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 adjudi-
cation. Long-term consequences, often
created by legislators at little or no bud-
get cost, can be more severe than the
“direct” criminal punishment — espe-
cially when a disposition consists solely
of probation without active incarcer-
ation. 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
expose immigration status and some pub-
Overwork, Public Lawyers Reject New
Cases,” November 9, 2008. Some conse-
quences may not be apparent for years,
but are inevitable. Lawyers representing
juvenile offenders must know these
consequences before they assess the
charge and before they advise the juve-
nile client to accept a plea bargain.

Here is an example: At a school in
Anywhere, Virginia, there is zero toler-
ance 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 malici-
ous 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 fol-
lowing 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 adjudica-
tion 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 admin-
istration. Seasoned juvenile justice pan-
elists included a Harvard Law professor,
a Rhode Island attorney general and dis-
trict attorney, a Massachusetts juvenile
court judge, a Pennsylvania state senator,
a Georgetown Law professor, and a news-
paper journalist. As a further step, the
ABA has initiated a massive, collabora-
tive 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 adjudi-
cation. 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. On any given
night almost 10,000 of these children are
held in adult jails and prisons, where they
are particularly vulnerable to victimiza-
tion 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.” The
United States is the only nation in the
world where juveniles are serving sen-
tences for life without possibility of parole.

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
designed 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 tradi-
tional 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 pro-
ceedings have been conducted out-
side of the public’s full gaze, and the
youths brought before our juvenile
courts have been shielded from
publicity. This insistence on confi-
dentiality is born of a tender con-
cern 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 impermissive 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.

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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.

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.


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 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.

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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.


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