioned earlier, if a student is convicted or adjudicated delinquent of certain serious offenses, the clerk of court must provide notice to schools, and schools may take disciplinary action including suspension or expulsion from school.<sup>154</sup> If the school chooses to take no disciplinary action, the notice from the clerk of court must be kept separate from the student's disciplinary record.<sup>155</sup> Parents must be notified of any disciplinary action the school decides to take against the student as a result of the adjudication or conviction.<sup>156</sup> A school cannot take disciplinary action against a juvenile for any record that has been expunged. Expunged records are treated as if the incident never occurred and therefore separate action based on such records cannot be taken by the school.<sup>157</sup>

If a student is suspended, expelled, or transferred to an alternative education program there is some recourse available. Students are given notice of the punishment and the opportunity for a hearing in each situation. The procedures the student must follow are specific to the punishment received. The more serious punishments have a more formal hearing process and additional opportunities for review of the final decision.<sup>158</sup>

There are sometimes collateral consequences affecting access to state higher education for a juvenile that has been adjudicated delinquent or charged with a crime. Access to Virginia's community

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<sup>149</sup> VA. CODE ANN. §16.1-260(G).

<sup>150</sup> VA. CODE ANN. §22.1-277.2:1.

<sup>151</sup> VA. CODE ANN. §22.1-254(F).

<sup>152</sup> VA. CODE ANN. §22.1-277.2:1; Va. Code Ann. § 22.1-277.04.

<sup>153</sup> VA. CODE ANN. §22.1-277.2:1; VA. CODE ANN. § 16.1-260(G).

<sup>154</sup> VA. CODE ANN. §22.1-277(B).

<sup>155</sup> VA. CODE ANN. § 22.1-288.2.

<sup>156</sup> *Id.*

<sup>157</sup> VA. CODE ANN. § 16.1-306(E).

<sup>158</sup> VA. CODE ANN. §22.1-277.

colleges is not affected as they are open admission institutions.<sup>159</sup> Students are automatically admitted and the application does not contain any questions about charges or adjudications.<sup>160</sup>

The policy to inquire about criminal charges or delinquency adjudications varies among four-year colleges in Virginia.<sup>161</sup> The Common Application, used by some schools, requires students to disclose and explain any past disciplinary violations, misdemeanors, felonies, or other crimes.<sup>162</sup> Colleges not using the Common Application may also require disclosure of criminal charges or delinquency adjudications.<sup>163</sup> Colleges vary greatly in how they consider the information. Some weigh it as one factor among many, while one institution has a committee that steps through a structured process for determining the seriousness of the charges and adjudications.<sup>164</sup> Many colleges and universities across the country expanded their inquiry into prior delinquent activity after the Virginia Tech shootings in 2007.

### **Collateral Consequences to Receipt of Public Benefits & Privileges**

Several public benefits and privileges can be negatively affected by adjudications. Collateral consequences to obtaining or keeping a driver's license are usually obvious and immediate. Other consequences, such as issues with becoming a foster parent or adopting, arise many years later.

Juveniles adjudicated delinquent must obtain written approval from the court in order to obtain a driver's license.<sup>165</sup> Juveniles will likely lose their driver's license or permit when they are adjudicated delinquent for theft or unauthorized use of a motor vehicle,<sup>166</sup> for driving under the influence, or for causing serious bodily injury including homicide.<sup>167</sup> Additionally, certain drug offenses can result in the revocation of a juvenile's license for six months.<sup>168</sup> Unlawfully possessing alcohol will also result in a juvenile having his license revoked.<sup>169</sup>

Under Virginia Code, an adult with a juvenile record containing an adjudication of delinquency may be prevented from becoming a foster parent or adopting a child. A juvenile conviction or adjudication that would have constituted a felony if committed by an adult even outside the Commonwealth generally bars fostering or adopting.<sup>170</sup> There are several exceptions to the rule for crimes including burglary, breaking and entering, and drug possession, if the required number of years has passed since conviction.<sup>171</sup>

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<sup>159</sup> See [http://colleges.collegetoolkit.com/colleges/browse/selectivity/virginia/51/results/open\\_admissions/5.aspx](http://colleges.collegetoolkit.com/colleges/browse/selectivity/virginia/51/results/open_admissions/5.aspx).

<sup>160</sup> See application for admission to Virginia's community colleges, [http://www.jsr.vccs.edu/jsr\\_ar/forms/11-0000.pdf](http://www.jsr.vccs.edu/jsr_ar/forms/11-0000.pdf).

<sup>161</sup> See application for undergraduate admission, Virginia Commonwealth University, <http://www.ugrad.vcu.edu/pdfs/UgradApp.pdf>.

<sup>162</sup> See Common Application, <https://www.commonapp.org/CommonApp/docs/downloadforms/CommonApp2010.pdf>.

<sup>163</sup> See application for admission, Virginia Polytechnic Institute, <http://www.admiss.vt.edu/forms/VTFreshApp.pdf>.

<sup>164</sup> See Threat Assessment Team Information for Virginia Polytechnic Institute, <http://www.threatassessment.vt.edu/about/index.html>.

<sup>165</sup> VA. CODE ANN. §46.2-334(A)(3) (2010).

<sup>166</sup> VA. CODE ANN. §46.2-390 (2010).

<sup>167</sup> VA. CODE ANN. §18.2-36.1; VA. CODE ANN. 18.2-51.4 (2010); VA. CODE ANN. § 46.2-391 (2010).

<sup>168</sup> VA. CODE ANN. §18.2-247 *et seq* (2010); VA. CODE ANN. § 46.2-390.1(A) (2010).

<sup>169</sup> VA. CODE ANN. §16.1-278.9(A).

<sup>170</sup> VA. CODE ANN. § 63.2-1719 (2010); VA. CODE ANN. 63.2-1721(B) (2010).

<sup>171</sup> VA. CODE ANN. § 63.2-1721(F)-(G) (2010).

The right to possess a firearm is affected by a delinquency adjudication as well. It is illegal for any juvenile fourteen years or older who is adjudicated delinquent for serious offenses such as murder, kidnapping, robbery, or rape to possess a firearm. Persons adjudicated delinquent at age fourteen or older of an offense that would be a felony if committed by an adult are precluded from possessing a firearm until age twenty-nine. Exceptions exist for individuals possessing firearms while carrying out official military or law enforcement duties or to those who have been pardoned or had their rights restored.<sup>172</sup>

## **NORTH CAROLINA**

### **Understanding the Justice System**

The Juvenile Code governs North Carolina's juvenile justice system.<sup>173</sup> The state's Department of Juvenile Justice and Delinquency Prevention (the Department), consulting with Chief District Judges, is charged with designating local agencies with the authority to share juveniles' information.<sup>174</sup>

In North Carolina, juveniles are divided into two classes, "undisciplined juveniles" and "delinquent juveniles."<sup>175</sup> Juvenile cases are considered adjudications, not convictions.<sup>176</sup> The term "undisciplined juvenile" is applied to a child who is at least six years old and less than sixteen and is found by a court to be unlawfully absent from school, regularly disobedient and beyond the disciplinary control of the parent or guardian, to have run away from home for more than twenty-four hours, or who is regularly found in restricted places.<sup>177</sup> Sixteen or seventeen years olds who commit any of the listed activities, with the exception of being absent from school, may also be considered "undisciplined juveniles."<sup>178</sup> A "delinquent juvenile" is a child between six and sixteen years of age who violates a local ordinance or state law, motor vehicle law, or is held in contempt of court.<sup>179</sup> Individuals who commit criminal acts after their sixteenth birthday or after they are emancipated, are prosecuted as adults.<sup>180</sup>

All juvenile proceedings must be completed prior to the individual turning eighteen years old. Once the juvenile turns eighteen or is emancipated, he can be transferred to adult court.<sup>181</sup> A hearing is held to determine probable cause and transfer to superior court.<sup>182</sup> The court may transfer the case to superior court if the juvenile was at least thirteen at the time of an alleged felony offense.<sup>183</sup> If the court finds probable cause to believe the child committed a class A felony, transfer to adult court is mandatory.<sup>184</sup> If a juvenile is transferred to adult court, any subsequent offenses will be heard there as well.<sup>185</sup> The scope and impact of collateral consequences in North Carolina depends on whether the minor is adjudicated in juvenile court or prosecuted as an adult.

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<sup>172</sup> VA. CODE ANN. §18.2-308.2.

<sup>173</sup> See N.C. GEN. STAT. § 7B (2009).

<sup>174</sup> N.C. GEN. STAT. § 7B-3100(a) (2009).

<sup>175</sup> N.C. GEN. STAT. §§ 7B-1600-1601 (2009).

<sup>176</sup> N.C. GEN. STAT. § 7B-807 (2009).

<sup>177</sup> N.C. GEN. STAT. § 7B-1501 (2009).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> N.C. GEN. STAT. § 7B-1604 (2009).

<sup>181</sup> N.C. GEN. STAT. §§ 7B-1600-1601 (2009).

<sup>182</sup> N.C. GEN. STAT. §§ 7B-1601, 7B-2200 (2009).

<sup>183</sup> N.C. GEN. STAT. § 7B-2200 (2009).

<sup>184</sup> N.C. GEN. STAT. § 7B-2200 (2009).

<sup>185</sup> N.C. GEN. STAT. § 7B-1604 (2009).

## **Notification of Collateral Consequences of Juvenile Records**

North Carolina does not require any member of the juvenile justice system to notify adjudicated youth about the collateral consequences or potential dissemination of their juvenile records or the opportunity for expungement of those records. A child could proceed through the court system interacting with the judge, district attorney, his defense attorney, and probation officers without ever learning the potential impact of the collateral consequences associated with having a juvenile record or that some relief may be available through the expungement process.

## **Treatment of Juvenile Records**

A juvenile at least ten years old will be fingerprinted and photographed if accused of committing a non-divertible offense.<sup>186</sup> Non-divertible offenses include murder, first or second degree rape, first or second degree sexual offenses, arson, felony drug offenses, first degree burglary, crimes against nature, and any felony involving willful infliction of serious bodily injury upon another or committed by use of a deadly weapon.<sup>187</sup> Juveniles adjudicated delinquent for a felony offense will also be fingerprinted and photographed.<sup>188</sup>

The Department maintains a database of arrest information called the North Carolina Juvenile Online Information Network (NCJOIN).<sup>189</sup> It includes papers filed in the juvenile proceeding such as the summons, petition, custody orders, recordings of hearings, and any motions or orders.<sup>190</sup> Often these documents contain the juvenile's personal and contact information as well as details of charges.<sup>191</sup> Each county courthouse also maintains records of the proceedings. A new juvenile court record database called JWise is currently being implemented.<sup>192</sup>

Juvenile records require a court order for the public to access them.<sup>193</sup> The public may not otherwise access arrest information including fingerprints and photographs.<sup>194</sup> However, limited information on offenders aged ten to seventeen is available from the Department of Corrections through the North Carolina Offender Information Service on-line search engine.<sup>195</sup>

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<sup>186</sup> N.C. GEN. STAT. § 7B-2102(a) (2009).

<sup>187</sup> N.C. GEN. STAT. § 7B-1701 (2009). *See also* North Carolina Controlled Substances Act, N.C. GEN. STAT. § 90-86-90-113.8 (2009).

<sup>188</sup> N.C. GEN. STAT. § 7B-2102(b) (2009); N.C. GEN. STAT. § 7B-2201 (2009).

<sup>189</sup> The North Carolina Department of Juvenile Justice and Delinquency Prevention, NC-JOIN, <http://www.ncdjdp.org/statistics/ncjoin.html> (last visited December 10, 2010).

<sup>190</sup> *See* N.C. GEN. STAT. § 7B-3000 (2009).

<sup>191</sup> *See* N.C. GEN. STAT. § 7B-1802 (2009).

<sup>192</sup> *See* North Carolina Court Improvement Program 2007-2008 Activity Overview, <http://www.nccourts.org/Citizens/CPrograms/Improvement/Documents/> (follow "3CIPGrantsOverview\_09.doc" hyperlink).

<sup>193</sup> N.C. GEN. STAT. § 7B-3000(b) (2009). *See also* *Virmani v. Presbyterian Health Services Corp.*, 515 S.E.2d 675 (N.C. 1999) (finding that the public's constitutional right to attend court proceedings is subject to reasonable limitations in the interest of justice or other compelling public purposes); *In re M.E.B.*, 569 S.E.2d 683 (N.C. Ct. App. 2002) (a court could not impose conditions on a probation that would open a juvenile's records to public display).

<sup>194</sup> N.C. GEN. STAT. § 7B-2102(d) (2009).

<sup>195</sup> North Carolina Department of Correction Offender Public Information, Offender Search, <http://webapps6.doc.state.nc.us/opi/offendersearch.do> (last visited December 8, 2010).



At the discretion of the prosecutor, juvenile court records may be shared with law enforcement officers and magistrates, but these records may not be reproduced.<sup>196</sup> If the juvenile is age ten or older and adjudicated delinquent for a felony offense, fingerprints and photographs are shared with the State Bureau of Investigation and the Federal Bureau of Investigation for use in investigations.<sup>197</sup>

Juvenile record information may be accessed by agencies investigating child abuse, neglect, or dependency, or providing for or arranging protective services.<sup>198</sup> Juvenile records may also be accessed by the juvenile, his guardians, and attorneys.<sup>199</sup>

### **Sealing and Expunging Delinquency Files or Records**

Juveniles can ask to have a record sealed or expunged. It is unlikely an individual would be appointed counsel for this purpose as public defenders are only appointed for adjudication proceedings.<sup>200</sup>

Juvenile court records can be sealed by court order, which would then require a judge to issue another court order for the record to be viewed.<sup>201</sup> Sealing a record does not guarantee it will not be accessed in the future. The record may still be used in future criminal proceedings or sentencing for certain felony offenses.<sup>202</sup> Sealed files may also be used to determine pretrial release or negotiating a plea agreement.<sup>203</sup>

A juvenile adjudicated undisciplined may petition the court to expunge the record of that adjudication.<sup>204</sup> In order to petition for expungement of a juvenile adjudication, the individual must be at least eighteen years old and at least eighteen months past the adjudication without any subsequent adjudications or convictions, other than minor traffic violations.<sup>205</sup> Class A, B1, B2, C, D, and E felonies, which include very serious crimes such as murder, rape, and kidnapping, are not eligible for expungement.<sup>206</sup> Individuals can also petition to expunge records of charges and allegations that did not result in adjudication.

Expungement of the juvenile record does not apply to the fingerprints and photographs taken at the time of arrest.<sup>207</sup> Fingerprints and photographs will be destroyed if no probable cause was found by the court,<sup>208</sup> or if the juvenile was not adjudicated delinquent for a felony or misdemeanor offense.<sup>209</sup> In all other instances, the records will not be destroyed.

An eligible individual wishing to petition to have a record expunged must provide an affidavit swearing the individual maintained good behavior since the adjudication and has not been adjudicated or convicted since that time, affidavits from two persons unrelated to the juvenile attesting to the

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<sup>196</sup> N.C. GEN. STAT. § 7B-3000(b) (2009).

<sup>197</sup> N.C. GEN. STAT. § 7B-2102(c) (2009).

<sup>198</sup> N.C. GEN. STAT. § 7B-3100(a) (2009).

<sup>199</sup> N.C. GEN. STAT. § 7B-3000(b) (2009).

<sup>200</sup> See generally N.C. GEN. STAT. §§ 7B-3000-3001, 7B-3200-3202 (2009).

<sup>201</sup> N.C. GEN. STAT. § 7B-3000(c) (2009).

<sup>202</sup> N.C. GEN. STAT. § 7B-3000(f) (2009).

<sup>203</sup> N.C. GEN. STAT. § 7B-3000(e) (2009).

<sup>204</sup> N.C. GEN. STAT. § 7B-3200(a) (2009).

<sup>205</sup> N.C. GEN. STAT. § 7B-3200(b) (2009).

<sup>206</sup> *Id.*

<sup>207</sup> N.C. GEN. STAT. § 7B-2102(d) (2009).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

individual's character, and a statement identifying the petition as a motion in the original case.<sup>210</sup> This documentation must be submitted to the court where the individual was originally adjudicated.

Once a record is expunged individuals are not required to reveal information regarding that proceeding and may treat the act as if it never occurred.<sup>211</sup> The exception to this rule is if the individual is testifying as a witness, he may be examined regarding the expunged record and it may be used for impeachment if testifying in his own defense.<sup>212</sup>

### **Employment Opportunities**

Juvenile records are not publicly available and therefore not generally available to employers. Juvenile adjudications are not considered convictions and therefore do not need to be revealed on job applications requesting information regarding convictions.<sup>213</sup>

### **Collateral Consequences Affecting Elementary & Secondary Education Students**

In North Carolina, juvenile records may be shared with the school where the juvenile is enrolled for the purposes of protecting the safety of the student or others or to assist in providing appropriate educational opportunities for the student or others.<sup>214</sup> The principal of the school must destroy or return any documents relating to the juvenile record once they are no longer needed or the student no longer attends the school.<sup>215</sup>

The school principal should be notified by juvenile court officials when a delinquency petition alleges a felony offense, the juvenile is transferred to adult court, the court reaches a disposition or dismissal in a case alleging delinquency for a felony offense, or when a disposition is modified or vacated in such a case.<sup>216</sup>

Schools can suspend or expel students based on the notification by the juvenile court of a pending of delinquency petition if the act violates school rules or if the juvenile is considered a danger to himself or others.<sup>217</sup> The school must maintain the required confidentiality of the records.<sup>218</sup> Suspensions of periods greater than ten days may be appealed.<sup>219</sup>

Collateral consequences affecting access to higher education for an individual with a juvenile record vary from institution to institution. The Common Application, used by some schools, requires students to disclose and explain any past disciplinary violations, misdemeanors, felonies, or other crimes.<sup>220</sup> Although juvenile history is not requested on the applications, some universities and colleges

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<sup>210</sup> N.C. GEN. STAT. § 7B-3200(c) (2009).

<sup>211</sup> N.C. GEN. STAT. § 7B-3201(a) (2009).

<sup>212</sup> N.C. GEN. STAT. § 7B-3201(b) (2009). *See also In re SST*, 599 S.E.2d 59, 61 (N.C. Ct. App. 2004) (holding that a juvenile who takes the stand in his own defense can be cross-examined about any prior delinquency adjudications, including the adjudications with expunged records).

<sup>213</sup> N.C. Gen. Stat. 7B-2412 (2009).

<sup>214</sup> N.C. GEN. STAT. § 115C-404(b) (2009).

<sup>215</sup> N.C. GEN. STAT. § 115C-404(a) (2009).

<sup>216</sup> N.C. GEN. STAT. § 7B-3101(a) (2009).

<sup>217</sup> N.C. GEN. STAT. § 115C-404(b) (2009).

<sup>218</sup> N.C. GEN. STAT. § 115C-404(a), (b) (2009).

<sup>219</sup> N.C. GEN. STAT. § 115C-391(e) (2009).

<sup>220</sup> *See* Common Application,

<https://www.commonapp.org/CommonApp/docs/downloadforms/CommonApp2011.pdf> (also attached at Appendix).

in North Carolina ask questions that could lead to the disclosure of juvenile adjudication information. Questions that could lead to disclosure include whether the applicant has ever taken responsibility for a crime, whether there are criminal charges pending, whether the applicant has been disciplined at school, or whether the applicant has ever been on probation.<sup>221</sup>

The sixteen schools in the University of North Carolina system ask standardized questions regarding any prior criminal history. Each of the colleges has a committee review the applications which indicate prior criminal records and determine admission status.<sup>222</sup> This process was implemented following two separate murders in 2004 of UNC-Wilmington students each by individuals who were either current or former students and who lied about or failed to disclose their criminal histories.

### **Collateral Consequences Relating to Public Benefits & Privileges**

The arrest or adjudication of a juvenile can lead to eviction from public housing. The housing authority has broad power to evict a household based on the act of one tenant or a guest of any of the tenants. Eviction is an option if a tenant or guest engages in criminal activity that is threatening to the health and safety of others, is threatening to others' peaceful enjoyment of the premises, or involves illegal drugs.<sup>223</sup>

A major consequence of a juvenile adjudication is the possibility of losing driving privileges. In North Carolina, a juvenile court may prevent a youth from obtaining a driver's license for as long as the juvenile court has jurisdiction over that individual.<sup>224</sup>

## **FLORIDA**

### **Understanding the Justice System**

Florida criminal offenders are considered juveniles if the offender is under eighteen years old.<sup>225</sup> The circuit court in Florida handles the proceedings in which a juvenile is alleged to have committed a delinquent act or violated the law.<sup>226</sup>

Florida statutes define a "child who has been found to have committed a delinquent act" as a child who is found by a court to have committed a violation of law or be in direct or indirect contempt of court prior to his eighteenth birthday, with the exception of when the juvenile court has terminated jurisdiction by transferring the case to adult court.<sup>227</sup> The Florida statute also indicates that a finding of delinquency is not considered a conviction and that the juvenile is not considered to have been found

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<sup>221</sup> College Foundation of North Carolina Online Application System, [https://www1.cfnc.org/ExternalScripts/Online\\_Applications/College\\_Admission/default.asp](https://www1.cfnc.org/ExternalScripts/Online_Applications/College_Admission/default.asp) (last visited May 14, 2010) (once logged in, follow links to the application for the college or university of interest); The Common Application for Undergraduate College Admission, <https://www.commonapp.org/CommonApp/docs/downloadforms/CommonApp2011.pdf> (last visited December 15, 2010).

<sup>222</sup> Closing the Doors to Higher Education: Another Collateral Consequence of a Criminal Conviction, Center for Community Alternatives, by Marsha Weissman, Alan Rosenthal, and Patricia Warth.

<sup>223</sup> N.C. GEN. STAT. § 157-29(e) (2009).

<sup>224</sup> N.C. GEN. STAT. § 7B-2506(9) (2009).

<sup>225</sup> Fla. Stat. § 985.03(6) (2010).

<sup>226</sup> Fla. Stat. § 985.0301 (2010).

<sup>227</sup> Fla. Stat. § 985.03 (2010).

guilty or to be a criminal.<sup>228</sup> The adjudication should not impose the civil disabilities ordinarily imposed by a conviction or crime.<sup>229</sup>

In some cases under Florida law juveniles can be tried as adults. There are several ways for a juvenile to be transferred to adult court. These are direct filing, voluntary waiver, involuntary discretion waiver, and involuntary mandatory waiver.

The state attorney has discretion to charge a juvenile as an adult by using a direct filing to give adult court jurisdiction. In order to direct file, the child must be at least fourteen at the time of the act and charged with committing a serious felony such as arson, robbery, kidnapping, murder, manslaughter, or another of enumerated offense.<sup>230</sup> If the child is fourteen or fifteen at the time the act was committed the state attorney has discretion to file to determine whether to direct file.<sup>231</sup> If the juvenile is sixteen or seventeen and charged with one of the enumerated crimes and previously adjudicated delinquent for a felony, it is mandatory that the state attorney direct file.<sup>232</sup>

Where the state attorney has discretion, this action is usually taken when the juvenile has a substantial criminal history or is considered dangerous. This option is also utilized for juveniles who are considered unable to be rehabilitated by the juvenile rehabilitation system.<sup>233</sup>

Voluntary waiver occurs when a juvenile, with support of a guardian, demands to be tried as an adult. The case is transferred for criminal prosecution and the juvenile is treated as an adult from that point forward. The juvenile will be treated as an adult for any subsequent charges as well.<sup>234</sup>

Involuntary discretion waiver occurs when the state attorney files a motion requesting the court transfer the juvenile to adult court for criminal prosecution. The child must be fourteen years of age or older at the time of the violation of the law.<sup>235</sup>

Involuntary mandatory waiver occurs in two situations. The first is if the child was at least fourteen years old and has been previously adjudicated delinquent for a felony. The other situation is if the child was at least fourteen years old and had adjudication withheld for three prior felony offenses, one of which involved the use of a firearm or violence against a person.<sup>236</sup>

A waiver hearing is held in circuit court, which allows the judge to consider all the evidence presented and to determine whether the case should remain in circuit court or be transferred to adult court. The judge can consider many factors in determining the appropriate jurisdiction of the case.<sup>237</sup>

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<sup>228</sup> Fla. Stat. § 985.35 (2010).

<sup>229</sup> *Id.*

<sup>230</sup> Fla. Stat. § 985.557 (2010).

<sup>231</sup> Fla. Stat. § 985.557(1) (2010).

<sup>232</sup> Fla. Stat. § 985.557(2) (2010).

<sup>233</sup> Fla. Stat. § 985.557 (2010).

<sup>234</sup> Fla. Stat. § 985.556(1) (2010).

<sup>235</sup> Fla. Stat. § 985.556(2) (2010).

<sup>236</sup> Fla. Stat. § 985.556(3) (2010).

<sup>237</sup> Fla. Stat. § 985.556(4) (2010).

### **Notification of Collateral Consequences of Juvenile Records**

The Florida Statutes do not require administrators of the juvenile justice system to notify juvenile offenders or their guardians of the collateral consequences of juvenile records. A juvenile could have many interactions with the juvenile court administrators, including his own attorney, and not learn the ramifications of a juvenile adjudication.

Most juvenile records in Florida are automatically expunged after a period of time. There is also a petition process for those whose records would not be automatically expunged. An individual can also petition to have the records expunged prior to the automatic expungement. There is no requirement of the juvenile justice system to inform the juvenile offenders or their guardians of the opportunity to seek expungement of those records.

### **Treatment of Juvenile Records**

In some cases, juvenile adjudications are considered part of the individual's record.<sup>238</sup> This means that a prior juvenile adjudication can lead to harsher sentences for an adult conviction. Any juvenile dispositions committed within five years of the primary offense are included in the prior record if the act would have been considered a crime had the offender been an adult at the time.<sup>239</sup>

Collection of fingerprints and photographs is another potential collateral consequence of having a juvenile record. Upon arrest, juveniles charged with crimes that would be a felony if committed by an adult are fingerprinted and photographed by the local Juvenile Assessment Center (JAC).<sup>240</sup> The fingerprints must be submitted to the Department of Law Enforcement (DLE).<sup>241</sup> Information regarding juveniles is stored in the Juvenile Justice Information System, the department's electronic information system, which is used to gather and store information on youth having contact with the DLE.<sup>242</sup>

All information obtained pertaining to juvenile adjudications is considered confidential. Per Florida Statute, it may be disclosed only to the authorized personnel of the court, the DLE, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents, any licensed professional or licensed community agency representative participating in the assessment or treatment of the juvenile, and others entitled by statute to receive that information, or upon an order of the court.<sup>243</sup> Information regarding arrests and adjudications must be shared with the juvenile's school. Within each county, the sheriff, the chiefs of police, the district school superintendent, and the DLE enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agencies must maintain the confidentiality of the information.<sup>244</sup>

The confidentiality requirement does not apply under several scenarios. These include if the child has been charged with a crime that if committed by an adult would be a felony, has committed three or more violations of the law which if committed by an adult would be misdemeanors, is transferred to the adult system,<sup>245</sup> or is fourteen or fifteen years old and is charged with committing a serious crime including arson, sexual battery, robbery, kidnapping, murder, manslaughter, armed burglary, and

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<sup>238</sup> Fla. Stat. § 921.0021(5) (2010).

<sup>239</sup> *Id.*

<sup>240</sup> Fla. Stat. § 985.11(1)(a) (2010).

<sup>241</sup> *Id.*

<sup>242</sup> Fla. Stat. § 985.601 (2010).

<sup>243</sup> Fla. Stat. § 985.04 (2010).

<sup>244</sup> *Id.*

<sup>245</sup> Fla. Stat. § 985.04 (2010).

possessing or discharging a weapon or firearm on school property.<sup>246</sup> There is an extensive statutory list of exceptions including many other serious crimes. Information regarding these crimes is not protected by the confidentiality requirement of the juvenile justice system and is public information. Being charged with one of these crimes also gives the state attorney discretion to transfer jurisdiction of the juvenile to adult court.<sup>247</sup>

Records in the custody of the DLE regarding juveniles are not available to the public. An order is required from the Secretary of Juvenile Justice to review the records. It is at the secretary's discretion to allow access but a sufficient reason for access must be supplied. Additionally, the records can be disclosed to other employees of the DLE when required to perform their official duties, persons authorized by DLE rules, or upon request to the Department of Corrections.<sup>248</sup>

The clerk of court must keep juvenile records separate from other records of circuit court. The records are not available to the public. Exceptions to this rule include a child and his guardian, their attorneys, law enforcement agencies, the Department of Juvenile Justice, the parole commission, the Department of Corrections, the Justice Administrative Commission, and by court order.<sup>249</sup>

### **Expunging and Sealing Delinquency Files or Records**

In Florida, most juvenile records are automatically destroyed after a period of time. Juveniles classified as serious offenders will have their records expunged when the individual turns twenty-six years old.<sup>250</sup> Juveniles not classified as serious offenders will have their criminal history record expunged when the individual turns twenty-four years old.<sup>251</sup> There is an exception to this rule if after the individual is eighteen years old, he is charged with or convicted of a forcible felony prior to the destruction of his juvenile record. In that case the juvenile record is merged with the adult record and maintained as part of the adult record.<sup>252</sup> The other exception occurs if the minor is adjudicated as an adult for a forcible felony. The juvenile's record merges with the adult record when he is adjudicated as an adult.<sup>253</sup>

Although Florida offers automatic expungement at age twenty-four or twenty-six, it is possible to petition the court to have the juvenile record sealed or expunged earlier. An individual may want to pursue this option, particularly in light of the collateral consequences that could impact education, employment, and housing opportunities prior to automatic expungement. One consideration however, is that individuals are only allowed to seal or expunge a record one time in a lifetime.<sup>254</sup> The court has sole discretion to decide whether a record should be sealed or expunged.<sup>255</sup> Statute dictates the sealing and expungement process. An individual must first get a certificate of eligibility for expungement from the DLE, and must have completed all court supervision applicable to the criminal activity. The certificate must be submitted with the completed application for expungement.<sup>256</sup>

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<sup>246</sup> Fla. Stat. § 985.557 (2010).

<sup>247</sup> *Id.*

<sup>248</sup> Fla. Stat. § 985.04(7) (2010).

<sup>249</sup> Fla. Stat. § 985.045(2) (2010).

<sup>250</sup> Fla. Stat. § 943.0515(1)(a) (2010).

<sup>251</sup> Fla. Stat. § 943.0515(1)(b) (2010).

<sup>252</sup> Fla. Stat. § 943.0515(2)(a) (2010).

<sup>253</sup> Fla. Stat. § 943.0515(2)(b) (2010).

<sup>254</sup> Fla. Stat. § 943.0585 (2010).

<sup>255</sup> *Id.*

<sup>256</sup> Fla. Stat. § 943.0585(1) (2010).

If the petition is approved, the criminal history record must be physically destroyed by any criminal justice agency maintaining a copy.<sup>257</sup> As an exception, the DLE will retain a copy of the record which will be confidential and not available except under court order.<sup>258</sup> Agencies required to expunge their records may keep a notation that the record was expunged.<sup>259</sup>

Once a record is expunged individuals are not required to reveal information regarding that proceeding and may treat the act as if it never occurred.<sup>260</sup> There are several exceptions to this rule that require an individual to reveal information pertaining to the expunged record. The exceptions are if the person is a candidate for employment with a criminal justice agency, a defendant in a criminal prosecution, petitions for the sealing of criminal records, applies for admission to the Florida Bar, seeks to work with or in an agency that serving children, the disabled, or the elderly, including schools, or seeks employment at a seaport.<sup>261</sup> Violation of this provision is considered a first degree misdemeanor.<sup>262</sup>

### **Employment Opportunities**

Juvenile records are not publicly available and therefore not generally available to employers. Juvenile adjudications are not considered convictions and thus do not need to be revealed on job applications requesting information regarding convictions. As previously discussed, there are job applications where an individual would need to reveal an arrest, even of an expunged record.

Individuals should always tell the truth on employment applications and read what is being asked very carefully. If asked about convictions, it may not be necessary to reveal information about juvenile adjudications. If the employer asks about arrests information may need to be included regarding juvenile offenses. Keep in mind some employers have access to full criminal records, including juvenile records.

### **Collateral Consequences Affecting Elementary & Secondary Education Students**

As indicated earlier, information regarding juvenile arrests and adjudications are shared with the juvenile's school.<sup>263</sup> The principal of the school must abide by the statutorily defined confidentiality requirements but can use the information for other purposes without disseminating the information from the record.<sup>264</sup>

A student can be suspended for acts which substantially disrupt the orderly conduct of school; vague language that allows schools to consider a broad range of actions.<sup>265</sup> Schools are also allowed to suspend a student who is charged with a felony or delinquent act that would be a felony if it had been committed by an adult, regardless of where the incident occurs.<sup>266</sup> The school must show that the charge has a negative impact on the educational program, discipline, or welfare of the school.<sup>267</sup> Although juvenile history is not requested on the applications, some universities and colleges ask questions that could lead to the disclosure of juvenile adjudication information.

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<sup>257</sup> Fla. Stat. § 943.0585(4) (2010).

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> Fla. Stat. § 943.0585(4)(a) (2010).

<sup>261</sup> *Id.*

<sup>262</sup> Fla. Stat. § 943.0585(4)(c) (2010).

<sup>263</sup> Fla. Stat. § 985.04 (2010).

<sup>264</sup> Fla. Stat. § 1006.08(3) (2010).

<sup>265</sup> Fla. Stat. § 1006.09(1)(c) (2010).

<sup>266</sup> Fla. Stat. § 1006.09(2)(a) (2010).

<sup>267</sup> *Id.*

Collateral consequences affecting access to higher education for an individual with a juvenile record vary from institution to institution. The Common Application, used by some schools, requires students to disclose and explain past disciplinary violations, misdemeanors, felonies, or other crimes.<sup>268</sup> Questions that potentially reveal information about adjudications include whether the applicant has ever taken responsibility for a crime, whether there are criminal charges pending, whether the applicant has been disciplined at school, or if the applicant has ever been on probation.<sup>269</sup>

### **Collateral Consequences Relating to Public Benefits & Privileges**

As previously noted, the arrest or adjudication of a juvenile can lead to eviction from public housing. Under Florida law, the housing authority has the discretion to evict or bar applicants from public housing based on the act of one tenant. This includes applicants or family members who have been convicted of criminal activity or criminal activity which may adversely affect the health, safety, or welfare of other tenants.<sup>270</sup>

A major consequence of a juvenile adjudication is the possibility of losing driving privileges. In Florida, a person under twenty-one years old found guilty of possession of alcohol can have his driver's license revoked for up to twelve months,<sup>271</sup> And will have their license automatically suspended for six months if caught driving while intoxicated.<sup>272</sup> Driving privileges can be suspended for truancy and will not be reinstated until the student attends school for thirty consecutive days.<sup>273</sup>

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### **Moving Forward**

There is much room for improvement in the juvenile justice system, especially with respect to reducing the impact of collateral consequences. It is particularly concerning that there are no requirements that juveniles be notified of the possible collateral consequences of delinquency adjudications. Changing that policy is an improvement that can quickly and easily implemented. There are many other actions that could be pursued to assist those in the juvenile justice system.

The first step states should take is to implement "Know Your Rights" policies. Since juvenile adjudications are not intended to be punishments, but opportunities for rehabilitation, states should move towards lessening the impacts of a juvenile adjudication on individuals. Each state should require notification of potential collateral consequences and the expungement process at the time of adjudication. Judges could be required as part of the disposition process to inform the juvenile of the implications of the sentence. This information could be reinforced in a pamphlet or other handout that is provided to the individual by various agents throughout during the juvenile justice process (counselors, probation officers, etc.).

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<sup>268</sup> See Common Application, <https://www.commonapp.org/CommonApp/docs/downloadforms/CommonApp2010.pdf>.

<sup>269</sup> *Id.*

<sup>270</sup> Fla. Stat. § 421 (2010).

<sup>271</sup> Fla. Stat. § 562 (2010).

<sup>272</sup> Florida DMV website, [http://www.flhsmv.gov/teens/parent\\_gdl.html](http://www.flhsmv.gov/teens/parent_gdl.html).

<sup>273</sup> *Id.*



Every state should implement an automatic expungement process that results in all juvenile records being expunged. States without such a policy can model theirs on one of the existing policies in use by other states, including those described here. The goal should be to have all juvenile records automatically expunged as early as possible. Currently many states with automatic expungement processes wait until the individual is in their mid-20s to expunge the adjudication. By this time, a person has already been negatively impacted by having to reveal information on college or job applications.

In the absence of an automatic expungement process, all states should create a simple expungement form, such as Delaware's, to make it easier for individuals to independently navigate the process. Having a form that can be easily completed by the individual and submitted to the court could remove some of the mystery surrounding the expungement process. This would also make the process more accessible, especially considering the lack of available legal representation to assist in the process.

State Bar Associations, law schools and youth advocacy organizations should be encouraged and supported in developing pro bono projects and other programs to provide community outreach and education around the impacts of juvenile adjudications, and direct assistance in pursuing expungement of juvenile records.

State legislative changes should be pursued to further limit the use, disclosure, or access to juvenile records. Many college and university applications have questions that require the applicant to reveal information that is otherwise protected as a juvenile record. Laws could be implemented to stop colleges and universities from circumventing the protections built into the restrictions on dissemination of juvenile delinquency records by asking about discipline at school or arrests regardless of the outcome.

Finally, additional legislative and judicial changes should be adopted to maximize the opportunity for youth to stay in the juvenile justice systems and not moved into the criminal courts. As previously noted, juvenile delinquency proceedings are not criminal convictions and the youths are not considered criminals. Usually juvenile records are not publically available and in some states are automatically expunged. Criminal records follow a person for their entire lives and are much more difficult to expunge or seal. A criminal record can negatively impact education, employment, and housing opportunities for a person's entire life. Any statutory changes which can further limit the circumstances in which youth are transferred to adult court will be critical in helping minimize the collateral consequences for juveniles in the legal system.

## **APPENDIX**

## The Family Court of the State of Delaware

In and For ☐ New Castle ☐ Kent ☐ Sussex County

### PETITION FOR EXPUNGEMENT OF JUVENILE RECORD

Petitioner	<b>DEPUTY ATTORNEY GENERAL</b> <input type="checkbox"/> <b>New Castle County</b> 820 N. French Street Wilmington, DE 19801 <input type="checkbox"/> <b>Kent County</b> 102 W. Water Street Dover, DE 19904 <input type="checkbox"/> <b>Sussex County</b> 114 East Market Street Georgetown, DE 19947	Crim. Case No.
Street Address		CPI No.
P.O. Box Number		
City/State/Zip Code		
Attorney Name		

If a hearing is scheduled in this matter, will Petitioner need an interpreter? ☐ Yes (If yes, specify language \_\_\_\_\_) ☐ No

AND NOW, TO WIT, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, Your Petitioner,  
(relationship to the party involved)  
respectfully represents that as a child under eighteen years of age in the Family Court of the State of Delaware the following charges were brought against \_\_\_\_\_ D.O.B. \_\_\_\_\_

Charge	Offense Date	Incident No.	Disposition Date	Disposition

WHEREFORE, Petitioner prays that this court grant an order directing the Clerk of Court to expunge from the records pertaining to the above listed charges the following:

- ☐ All evidence of an adjudication of delinquency upon \_\_\_\_\_
- ☐ All evidence in which \_\_\_\_\_ was charged with an act of delinquency and the charges were Nolle Prosequied, dismissed, or dropped.
- ☐ All evidence in which charges have been disposed of through arbitration or otherwise without an adjudication of delinquency
- ☐ That all indicia of arrest, fingerprints, photographs and police records pursuant to the provisions of 10 Del .C. § 1001 be destroyed.

That the expungement of the record is being requested for the following reasons:

- ☐ The party involved is going to enter a branch of the armed forces of the United States (10 Del .C. § 1001 (a)) (You must include an intention to enlist documented in writing by the military authority in the branch of the armed forces you intend to enlist.)
- ☐ Three years have elapsed since the date an adjudication was entered upon the status of the party, and no subsequent adjudication has been entered against the party (10 Del .C. § 1001 (a))
- ☐ The party involved was charged with an act of Delinquency and the charges were Nolle Prosequied, dismissed, dropped, disposed of through arbitration or otherwise without an adjudication of delinquency (10 Del .C. § 1001 (b)).
- ☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Petitioner's Signature

Sworn to subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Mediator/Notary Public

\_\_\_\_\_  
Date

**AFFIDAVIT OF MAILING**

<p>I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on the _____ day of _____ and sent to the other party or attorney at the address listed on the petition, first class postage pre-paid.</p>	
	<p>_____ Movant</p>
<p>Sworn to subscribed before me this _____ day of _____, _____</p>	
	<p>_____ Clerk of Court/ Notary Public</p>

### APPLICANT

Legal Name \_\_\_\_\_  
Last/Family/Sur (Enter name **exactly** as it appears on official documents.) First/Given Middle (complete) Jr., etc.

Preferred name, if not first name (choose only one) \_\_\_\_\_ Former last name(s), if any \_\_\_\_\_

Birth Date \_\_\_\_\_ mm/dd/yyyy ☐ Female ☐ Male US Social Security Number, if any \_\_\_\_\_  
Optional, unless applying for US Federal financial aid with the FAFSA form

Preferred Telephone ☐ Home ☐ Cell Home (\_\_\_\_\_) \_\_\_\_\_ Cell (\_\_\_\_\_) \_\_\_\_\_  
Area/Country/City Code Area/Country/City Code

E-mail Address \_\_\_\_\_ IM Address \_\_\_\_\_

Permanent home address \_\_\_\_\_  
Number & Street Apartment #

\_\_\_\_\_  
City/Town County or Parish State/Province Country ZIP/Postal Code

**If different from above, please give your current mailing address for all admission correspondence.** (from \_\_\_\_\_ to \_\_\_\_\_)  
(mm/dd/yyyy) (mm/dd/yyyy)

Current mailing address \_\_\_\_\_  
Number & Street Apartment #

\_\_\_\_\_  
City/Town County or Parish State/Province Country ZIP/Postal Code

If your current mailing address is a boarding school, include name of school here: \_\_\_\_\_

### FUTURE PLANS

Your answers to these questions will vary for different colleges. If the online system did not ask you to answer some of the questions you see in this section, this college chose not to ask that question of its applicants.

College \_\_\_\_\_ Deadline \_\_\_\_\_  
mm/dd/yyyy

Entry Term: ☐ Fall (Jul-Dec) ☐ Spring (Jan-Jun)

Decision Plan \_\_\_\_\_

Academic Interests \_\_\_\_\_

Career Interest \_\_\_\_\_

Do you intend to apply for need-based financial aid? ☐ Yes ☐ No

Do you intend to apply for merit-based scholarships? ☐ Yes ☐ No

Do you intend to be a full-time student? ☐ Yes ☐ No

Do you intend to enroll in a degree program your first year? ☐ Yes ☐ No

Do you intend to live in college housing? \_\_\_\_\_

What is the highest degree you intend to earn? \_\_\_\_\_

### DEMOGRAPHICS

Citizenship Status \_\_\_\_\_

Non-US Citizenship \_\_\_\_\_

Years lived in the US? \_\_\_\_\_

Birthplace \_\_\_\_\_  
City/Town State/Province Country

First Language \_\_\_\_\_

Primary language spoken at home \_\_\_\_\_

Are you proficient in any other languages? \_\_\_\_\_

**Optional** The items with a gray background are optional. No information you provide will be used in a discriminatory manner.

Marital Status \_\_\_\_\_

Religious Preference \_\_\_\_\_

US Armed Services veteran? ☐ Yes ☐ No

1. Are you Hispanic/Latino?  
☐ Yes, Hispanic or Latino (including Spain) ☐ No

2. Regardless of your answer to the prior question, please indicate how you identify yourself. (Check all that apply.)

☐ American Indian or Alaska Native (including all Original Peoples of the Americas)  
Are you Enrolled? ☐ Yes ☐ No If yes, please enter Tribal Enrollment Number \_\_\_\_\_

☐ Asian (including Indian subcontinent and Philippines)

☐ Black or African American (including Africa and Caribbean)

☐ Native Hawaiian or Other Pacific Islander (Original Peoples)

☐ White (including Middle Eastern)

## FAMILY

Please list both parents below, even if one or more is deceased or no longer has legal responsibilities toward you. Many colleges collect this information for demographic purposes even if you are an adult or an emancipated minor. If you are a minor with a legal guardian (an individual or government entity), then please list that information below as well. If you wish, you may list step-parents and/or other adults with whom you reside, or who otherwise care for you, in the Additional Information section.

### Household

Parents' marital status (relative to each other): ☐ Never Married ☐ Married ☐ Widowed ☐ Separated ☐ Divorced (date mm/yyyy)

With whom do you make your permanent home? ☐ Parent 1 ☐ Parent 2 ☐ Both ☐ Legal Guardian ☐ Ward of the Court/State ☐ Other

**Parent 1:** ☐ Mother ☐ Father ☐ Unknown

Is Parent 1 living? ☐ Yes ☐ No (Date Deceased mm/yyyy)

**Parent 2:** ☐ Mother ☐ Father ☐ Unknown

Is Parent 2 living? ☐ Yes ☐ No (Date Deceased mm/yyyy)

Last/Family/Sur First/Given Middle Title (Mr./Ms./Dr., etc.)

Country of birth \_\_\_\_\_

Home address if different from yours \_\_\_\_\_

Preferred Telephone: ☐ Home ☐ Cell ☐ Work

(      )  
Area/Country/City Code

E-mail \_\_\_\_\_

Occupation \_\_\_\_\_

Employer \_\_\_\_\_

College (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

Graduate School (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

### Legal Guardian (if other than a parent)

Relationship to you \_\_\_\_\_

Last/Family/Sur First/Given Middle Title (Mr./Ms./Dr., etc.)

Home address if different from yours \_\_\_\_\_

Preferred Telephone: ☐ Home ☐ Cell ☐ Work

(      )  
Area/Country/City Code

E-mail \_\_\_\_\_

Occupation \_\_\_\_\_

Employer \_\_\_\_\_

College (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

Graduate School (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

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Last/Family/Sur First/Given Middle Title (Mr./Ms./Dr., etc.)

Country of birth \_\_\_\_\_

Home address if different from yours \_\_\_\_\_

Preferred Telephone: ☐ Home ☐ Cell ☐ Work

(      )  
Area/Country/City Code

E-mail \_\_\_\_\_

Occupation \_\_\_\_\_

Employer \_\_\_\_\_

College (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

Graduate School (if any) \_\_\_\_\_ CEEB \_\_\_\_\_

Degree \_\_\_\_\_ Year \_\_\_\_\_

### Siblings

Please give names and ages of your brothers or sisters. If they are enrolled in grades K-12 (or international equivalent), list their grade levels. If they have attended or are currently attending college, give the names of the undergraduate institution, degree earned, and approximate dates of attendance. If more than three siblings, please list them in the Additional Information section.

Name Age & Grade Relationship

College Attended \_\_\_\_\_ CEEB \_\_\_\_\_

Degree earned \_\_\_\_\_ Dates mm/yyyy – mm/yyyy  
or expected

Name Age & Grade Relationship

College Attended \_\_\_\_\_ CEEB \_\_\_\_\_

Degree earned \_\_\_\_\_ Dates mm/yyyy – mm/yyyy  
or expected

Name Age & Grade Relationship

College Attended \_\_\_\_\_ CEEB \_\_\_\_\_

Degree earned \_\_\_\_\_ Dates mm/yyyy – mm/yyyy  
or expected

AP-2/2010-11

## EDUCATION

### Secondary Schools

Current or most recent secondary school attended \_\_\_\_\_

Entry Date \_\_\_\_\_ Graduation Date \_\_\_\_\_ School Type: ☐ Public ☐ Charter ☐ Independent ☐ Religious ☐ Home School

Address \_\_\_\_\_ CEEB/ACT Code \_\_\_\_\_

City/Town \_\_\_\_\_ State/Province \_\_\_\_\_ Country \_\_\_\_\_ ZIP/Postal Code \_\_\_\_\_

Counselor's Name (Mr./Ms./Dr., etc.) \_\_\_\_\_ Counselor's Title \_\_\_\_\_

E-mail \_\_\_\_\_ Telephone (\_\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_\_) \_\_\_\_\_

List all other secondary schools you have attended since 9<sup>th</sup> grade, including summer schools or enrichment programs hosted on a secondary school campus:

School Name & CEEB/ACT Code	Location (City, State/Province, ZIP/Postal Code, Country)	Dates Attended (mm/yyyy)

Please list any community program/organization that has provided free assistance with your application process: \_\_\_\_\_

If your education was or will be interrupted, please indicate so here and provide details in the Additional Information section: \_\_\_\_\_

### Colleges & Universities

List all colleges you have attended since 9<sup>th</sup> grade, including summer schools or enrichment programs hosted on a college campus:

College/University Name & CEEB/ACT Code	Location (City, State/Province, ZIP/Postal Code, Country)	Degree Candidate?		Dates Attended mm/yyyy – mm/yyyy	Degree Earned
		Yes	No		
		<input type="radio"/>	<input type="radio"/>		
		<input type="radio"/>	<input type="radio"/>		
		<input type="radio"/>	<input type="radio"/>		

## ACADEMICS

The self-reported information in this section is not intended to take the place of your official records. Please note the requirements of each institution to which you are applying and arrange for official transcripts and score reports to be sent from your secondary school and the appropriate testing agencies. Where "Best Scores" are requested, please report the highest individual scores you have earned so far, even if those scores are from different test dates.

**Grades** Class Rank \_\_\_\_\_ Class Size \_\_\_\_\_ Weighted? ☐ Yes ☐ No GPA \_\_\_\_\_ Scale \_\_\_\_\_ Weighted? ☐ Yes ☐ No

**ACT** Exam Dates: \_\_\_\_\_ Best Scores: \_\_\_\_\_

COMP	English	Math
mm/yyyy	mm/yyyy	mm/yyyy
Reading	Science	Writing
mm/yyyy	mm/yyyy	mm/yyyy

**SAT** Exam Dates: \_\_\_\_\_ Best Scores: \_\_\_\_\_

Critical Reading	Math	Writing
mm/yyyy	mm/yyyy	mm/yyyy

**TOEFL/IELTS** Exam Dates: \_\_\_\_\_ Best Score: \_\_\_\_\_

Test	Score
mm/yyyy	mm/yyyy

**AP/IB/SAT Subjects** Best Scores: \_\_\_\_\_

Type & Subject	Score	Type & Subject	Score
mm/yyyy	mm/yyyy	mm/yyyy	mm/yyyy
mm/yyyy	mm/yyyy	mm/yyyy	mm/yyyy
mm/yyyy	mm/yyyy	mm/yyyy	mm/yyyy
mm/yyyy	mm/yyyy	mm/yyyy	mm/yyyy

**Current Courses** Please indicate title, level (AP, IB, advanced honors, etc.) and credit value of all courses you are taking this year. Indicate quarter classes taken in the same semester on the appropriate semester line.

First Semester/Trimester	Second Semester/Trimester	Third Trimester <small>or additional first/second term courses if more space is needed</small>

**Honors** Briefly list any academic distinctions or honors you have received since the 9<sup>th</sup> grade or international equivalent (e.g., National Merit, Cum Laude Society).

Grade level or post-graduate (PG)					Honor	Level of Recognition			
9	10	11	12	PG		School	State/Regional	National	International
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## EXTRACURRICULAR ACTIVITIES & WORK EXPERIENCE

**Extracurricular** Please list your **principal** extracurricular, volunteer, and work activities **in their order of importance to you**. Feel free to group your activities and paid work experience separately if you prefer. Use the space available to provide details of your activities and accomplishments (specific events, varsity letter, musical instrument, employer, etc.). **To allow us to focus on the highlights of your activities, please complete this section even if you plan to attach a résumé.**

Grade level or post-graduate (PG)					Approximate time spent		When did you participate in the activity?		Positions held, honors won, letters earned, or employer	If applicable, do you plan to participate in college?
9	10	11	12	PG	Hours per week	Weeks per year	School year	Summer/School Break		
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	_____	_____	<input type="radio"/>	<input type="radio"/>	_____	<input type="radio"/>
Activity _____										



## WRITING

**Short Answer** Please briefly elaborate on one of your extracurricular activities or work experiences in the space below or on an attached sheet (150 words or fewer).

**Personal Essay** Please write an essay (250 words minimum) on a topic of your choice or on one of the options listed below, and attach it to your application before submission. **Please indicate your topic by checking the appropriate box.** This personal essay helps us become acquainted with you as a person and student, apart from courses, grades, test scores, and other objective data. It will also demonstrate your ability to organize your thoughts and express yourself. *NOTE: Your Common Application essay should be the same for all colleges. Do not customize it in any way for individual colleges. Colleges that want customized essay responses will ask for them on a supplement form.*

- ☐ 1 Evaluate a significant experience, achievement, risk you have taken, or ethical dilemma you have faced and its impact on you.
- ☐ 2 Discuss some issue of personal, local, national, or international concern and its importance to you.
- ☐ 3 Indicate a person who has had a significant influence on you, and describe that influence.
- ☐ 4 Describe a character in fiction, a historical figure, or a creative work (as in art, music, science, etc.) that has had an influence on you, and explain that influence.
- ☐ 5 A range of academic interests, personal perspectives, and life experiences adds much to the educational mix. Given your personal background, describe an experience that illustrates what you would bring to the diversity in a college community or an encounter that demonstrated the importance of diversity to you.
- ☐ 6 Topic of your choice.

**Additional Information** If there is any additional information you'd like to provide regarding special circumstances, additional qualifications, etc., please do so in the space below or on an attached sheet.

### Disciplinary History

- 1 Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from 9<sup>th</sup> grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in your probation, suspension, removal, dismissal, or expulsion from the institution? ☐ Yes ☐ No
- 2 Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime? ☐ Yes ☐ No  
[Note that you are not required to answer "yes" to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise ordered by a court to be kept confidential.]

If you answered "yes" to either or both questions, please attach a separate sheet of paper that gives the approximate date of each incident, explains the circumstances, and reflects on what you learned from the experience.

## SIGNATURE

**Application Fee Payment** If this college requires an application fee, how will you be paying it?

- ☐ Online Payment ☐ Will Mail Payment ☐ Online Fee Waiver Request ☐ Will Mail Fee Waiver Request

### Required Signature

- ☐ I certify that all information submitted in the admission process—including the application, the personal essay, any supplements, and any other supporting materials—is my own work, factually true, and honestly presented, and that these documents will become the property of the institutions to which I am applying and will not be returned to me. I understand that I may be subject to a range of possible disciplinary actions, including admission revocation, expulsion, or revocation of course credit, grades, and degree should the information I have certified be false.
- ☐ I acknowledge that I have reviewed the application instructions for each college receiving this application. I understand that all offers of admission are conditional, pending receipt of final transcripts showing work comparable in quality to that upon which the offer was based, as well as honorable dismissal from the school.
- ☐ I affirm that I will send an enrollment deposit (or equivalent) to only one institution; sending multiple deposits (or equivalent) may result in the withdrawal of my admission offers from all institutions. [Note: students may send an enrollment deposit (or equivalent) to a second institution where they have been admitted from the waitlist, provided that they inform the first institution that they will no longer be enrolling.]

Signature 

Date \_\_\_\_\_  
mm/dd/yyyy

Common Application member institution admission offices do not discriminate on the basis of race, color, ethnicity, national origin, religion, creed, sex, age, marital status, parental status, physical disability, learning disability, political affiliation, veteran status, or sexual orientation.

STATE OF NORTH CAROLINA  
[XXXXXX] COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. [XXXXXX]

STATE OF NORTH CAROLINA

v.

[XX], A JUVENILE.

)  
)  
)  
)  
)  
)

PETITION AND ORDER TO EXPUNGE  
JUVENILE RECORD

NOW COMES the Juvenile, by and through [his/her] attorney, and moves this Honorable Court, pursuant to N.C. Gen. Stat. § 7B-3200, to issue an order directing the Clerk of Court of [XXXXXX] County, North Carolina, and all law enforcement agencies to expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions and orders in the above-captioned matter. The Petitioner requests a hearing on this petition.

In support thereof, the Petitioner States the following:

1. On [Date], the Petitioner, a juvenile at the time, [admitted to/was adjudicated delinquent of] [Crime], a violation of N.C. Gen. Stat § [Statute Number], punishable as a [Class of Crime].
2. The Petitioner had not previously been adjudicated delinquent of any felony or misdemeanor.
3. The Petitioner had not previously been placed on probation or previously received an expunction.
4. The Petitioner was placed on [Length of Probation] during which [she/he] completed [Terms of Probation Completed, i.e. community service, formal apologies to victim, therapy or drug treatment]

5. The Petitioner successfully completed probation on [Date], at which time probation was terminated.
6. The Petitioner has now attained the age of [Current Age].
7. More than 18 months have elapsed since [he/she] was released from juvenile court jurisdiction.
8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any state.
9. Attached to this motion are verified affidavits of [X] and [Y], two persons unrelated to the Petitioner who know the character and reputation of the Petitioner in the community in which [he/she] lives. See Affidavits of [X] and [Y], attached as Exhibits 1 and 2.
10. Based on the foregoing, the Petitioner requests that the Court issue an order directing the Clerk of Court of [County] County and all law enforcement agencies to expunge their records of adjudication, including any reference to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

WHEREFORE, the Petitioner requests the Court to schedule a hearing on this matter.

The district attorney shall have ten (10) days thereafter in which to file any objections thereto and shall be duly notified as to the date of the hearing on the petition.

Respectfully submitted this the [#] day of [Month], [Year].

[Student's Name]  
Certified Law Student  
Juvenile Justice Clinic  
UNC School of Law  
(919) 962-4107

\_\_\_\_\_  
[Supervisor's Name]  
Supervising Attorney  
Juvenile Justice Clinic  
UNC School of Law  
102 Ridge Road  
Chapel Hill, NC 27514  
(919) 962-4107

| \* \* \* \*

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney  
for the [#], Judicial District by deposit of said copy with [Name], Assistant District Attorney.

This the 29th day of January 2010.

\_\_\_\_\_  
[Name of Server]

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. [XXXXXX]

[XX], A JUVENILE.

1. On [Date], the above-named Juvenile, [admitted to/was adjudicated delinquent of] [Crime], a violation of N.C. Gen. Stat § [Statute Number], punishable as a [Class of Crime].
2. The Petitioner had not previously been adjudicated delinquent of any felony or misdemeanor.
3. The Petitioner had not previously been placed on probation or previously received an expunction.
4. The Petitioner was placed on [Length of Probation] during which [she/he] completed [Terms of Probation Completed, i.e. community service, formal apologies to victim, therapy or drug treatment].
5. The Petitioner successfully completed probation on [Date], at which time probation was terminated.
6. The Petitioner has now attained the age of [Current Age].

7. More than 18 months have elapsed since [he/she] was released from juvenile court jurisdiction.
8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any state.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, pursuant to N.C. Gen. Stat. § 7B-3200, that the Clerk of Court of [County] and all law enforcement agencies expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

IT IS FURTHER ORDERED that the Clerk of Court of [County] County send a copy of this expunction order to all public officials known to be a custodian of such entries, including, but not limited to, the [City] Police Department, the North Carolina State Bureau of Investigation, and the Federal Bureau of Investigation.

Respectfully submitted this the [#] day of [Month], [Year].

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[JUDGE]  
District Court Judge

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT**  
**APPLICATION FOR CERTIFICATION OF ELIGIBILITY**  
PLEASE TYPE OR PRINT ALL INFORMATION

SECTION A - ALL APPLICANTS

Last Name		First Name		Middle Name
Aliases: Maiden: Divorce		Residence Phone ( )		Business Phone ( )
Date of Birth (DOB) MONTH DAY YEAR		Race	Sex	Social Security No.
Mailing Address		City		State Zip
Permanent Address		City		State Zip
Arresting Agency	Date(s) of Arrest		Florida Drivers License No.	

**Select One:** ☐ **Expunge** ☐ **Seal** **NOTE:** For Expunction applications, the State Attorney or Statewide Prosecutor must complete Section B.

<p>Charge(s)</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>I hereby certify that the information contained herein is true and correct to the best of my knowledge.</p> <p>Signature _____ Date _____</p>	<p><b>NOTARY</b>  <b>(PLEASE STAMP WITH SEAL)</b>  Sworn to and subscribed before me  This _____ Day of _____, 20____  _____  (Signature of Notary Public)  _____  (Print, Type, or Stamp Commissioned Name of Notary or Deputy Clerk of the Court)  Personally Known _____ or Produced Identification _____  Type of Identification Produced: _____</p>
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State Attorney/Statewide Prosecutor	County	Circuit	Reviewing Officer
-------------------------------------	--------	---------	-------------------

Charge(s) Description	Statute Violation	Case Number	Action
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

<p>If one of the paragraphs below is checked, my signature below indicates that, based on the disposition of all charges related to the above-referenced case, that case is eligible to be expunged, if the applicant is otherwise eligible to have his or her record expunged under law. My signature does not imply that the applicant has satisfied all other statutory eligibility criteria, or that this Office would not oppose a petition to expunge the above-referenced case. By checking paragraph 1, 2, or 3, I certify that the above-referenced case is presently eligible to be expunged, assuming that the applicant is otherwise eligible, because:</p> <p><input type="checkbox"/> 1. An indictment, information, or other charging document was not filed or issued in the case; OR</p> <p><input type="checkbox"/> 2. An indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction; OR</p> <p><input type="checkbox"/> 3. (a) None of the charges (acts) related to the arrest or alleged criminal activity to which the application for certificate of eligibility to expunge pertains resulted in an adjudication of guilt or of delinquency; AND  (b) The record of the arrest or alleged criminal activity to which the application for certificate of eligibility to expunge pertains has been sealed for at least 10 years; AND  (c) None of the charges (if any) for which adjudication of guilt or of delinquency was withheld relates to a violation of s. 393.135, s. 394.4593, s. 767.025, chapter 794, s. 796.03, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435.</p>	<p>The above-referenced case is not eligible to be expunged because:</p> <p><input type="checkbox"/> One or more of the charges (acts) related to the arrest or alleged criminal activity to which the application for certificate of eligibility to expunge pertains resulted in an adjudication of guilt or of delinquency;</p> <p>OR, BECAUSE OF ONE OR MORE OF THE FOLLOWING REASONS:</p> <p><input type="checkbox"/> The record of the arrest or alleged criminal activity to which the application for certificate of eligibility to expunge pertains has not been sealed for at least 10 years;</p> <p><input type="checkbox"/> One or more of the charges for which an adjudication of guilt or of delinquency was withheld relate to a violation of s. 393.135, s. 394.4593, s. 767.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435;</p> <p><input type="checkbox"/> Records available to this Office disclose some other ground of statutory ineligibility (e.g., adjudication of guilt in a different case; previous expunction or sealing).</p>
Signature _____ Title(Prosecuting Authority) _____ Date _____	Signature _____ Title(Prosecuting Authority) _____ Date _____

SECTION B - STATE ATTORNEY  
FOR EXPUNCTION APPLICATIONS ONLY

SECTION C  
FDLE

Acct/Budget	Expunge/Seal Section	Expunge/Seal Section
Date Received _____	I.D.# _____ ORI _____	Date Received _____
Check _____	Certification Status    Approved    Denied	Date Entered _____
Processed By _____ - _____	Seal <input type="checkbox"/> <input type="checkbox"/>	Date Mailed _____
	Expunge <input type="checkbox"/> <input type="checkbox"/>	

**IMPORTANT: A CERTIFICATE OF ELIGIBILITY IS VALID FOR 12 MONTHS FROM THE DATE OF ISSUANCE. AFTER THAT TIME, A NEW CERTIFICATE MUST BE APPLIED FOR.**

## GENERAL INSTRUCTIONS & INFORMATION:

1. **Applicable law:** Sections 943.0585 and 943.059, Florida Statutes, and Chapter 11C-7, Florida Administrative Code (FAC), govern the use of this application, for the expunction or sealing of non-judicial criminal history records by criminal justice agencies. These statutes and the implementing rules require that you obtain a **Certificate of Eligibility** from the Florida Department of Law Enforcement (FDLE) **prior** to requesting a court for an order to seal or expunge your non-judicial criminal history records, and that you provide the information required by this application process.
2. Please type or print all information, except signatures. Complete all required portions of the application and submit all required documents and the processing fee noted below, under Section A. **Failure to disclose your social security number (SOC) may delay the processing time of your application. If your application is submitted without all the required information, documentation, or the processing fee, FDLE may reject your application.**
3. **Mailing information:** Mail your completed application package and fee to the following address:  
  
**Florida Department of Law Enforcement  
ATTN: Expunge/Seal Section  
P.O. Box 1489  
Tallahassee, Florida 32302-1489**
4. **Contact Information:** FDLE's Expunge/Seal Section – (850) 410-7870.
5. **Optional Personal Review of your Florida criminal history record:** If you have questions about what appears in your Florida criminal history record maintained by FDLE, you may wish to obtain a Personal Review of your record from FDLE, pursuant to Chapter 11C-8, FAC, before submitting this application form. The Personal Review is **optional** and is not required for FDLE to process your Application for Certification of Eligibility for expunction or sealing of your record. To obtain a Personal Review, please complete and submit the enclosed FDLE **Fingerprint form** and a **letter** to FDLE at the address above. If you submit the fingerprint form and a letter for your Personal Review, please DO NOT send in the APPLICATION or the \$75.00 processing fee until the Personal Review is completed; the results of your personal review may influence your decision to request the expunction or sealing of your criminal history record.

## SECTION A: FOR ALL APPLICANTS

1. Complete **every part** of **SECTION A**. Make sure your **signature**, as the applicant, is **notarized**.
2. If you were given a **Notice to Appear** and not physically arrested for the charge(s), indicate the date of the Notice to Appear in the box marked "Date of Arrest."
3. **NON-REFUNDABLE Processing Fee:** Submit with your application a **money order or Cashier's check** in the amount of **\$75.00**, made payable to the Florida Department of Law Enforcement (FDLE).
4. Submit the attached **fingerprint form** with your fingerprints, as part of your application packet. **This form must be completed by authorized personnel at a law enforcement or criminal justice agency**, using **only** the attached FDLE Fingerprint form. (If you have obtained a **Personal Review**; **send the fingerprint card back** with the enclosed fingerprint form, please resubmit the same form for the Expunge/Seal "Certificate of Eligibility" application.)
5. Provide a **certified copy of the final disposition(s)** for **each** of the charges you list on your application. Dispositions can usually be obtained from the office of the Clerk of Courts in the county where you were charged. For Pretrial Intervention and other Diversion programs, a **certified letter of completion** from the State Attorney or Statewide Prosecutor may substitute for a certified disposition. If you received probation for any of the charges, you must also submit a **certified copy of the termination of your probation**.

## SECTION B: FOR EXPUNCTION APPLICANTS ONLY

1. **Submit the application to the State Attorney or Statewide Prosecutor for completion of SECTION B only if you are applying to have your records EXPUNGED.** NOTE: In addition to proper completion of Section B, you must also submit the certified copies of disposition(s) and termination of probation required under Section A.

## SECTION C: FOR FDLE USE ONLY



**REASONS AN APPLICATION FOR CERTIFICATE OF ELIGIBILITY TO SEAL OR  
EXPUNGE A CRIMINAL HISTORY RECORD WILL BE DENIED**

Pursuant to Sections s.943.0585 and s.943.059, Florida Statutes, a Certificate of Eligibility to expunge or seal a criminal history record **cannot** be issued under any of the following circumstances:

1. The criminal history record reflects that you have been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing any felony or a misdemeanor specified in s.943.051(3)b. **Certain driving violations are classified as criminal, such as DUI, reckless driving, and (with some exceptions) driving while license is suspended/canceled/revoked.**
2. The criminal history record reflects that you have been adjudicated guilty of or adjudicated delinquent for committing one or more of the acts stemming from the arrest or alleged criminal activity to which the application pertains.
3. The criminal history record reflects that you have received a prior sealing or expunction of a criminal history record under s.943.0585, s.943.059, former s.893.14, former s.901.33, former s.943.058, or from any jurisdiction outside the state.
4. The criminal history record to which the application pertains relates to a violation of s.393.135, s.394.4593, s.787.025, chapter 794, s.796.03, s.800.04, s.810.14, s.817.034, s.825.1025, s.827.071, chapter 839, s.847.0133, s.847.0135, s.847.0145, s.893.135, s.916.1075, a violation enumerated in s.907.041, or a violation of any offense qualifying for registration as a sexual predator under s.775.21 or for registration as a sexual offender under s.943.0435, Fla. Stat., with a finding of guilt, or a plea or guilty or nolo contendere (without regard to whether adjudication was withheld).
5. The criminal history record reflects that you have another petition to seal or expunge pending before a court of competent jurisdiction.
6. The criminal history record reflects that the court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application pertains has not been completed.
7. **[For expunction only]** The criminal history record reflects that some or all of the charges related to the arrest or criminal activity to which the application pertains were not dismissed prior to trial, adjudication, or the withholding of adjudication. If no other disqualification applies, the record would be eligible to be sealed.

**PLEASE NOTE:** The Governor and Cabinet of Florida, acting in the capacity of the Board of Executive Clemency, declared on June 10, 1999, that the granting of a full pardon does not remove any condition of ineligibility for sealing or expunging a criminal history record which would otherwise be imposed by a conviction or withholding of adjudication pursuant to Sections 943.0585 and 943.059, Florida Statutes, and, acting in the capacity of agency head of the Department of Law Enforcement, the Board directed FDLE to deny a Certificate of Eligibility to any person receiving a pardon who is otherwise ineligible for the sealing or expunging of the person's criminal history record.

## DISQUALIFYING CHARGES FOR EXPUNCTION/SEALING

A request for a certificate of eligible for an expunction or sealing of a criminal history record will be denied if the defendant was found guilty or pled guilty or nolo contendere, even if the adjudication was withheld, on any violation of the following:

### **Offenses listed in S.907.041, F.S.**

1. Arson
2. Aggravated Assault
3. Aggravated Battery
4. Illegal use of explosives
5. Child abuse or Aggravated Child Abuse
6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult
7. Aircraft piracy
8. Kidnapping
9. Homicide
10. Manslaughter
11. Sexual Battery
12. Robbery
13. Carjacking
14. Lewd, lascivious, or indecent assault or act upon or in the presence of a child under the age of 16 years
15. Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority
16. Burglary of a dwelling
17. Stalking or Aggravated Stalking
18. Act of Domestic Violence, as defined in **s.741.28**
19. Home-invasion Robbery
20. Act of Terrorism as defined by s.775.30
21. Attempting or conspiring to commit any of the above crimes
22. Manufacturing any substances in violation of chapter 893

### **S.393.135, F.S.**

Sexual misconduct with developmentally disabled person and related offenses

### **S.394.4593, F.S.**

Sexual misconduct with mentally ill person and related offenses

### **S.787.025, F.S.**

Luring or enticing a child

### **Chapter 794, F.S.**

Sexual Battery and related offense

### **S.796.03, F.S.**

Procuring person under 18 for prostitution

### **S.800.04, F.S.**

Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age

### **S.810.14, F.S.**

Voyeurism

### **S.817.034, F.S.**

Florida Communication Fraud Act

(Scheme to Defraud or Organized Fraud, as defined in s.817.034, F.S.)

### **S.825.1025, F.S.**

Lewd or lascivious offense upon or in presence of elderly person or disabled adult

### **S.827.071, F.S.**

Sexual performance by a child

### **Chapter 839, F.S.**

Offenses by Public Officers and Employees

### **S.847.0133, F.S.**

Showing, etc., obscene literature to minor

### **S.847.0135, F.S.**

Computer pornography

### **S.847.0145, F.S.**

Selling or buying of minors

### **S.893.135, F.S.**

Trafficking in controlled substances

### **S.916.1075**

Sexual misconduct with mentally deficient or mentally ill defendant and related offenses

A violation of any offense qualify for registration as a sexual predator under **s.775.21** or for registration as a sexual offender under **s.943.0435**.

All references are from Florida Statutes

## FINGERPRINTS FOR APPLICATION FOR CERTIFICATION OF ELIGIBILITY

Name:  
Last \_\_\_\_\_ First \_\_\_\_\_ Middle \_\_\_\_\_

Alias(aka)  
Name: Last \_\_\_\_\_ First \_\_\_\_\_ Middle \_\_\_\_\_

RACE: \_\_ SEX: \_\_ DOB: \_\_\_\_\_ \* SOC: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Please mail completed application and fingerprints to:  
FDLE, P.O. Box 1489, Tallahassee, FL 32302, Attn: Expunge/Seal Section

Signature of official taking fingerprints: \_\_\_\_\_ ORI: \_\_\_\_\_

Signature of person fingerprinted: \_\_\_\_\_ Date: \_\_\_\_\_

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
Left Four Fingers Taken Simultaneously		L. Thumb	R. Thumb	Right Four Fingers Taken Simultaneously

- Social Security Number, this information is voluntary; failure to disclose may delay the processing time of your application.

Form 40-024

**☒ DID YOU REMEMBER TO:**

- ☐ Complete the application? Did you Sign and date the application in front of a notary?
- ☐ Provide a certified (stamped copy) disposition of your case you want to have sealed/expunged?
- ☐ Include your name, race/sex, date of birth, social security number and signature on the fingerprint form?
- ☐ Provide a \$75.00 check or money order made payable to FDLE? Did you sign and completely fill out the check or money order?
- ☐ Include an Attorney's letterhead, if you (applicant) are represented by an attorney?
- ☐ Make copies of your application and documents for your records?
- ☐ For Expunge Applicants only: Is Section B completed and signed by the State Attorney's Office?
- ☐ For Juvenile Expunge Applicants only: Is Section B completed and signed by the State Attorney's Office?

FDLE asks that you provide your social security number (SSN). The decision to provide your SSN is at your option, and if you provide your SSN, FDLE will use it for purposes of identification, and may share the information with other agencies for the same purpose. FDLE's request for your SSN is authorized by state law because use of it is imperative for FDLE to fulfill its lawful duties and responsibilities. Your failure to provide your SSN may result in a delay in processing your application or request.