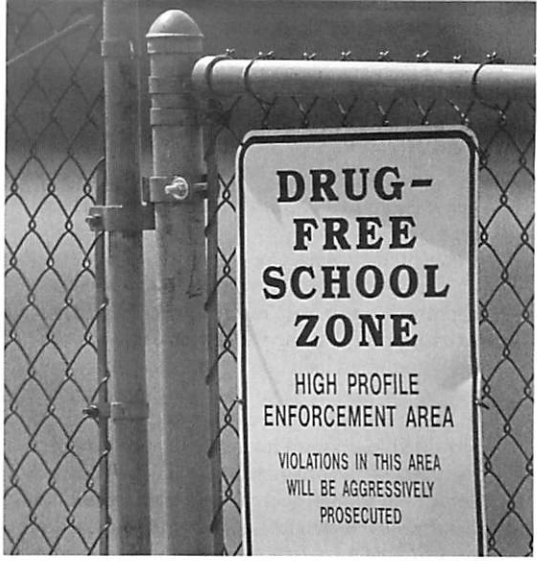
# Five Devastating Collateral Consequences of Juvenile Delinquency Adjudications You Should Know *Before* You Represent a Child




by Julie Ellen McConnell

**Julie Ellen McConnell** is director of the Children's Defense Clinic and assistant clinical professor of law at the University of Richmond where she supervises second- and third-year law students in the representation of children charged with acts of delinquency and children who are in need of supervision, because of truancy or runaway status. She previously was supervising assistant commonwealth's attorney in the Juvenile and Domestic Relations Court for the Richmond Commonwealth's Attorney's Office where she prosecuted cases involving juvenile delinquency, child abuse, sexual abuse, domestic violence, elder abuse, and homicide. Before that she was an assistant public defender in the Richmond public defender's office.

The original purpose of the juvenile court was to create a forum, separate from the adult courts, in which children could be given the opportunity for rehabilitation and treatment.[1] Society placed an emphasis on correcting misbehavior and minimizing disruptions in the transition to adulthood for young people and wanted to spare them the stigma of being branded as "criminals."[2] In 1967, the Court established in *In re Gault* that juveniles, even though they were in a different system, were still entitled to the basic safeguards that an adult would be granted in the courtroom.[3]

For most of the existence of the juvenile court in Virginia, the belief that children are amenable to reform prevailed. Unfortunately, the late 1980s and 1990s ushered in a new attitude about how children should be treated in the criminal justice system. Based on a now disproven theory that there would be a wave of juvenile "superpredators" that would wreak havoc on our communities, public policy began to deemphasize youth privacy, treatment, and rehabilitation in favor of laws designed to heighten public accountability.[4] In reality, the predicted youth crime wave never materialized and between 1999 and 2008, juvenile arrest rates for violent crimes decreased by 8.6 percent and total juvenile arrest rates have fallen by 15.7 percent in the past decade.[5] Regardless, Congress and the Virginia General Assembly enacted numerous laws creating serious collateral consequences attendant to delinquency adjudications.

In *Padilla v. Kentucky*,[6] the Supreme Court recently addressed the duty of counsel to advise clients about collateral consequences. In light of this case, the lifelong impact of many collateral consequences, and the inherent vulnerability of children,[7] it is imperative that to provide effective assistance of counsel, attorneys inform their clients of all the potential collateral consequences of a juvenile adjudication or conviction.[8] Collateral consequences greatly impact the lives of individuals with criminal records, as well as, in many instances, the lives of their families.[9] These consequences, both individually and collectively, constrict the social, economic, and political access of the two million juveniles arrested nationwide each year,[10] impeding the individual's ability to reintegrate successfully into the community upon release. The collection of consequences that can attach to a single conviction is exceedingly difficult to grasp, as they comprise a mixture of federal and state statutory law, regulatory law, and local policies.[11]

**A Delinquency Charge Can Have Devastating Ripple Effects on a Child's Access to an Education.**

In the 1990s, zero tolerance laws, spearheaded by the federal government in the passage of the Gun-Free Schools Act (GFSA),[12] mandated that states establish laws regarding firearms, require a one-year expulsion for certain weapons offenses, and provided incentives to states to tighten laws

Gang Prosecution continued from page 23

membership in a criminal street gang as defined in 18.2-46.1."

22 *United States v. Abel*, 469 U.S. 45 (1984).

23 *Id.* The Court stated, "A witness' and a party's common membership in an organization, even without proof that the witness or party has personally adopted its tenets, is certainly probative of bias." *Id.* at 52. The Court further explained, "For purposes of the law of evidence the jury may be permitted to draw an inference of subscription to the tenets of the organization from membership alone, even though such an inference would not be sufficient to convict beyond a reasonable doubt in a criminal prosecution under the Smith Act [forbidding syndicalism]." *Id.* at 53.

The *Abel* court noted, and rejected, the claim of the defendant that evidence of gang affiliation and gang tenets was more prejudicial than probative.

> "Respondent argues that even if the evidence of membership in the prison gang were relevant to show bias, the District Court erred in permitting a full description of the gang and its odious tenets. Respondent contends that the District Court abused its discretion under Federal Rule of Evidence 403, because the prejudicial effect of the contested evidence outweighed its probative value. In other words, testimony about the gang inflamed the jury against respondent, and the chance that he would be convicted by his mere association with the organization outweighed any probative value the testimony may have had on [the defense witness'] bias.
>
> "Respondent specifically contends that the District Court should not have permitted [the rebuttal witness'] precise description of the gang as a lying and murderous group. Respondent suggests that the District Court should have cut off the testimony after the prosecutor had elicited that [the defense witness] knew respondent and may have belonged to an organization together. This argument ignores the fact that the *type* of organization in which a witness and a party share membership may be relevant to show bias. If the organization is a loosely knit group having nothing to do with the subject matter of the litigation, the inference of bias arising from common membership may be small or nonexistent. If the prosecutor had elicited that both respondent and [the defense witness] belonged to the Book of the Month Club, the jury probably would not have inferred bias even if the District Court had admitted the testimony. The attributes of the Aryan Brotherhood – a secret prison sect sworn to perjury and self-protection – bore directly not only on the *fact* of the bias but also on the *source* and *strength* of [the defense witness'] bias. The tenets of this group showed that [the defense witness] had a powerful motive to slant his testimony towards respondent, or even commit perjury outright."
>
> *Id.* at 53-54 (emphasis in original; alterations added).

The Supreme Court also rejected the defendant's protest that the gang-related evidence was not offered to show bias, but instead was offered to suggest that the witness' membership in the gang was impermissible (and inadmissible) past conduct bearing on his veracity and character for truthfulness. The Court stated, "It seems clear to us that the proffered testimony with respect to [the defense witness'] membership in the Aryan Brotherhood sufficed to show potential bias in favor of respondent; because of the tenets of the organization described, it might also impeach his veracity directly. But there is no rule of evidence which provides that testimony admissible for one purpose and inadmissible for another purpose is thereby rendered inadmissible; quite the contrary is the case. It would be a strange rule of law which held that relevant, competent evidence which tended to show bias on the part of a witness was nonetheless inadmissible because it also tended to show that the witness was a liar." Id. at 56.

*See also Dawson v. Delaware*, 503 U.S. 159 (1992), in which the Supreme Court rejected a broad First Amendment claim offered by the defendant regarding a gang-related stipulation used at his capital sentencing proceeding. The stipulation was undetailed and provided no context for its declaration that the defendant was affiliated with a prison gang, and the Court found it inadmissible and irrelevant on that basis. However, the Court's strong and extensive dicta indicates that if the prosecution had offered more extensive gang-related evidence, such as testimony of an expert witness, then such evidence would have provided the necessary context to make the gang-related stipulation relevant. In other words, it was the dearth of context that was the problem; further information about the gang and its tenets could have and surely would have been probative of legitimate death-penalty issues.

24 *Payne v. Commonwealth*, 233 Va. 460 (1987), *cert. denied*, 484 U.S. 933 (1987).

25 *Utz*, 28 Va. App. at 418.

26 *Abel*, 469 U.S. 45.

27 *Payne*, 233 Va. 460.

28 *Cousins v. Commonwealth*, 56 Va. App. 257 (2010).

29 *Id.* at 275.

involving weapons in schools. Whenever a child is charged with a delinquent act, even if it does not take place on school grounds, juvenile court intake officers are required by statute to notify the superintendent of the child's school district.[13] Intake officers are further required to provide specific information about the nature of the offense and whether a petition is filed if it involves homicide, felonious assault, sexual assault, schedule I or II drug offenses, arson, burglary, robbery, or mob or gang activity.[14] If a child is adjudicated delinquent of one of these offenses, the school superintendent may suspend or expel him or her.[15] In some cases, including those involving weapons and drug offenses, if they occurred on school grounds, a school district must expel a child from school for not less than a year regardless of an adjudication of guilt under Virginia's zero tolerance policy. [16]

**Many Juvenile Records Are No Longer Confidential**

Youth and their families often believe that a juvenile record automatically disappears when the child turns 18, but juvenile records are no longer expunged for a child adjudicated delinquent of a felony.[17] If a child is at least 14 when charged with a violent felony, the records will be open to the public.[18] This lack of confidentiality can have devastating effects, including inhibiting future employment opportunities. Certain offenses are barrier crimes to providing care for children, the elderly, and the disabled, and serving in the military.[19]

In 1996, Congress passed a federal law that drastically broadened eviction policies governing low-income housing[20] requiring eviction for "[a]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control. ..."[21] This policy also rendered evicted family members ineligible for public housing for at least three years following the eviction.[22]

**Once an Adult, Always an Adult**

In certain cases, children can be tried in circuit court as adults, rather than in juvenile court.[23] A young person 14 years or older can be transferred to circuit court in several ways: automatic certification after a preliminary hearing in juvenile and domestic relations court if the person is charged with capital murder, 1st or 2nd degree murder, murder by lynching, or aggravated malicious wounding;[24] prosecutorial certification after proper notice and a preliminary hearing in juvenile court for serious felonies, such as robbery, rape, or a third possession with the intent to distribute narcotics;[25] and finally, by judicial discretion after a transfer hearing for all other felonies upon request by the commonwealth.[26]

Once in circuit court, the youth will have the right to a jury trial, but will still be sentenced by the judge, who will have the option of employing the sentencing options of the juvenile court, with one exception.[27] Although the court will have the discretion to impose a sentence that combines a commitment to the Department of Juvenile Justice with time in the Department of Corrections,[28] the court will be required to sentence the young person to the Department of Corrections for any mandatory sentences required by statute.[29] The court is hamstrung by the absence of authority by which it can impose a mandatory minimum sentence to be served in the Department of Juvenile Justice, because the very nature of that system is that the length of stay is based on the youth's progress in the rehabilitative programs offered in juvenile facilities. Even in the case of serious offender commitments, the young person has a statutory right to a review after the first two years and could be released if a court felt the child had been rehabilitated.[30] It is important to note, however, that any time a child spends in detention or jail can be counted toward a sentence in the Department of Corrections if counsel petitions the department to include the time in the length of stay calculation.[31] And finally, once a young person has been tried in circuit court, he will forever be considered an adult and in future cases will proceed directly to circuit court, and in the case of a jury trial, will be sentenced by the jury. [32]

*...juvenile records are no longer expunged for a child adjudicated delinquent of a felony.*

**Juvenile Adjudications Can Trigger Enhancements in Sentencing for Later Convictions**

In some cases, juvenile adjudications can enhance sentencing for subsequent convictions.[33] A juvenile 14 years or older who has been adjudicated

delinquent of an offense that would be a violent felony if committed by an adult may be committed as a "serious offender" to a juvenile correctional center for a determinate sentence of anywhere from one year to up to the age of 21, but not to exceed seven years.[34]

Virginia's discretionary sentencing guidelines include prior juvenile convictions and adjudications of delinquency,[35] so a prior juvenile burglary adjudication, for example, would make a defendant a Category II offender on the Virginia Sentencing Guidelines, thus enhancing his sentencing range significantly. And some prior juvenile adjudications for sexual offenses will trigger a maximum penalty for future sex offenses[36] and can be considered as evidence in determining eligibility under the Sexually Violent Predator's Act.[37]

*Adolescents, more than adults, tend to discount the future and to afford greater weight to the short-term consequences of decisions."*

Additionally, in Virginia, it is generally unlawful for any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years or older, for an act that would be a felony if committed by an adult, to possess a firearm.[38] And the minimum mandatory punishments under Virginia's "firearm felon"[39] statute apply to any person adjudicated delinquent when 14 or older for murder, kidnapping, robbery with a firearm, or rape and to any person under 29 who was adjudicated delinquent as a juvenile 14 years or older, for an act that would be a felony if committed by an adult.[40]

**Delinquency Adjudications Can Dramatically Increase Sentencing Calculations under Federal Guidelines**

The federal guidelines require the computation of a convicted defendant's Criminal History Category (CHC). This category establishes one axis of the sentencing guidelines matrix. The higher the CHC, the higher the guideline sentence recommendation. Section 4A. 1.2 of the guidelines sets forth the number of points to be included in calculating the category; and it does so by assigning points based upon sentences previously served, including for juvenile adjudications.[41]

The sentencing guidelines require that two points be added for each juvenile sentence to confinement of at least sixty days and that one point be added for other juvenile sentences within five years of the current offense.[42] This may include simply a commitment to a juvenile detention home.[43] If the defendant received a sentence of imprisonment exceeding one year and one month, three points are added for each sentence.[44]

A delinquency adjudication is not a conviction for immigration purposes,[45] but a delinquency adjudication still can create problems for juvenile immigrants. Certain grounds of inadmissibility (bars to obtaining legal status) and deportability (loss of current legal status) do not depend upon conviction; mere "bad acts" or status can trigger the penalty.[46]

**Conclusion**

It is imperative that lawyers representing children understand the myriad collateral consequences of a young person's encounters with the law and properly inform their clients about them. "Adolescents, more than adults, tend to discount the future and to afford greater weight to the short-term consequences of decisions." [47] Lawyers have a duty to be well informed as to all of the consequences a youth might face in order to properly advise their clients.[48] We must anticipate these consequences and fully consider and plan for them wherever possible.[49]

Endnotes:

1 *Smith v. Daily Mail*, 443 U.S. 97, 107 (1979) (Justice Rehnquist expressing his concern over piercing this traditional veil of confidentiality).

2 Franklin E. Zimring, "American Juvenile Justice" (2005) (noting that Jane Addams, one of the original visionaries of the juvenile justice system, said that the goal of the system was "a determination to understand the growing child and a sincere effort to find ways for securing his orderly development in normal society.")

3 *In re Gault*, 387 U.S. 1428 (1967) (concluding that juveniles were protected by the constitutional right to counsel, the opportunity to confront witnesses, the right against self-incrimination, the right to a transcript of the hearing, and a right to appeal the court's decision).

4 Howard N. Snyder and Melissa Sickmund, "Juvenile Offenders and Victims: 1999 National Report, National Center for Juvenile Justice" (NCJJ) (describing "superpredator" myth created by John DiIulio to call public attention to what he characterized as a "new breed" of offenders). *See* "Body Count: Moral Poverty...And How to Win

America's War Against Crime and Drugs" William J. Bennett, John J. DiIulio , and John P. Walters, ("[K]ids that have absolutely no respect for human life and no sense of the future. . . . These are stone-cold predators!" He has described these young people as "fatherless, Godless, and jobless" and as "radically impulsive, brutally remorseless youngsters, including ever more teenage boys, who murder, assault, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious [linked] disorder." P. 27.

5 U.S. Dep't of Justice, Federal Bureau of Investigation, Crime in The United States 2008: Ten Year Arrest Trends, Table 32, available at http://www2.fbi.gov/ucr/cius2008/data/table_32.html (last viewed May 10, 2011).

6 *Padilla v. United States*, 130 S. Ct. 1473 (2010). (ruling in an ineffective assistance claim that criminal defense attorneys must warn their clients of a potential deportation if they plead guilty and are not U.S. citizens.)

7 *Roper v. Evans,* 543 U.S. 551, 569 (2005) (stating juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure... "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions").

8 U.S. Const. Amend. VI.

9 Christopher Mele & Teresa A. Miller, "Collateral Penalties as Techniques of Social Policy, in Civil Penalties, Social Consequences 10" (2005) (relating that collateral consequences "reach far beyond individuals who have come into direct contact with the criminal justice system to include their families and communities").

10 Charles Puzzanchera, Office of Juvenile Justice and Delinquency, Juvenile Arrests 2008 (2009).

11 *See, e.g.,* Gabriel J. Chin, "Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction," 6 J. Gender Race & Just. 253, 259 (2002) (explaining the difficulties of grasping the range of consequences that attach to a particular offense).

12 20 U.S.C. Chapter 70, § 8924.

13 Va. Code Ann. § 16.1-260(G) (2011).

14 *Id.*

15 Va. Code Ann. § 22.1-277 (2011).

16 Va. Code Ann. § 22.1-277.07 and Va. Code Ann. § 22.1-277.08.

17 Va. Code Ann. 16.1-299 (2011).

18 Va. Code Ann. § 16.1-305 (2011).

19 Va. Code Ann. § 19.2-392.02 (2011); Va. Code Ann. § 63.2-1719 (2011); Va. Code Ann. § 63.2-1726 (2011). All branches of the military require adjudications, whether traffic related or more serious, be reported and waivers must be granted before recruits are allowed to serve.

20 National Affordable Housing Act, Pub. L. No. 104-120, § 9(a)(2), 110 Stat. 836 (1996).

21 *Id.*

22 In 2002, the issue went to the Supreme Court in *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002)(affirming that residents could lawfully be evicted from public housing based on the offenses of their relatives).

23 Va. Code Ann. § 16.1-269.1 (2011).

24 Va. Code Ann. § 16.1-269.1(B) (2011).

25 Va. Code Ann. § 16.1-269.1(C) (2011).

26 Va. Code Ann. § 16.1-269.1 (A)(2011).

27 Va. Code Ann. § 16.1-272(A) (2011).

28 A "violent juvenile felony" is defined as any offense that is subject to certification to the adult court pursuant to Va. Code Ann. § 16.1-269.1(B) or (C) (2011). The statute reads that, under this provision, a juvenile may "serve a portion of the sentence as a serious juvenile offender ... and the remainder of such sentence in the same manner as provided for adults"; (ii) "... serve the entire sentence in the same manner as provided for adults"; or (iii) a suspended adult term "conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case...." [*see* Va. Code Ann.§ 16.1-272(A)(1) (2011)].

29 *See Commonwealth v. Brown*, 279 VA. 210, 688 S.E. 2d 185 (2011) (holding the mandatory minimum sentencing provisions of Va. Code § 18.2-53.1 control over the juvenile sentencing options contained in subdivision A 1 of § 16.1-272 that allow suspension of an adult sentence).

30 Va. Code Ann. § 16.1-285.1(F) (2011).

31 Va. Code Ann. § 53.1-187(2011).

32 Va. Code Ann. § 16.1-269.1(c)(2011). *See also Hughes v. Commonwealth*, 39 Va. App. 448, 573 S.E.2d 324 (2002) (concluding that defendant juvenile, tried as an adult and convicted of lesser-included offense of unlawful wounding, could not have his case transferred back to the juvenile court, as once juvenile court made a probable cause finding it had no further jurisdiction); *Saunders v. Commonwealth*, 281 Va. 448, 706 S.E.2d 350 (2011) (concluding when defendant appeared before a circuit court for sentencing on criminal charges under Va. Code Ann. § 16.1-269.6, the jury was correctly allowed to sentence defendant because he was not a juvenile in that he had been previously convicted as an adult on an unrelated charge and given an adult sentence).

33 VA Code Ann. 17.1-805(2011). Virginia Code states that, "previous convictions shall include prior ...juvenile adjudications of delinquency based on an offense which would have been at the time of conviction, a felony, if committed by an adult..."

34 Va. Code Ann. § 16.1-285.1(2011) Also, Children on parole for a prior commitment for a delinquency which would have been a felony if com-

mitted by an adult or those with a felony adjudication from the previous twelve months are eligible for a serious offender commitment for any felony adjudication.

35 Va. Code Ann. § 19.2-295.1 (2011).

36 Va. Code Ann. § 18.2-67.5:3 (2011). *See also* Va. Code Ann. § 18.2-67.5(2) (2011).

37 *See Commonwealth v. Garrett*, 276 Va. 590, 667 S.E.2d 739 (2008) (concluding that an expert may testify about the defendant's propensity to commit further acts of a sexually violent nature based on analysis of juvenile and adult records).

38 Va. Code Ann. § 18.2-308.2(A) (2011).

39 *Id.*

40 *Id.*

41 United States Sentencing Guidelines § 4A. 1.1 *See also United States v. Kirby*, 893 F.2d 867 (6th Cir. 1990)(holding that the federal court determination is not effected by whether a juvenile adjudication is considered a "conviction of crime.").

42 United States Sentencing Guidelines § 4A. 1.2(d)(2).

43 *See United States v. Williams*, 891 F.2d 212 (9th Cir. 1989).

44 United States Sentencing Guidelines § 4A. 1.2(d)(1).

45 *See Matter of Devision*, 22 I&N Dec. 1362 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981).

46 8 U.S. Chapter § 1182(a)).

47 Kim Taylor-Thompson, "States of Mind/States of Development," 14 STAN. L. & POL'Y REV. 143, 154 (2003).

48 Kristin Henning, "Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?" 79 N.Y.U. L. REV. 520 (2004); Elizabeth Scott & Thomas Grisso, "The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform," 88 J. CRIM. L. & CRIMINOLOGY 137 (1997).

49 Robert E. Shepherd, "Pleading Guilty in Delinquency Cases", 16 *Criminal Justice Magazine* (2001).