

Marked for Life: Long-Term Effects of Juvenile Adjudications

by Margaret A. Nelson

Collateral consequences in juvenile criminal cases are often not immediately apparent but in the long run they can be devastating. Many are unintended results that flow directly from a court's adjudication.¹ Long-term consequences, often created by legislators at little or no budget cost, can be more severe than the "direct" criminal punishment — especially when a disposition consists solely of probation without active incarceration. The "hurried processing of even misdemeanor pleas can have serious consequences for the accused. . . . Even if they get no jail time, such defendants still get a criminal conviction, which can affect immigration status and some public benefits." *New York Times*, "Citing Workload, Public Lawyers Reject New Cases," November 9, 2008. Some consequences may not be apparent for years, but are inevitable. Lawyers representing youthful offenders must know these consequences before they assess the charge and before they advise the juvenile client to accept a plea bargain.

Here is an example: At a school in Anywhere, Virginia, there is zero tolerance for fighting. Adolescent Billy Bully started picking on classmate Tiny Tim. Verbal jabs led to Billy hitting Tiny; a fight broke out. When another classmate, 15-year-old Sam Samaritan, stepped in to break it up, the fight stopped briefly, but then Billy jumped on Tiny again. Sam intervened and threw Billy to the ground, causing Billy to break his arm and cut his hand. Because of the injuries, Sam Samaritan was charged with malicious wounding, a felony, and Billy Bully was charged with assault and battery, a misdemeanor. Sam's lawyer negotiated a plea agreement, which pleased the family because Sam's charge was reduced to unlawful wounding, a lesser felony, with no public trial, no detention time and no

fine or community service. When they accepted the offer Sam's lawyer forgot to mention that Sam can no longer hunt with his father, he will have trouble following his family's traditional path into the Marine Corps, and he will not be employable as a police officer, as he had hoped. Because of the felony adjudication he agreed to in that "great deal," he cannot possess a weapon until he is aged twenty-nine.

Many participants in the juvenile justice system realize that problems have reached critical mass and are trying to correct them. On November 6, 2008, at the Georgetown University Law Center, the American Bar Association (ABA) sponsored a national bipartisan town hall meeting, Call to Action for Juvenile Justice. The meeting gave participants an opportunity to plead for reform of the system by the next White House administration.² Seasoned juvenile justice panelists included a Harvard Law professor, a Rhode Island attorney general and district attorney, a Massachusetts juvenile judge, a Pennsylvania state senator, a Georgetown Law professor, and a newspaper journalist. As a further step, the ABA has initiated a massive, collaborative assessment of state policies and statutes that impose post-conviction or post-incarceration collateral burdens on juveniles.

In Virginia and across the nation, significant statutory changes in the last two decades have increased the severity of the consequences of a juvenile adjudication. Nationwide each year, police make 2.2 million juvenile arrests, 1.7 million cases are referred to juvenile courts, an estimated 400,000 youths cycle through juvenile detention centers, and nearly 100,000 youths are confined in juvenile jails, prisons, boot camps, and other residential facilities.³ On any given

night almost 10,000 of these children are held in adult jails and prisons, where they are particularly vulnerable to victimization and abuse. "Misguided policies that purport to be 'tough on crime' increase incarceration rates, disproportionately impact poor youth and youth of color, exacerbate the problem of gang-related crime, funnel a disproportionate number of youth who have a cognizable mental health and/or substance abuse disorder into the justice system, and can in fact make our communities less safe."⁴ The United States is the only nation in the world where juveniles are serving sentences for life without possibility of parole.⁵

For most of the one-hundred-year history of the juvenile or family court in the United States and until 1995 in Virginia, a juvenile adjudication was not deemed to be equivalent to conviction of a crime and did not carry forward the stigma or consequences of a criminal conviction into the rest of the youth's life. Access to juvenile proceedings and records was limited for many of the same reasons. Notably, former Chief Justice William H. Rehnquist expressed his concern about piercing this traditional veil of confidentiality in juvenile cases in *Smith v. Daily Mail*, 443 U.S. 97 (1979):

It is a hallmark of our juvenile justice system in the United States that, virtually from its inception, its proceedings have been conducted outside of the public's full gaze, and the youths brought before our juvenile courts have been shielded from publicity. This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide youthful errors and "bury them in the graveyard of the forgot-

ten past.” The prohibition of publication of a juvenile’s name is designed to protect the young person from the stigma of misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the state. (443 U.S. at 107)

Attorneys who have not practiced in Virginia’s juvenile courts in the last two decades may be unaware of the increasing collateral effects of juvenile proceedings. Juvenile court is no longer a place for young, green attorneys to “get their feet wet,” “learn the ropes,” or dabble in criminal practice before moving on, as mentors used to advise past generations. Since 2005, in response to these dramatic changes, the Indigent Defense Commission set in place specialized guidelines for certification and standards of practice for Virginia attorneys who request to serve as assigned counsel for juvenile criminal cases. Court-appointed counsel must demonstrate specific training and mentorship under an experienced attorney to gain certification for representation of juveniles.⁶

In Virginia, two significant events heightened the gravity of juvenile delinquency adjudications. In 1995 the General Assembly adopted sentencing guidelines that included juvenile adjudications as prior crimes for scoring a defendant on guideline sheets and determining range of punishment for subsequent adult convictions. In 1996 the legislature reformed the transfer system and amended other code sections to include juvenile delinquency adjudications as prior convictions for enhanced sentences. A loss of future juvenile status is a long-term consequence because, in the eyes of the law, “once an adult, always an adult.”⁷ These two significant alterations have changed the course of and had paramount impact on these individuals throughout their lives.

Juvenile proceedings can be far more punitive than when rehabilitation was the prevailing goal before 1995. Sadly, misinformed parents who remember the

Consequences of Adjudications and Findings of Guilt in Virginia

Grants, loans, and work study—The federal Higher Education Act of 1998 (P.L. 105-244) denies federal grants, loan, and work assistance to students convicted of drug-related offenses while they are receiving such federal financial aid.

Employment—Applicants for home health care and nursing positions will be barred from those jobs for certain misdemeanor and felony convictions involving abuse and neglect and specific violent and sexual offenses. § 32.1-162.9:1.

Sex Offender Registry—Juvenile sex offenders are included on the Sex Offender and Crimes Against Minors Registry, which posts name, age, address, phone number, crimes, and photograph on the Internet.

Voting—Virginia citizens who have been convicted of a felony are ineligible to vote unless their right to vote has been restored. Constitution of Virginia, Article 2, § 1. When a youth is convicted as an adult at age 14, he or she may never be allowed to vote.

Military Duty—For an individual with anything on his or her record worse than a minor traffic or minor non-traffic offense, a secret security clearance cannot be obtained. This could affect acceptance of a juvenile for military service. See Chapter 4 of the U.S. Army, *Active and Reserve Components Enlistment Program Manual*, AR 601-210, http://www.army.mil/usapa/epubs/pdf/r601_210.pdf

HIV and hepatitis B and C testing—A person, including a juvenile, who has been convicted of certain crimes — sexual assault (which includes consensual but statutorily impermissible sex between minors), other offenses against children, or assault and battery where the complainant is exposed to bodily fluids — can be ordered to submit to testing for these diseases any time a subsequent complaining witness requests the test.

Drug court unavailable to “violent” offenders—Juvenile offenders who previously have been adjudicated not innocent of a violent criminal offense within the preceding ten years are not eligible for participation in a drug treatment court established or continued in operation pursuant to *Virginia Code* § 19.2-297.1. (The definition of violent sometimes includes activities which do not involve threats or assaults.)

Prior convictions affect future proceedings—Juvenile delinquency adjudications count as prior convictions when sentencing an adult for a felony conviction, in state and federal courts. (*Virginia Code* § 19.2-295.1, United States Sentencing Guidelines §§ 4A1.1, 4A1.2(d)(2))

Public housing authorities—Residence in public housing can be banned. In some cases, this ban can affect a family’s housing if the family accepts the juvenile back.

Possession or transportation of firearms—Convicted felons cannot carry stun weapons, explosives, or concealed weapons. If they were aged fourteen or older when adjudicated delinquent for a juvenile felony, they cannot obtain a weapon until age twenty-nine. This is one of the most significant changes which exclude young adults from military service. § 18.2-308.2. If a person violates the ban after being adjudicated delinquent for a serious felony—murder, kidnapping, armed robbery or rape — the ban is extended to a lifetime.

continued on page 32

juvenile system of the “good ol’ days” before 1995, decide to “teach Johnny a good lesson” by letting the juvenile judge “scare him back on track,” then suddenly find that the situation is out of their hands and their child’s life has been changed forever. The consequences for our juvenile clients and their families can be devastating if attorneys don’t know the pitfalls for youthful offenders. Juvenile justice is no longer a matter of ‘fessing up, taking one’s medicine, turning over a new leaf and moving on.

not convicted, he or she can be the subject of a juvenile court case and regains juvenile status, rather than being required to be tried as an adult for subsequent potential charges. § 16.1-271 *Code of Virginia* as amended.

The author thanks Robert E. Shepherd Jr., professor emeritus of the University of Richmond School of Law, and Melissa C. Goemann, director of the Mid-Atlantic Juvenile Defense Center, for their advice, research, and support.

Endnotes:

- 1 Juveniles tried as minors for misdemeanors or felonies are “adjudicated delinquent of a particular act.” These adjudications are not findings of guilt. The same judge who adjudicates the finding of delinquency usually disposes of the case based on options presented in a predisposition report. However, minors can be transferred and tried as an adult, found guilty, and convicted if (1) they are accused of the more serious type of criminal behavior; (2) they are aged fourteen to seventeen; and (3) there is a finding that they have done what they are alleged to have done in the charges.
- 2 The author attended as co-vice chair of the Virginia State Bar Access to Justice Committee and as a member of the ABA Juvenile Justice Criminal Law Section’s Collateral Consequences Subcommittee.
- 3 Annie E. Casey Foundation, *2008 KIDS COUNT Data Book* essay: “A Road Map for Juvenile Justice Reform.”
- 4 The Constitution Project, *Smart on Crime — Recommendations for the Next Administration and Congress*, 2008. <http://www.2009transition.org/criminaljustice/>
- 5 Annie E. Casey Foundation. *2008 KIDS COUNT*
- 6 The list of qualified attorneys is maintained by the Virginia Indigent Defense Commission, § 19.2-163.03 *Code of Virginia* as amended
- 7 In 2007 the Virginia General Assembly revised the “once an adult, always an adult” law. Now, in Virginia, if a transferred minor tried in Circuit Court is

Consequences continued from page 31

Immigration—The conviction of a juvenile as an adult in a criminal court may result in deportation. *Matter of C.M., supra; Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966)

Foster care or adoption— Juvenile convictions and adjudications that would have constituted a felony if committed by an adult are considered felonies for the purpose of barring eligibility for becoming a foster and adoptive parent. An applicant with one misdemeanor assault and battery conviction not involving “moral turpitude,” abuse, or neglect may adopt or foster if ten years have elapsed since the conviction. § 63.2-1721.

Space considerations impede our ability to cover numerous other areas of impact, including Medicaid benefits, other employment opportunities, release of juvenile criminal records, and obtaining credit.

As the ABA study continues, more information will become available about collateral consequences of juvenile adjudications in Virginia.

For a national perspective, see <http://www.justicefellowship.org/search.asp?keywords=collateral+consequences>; http://www.clasp.org/publications/every_door_closed.pdf; <http://www.clsphila.org/content.aspx?id=178>; and <http://www.sentencingproject.org/Advocacy.aspx?IssueID=7>.

Persons who wish to discuss this topic with Margaret Nelson can send their correspondence to the VSB Access to Legal Services Committee, c/o Maureen Petrini, 707 East Main Street, Suite 1500, Richmond, VA 23219, or to petrini@vsb.org.

—Margaret A. Nelson