



**2016 Juvenile Defender Conference**  
August 12, 2016 / Chapel Hill, NC

**ELECTRONIC MATERIALS\***

\*This PDF file contains "bookmarks," which serve as a clickable table of contents that allows you to easily skip around and locate documents within the larger file. A bookmark panel should automatically appear on the left-hand side of this screen. If it does not, click the icon—located on the left-hand side of the open PDF document—that looks like a dog-eared page with a ribbon hanging from the top.



## **2016 Juvenile Defender Conference Defending Sex Cases in Delinquency Court**

August 12, 2016 / Chapel Hill, NC

*Cosponsored by the UNC-Chapel Hill School of Government  
& Office of Indigent Defense Services*

### **AGENDA**

8:00 to 8:45am	Check-in
8:45 to 9:00	Welcome <i>Austine Long, Program Attorney, UNC School of Government, Chapel Hill, NC</i>
9:00 to 10:00	<b>Case Law Update [60 min.]</b> <i>LaToya Powell, Assistant Professor of Public Law and Government UNC School of Government, Chapel Hill, NC</i>
10:00 to 11:00	<b>Preparing for Trial: Sex Offense Cases [60 min.]</b> <i>Sharif Deveaux, Assistant Public Defender Office of the Public Defender – District 10, Raleigh, NC</i>
11:00 to 11:15	Break
11:15 to 12:15pm	<b>Sex Offender Specific Evaluations [60 min.]</b> <i>John F. Warren, III, Ph.D. Matthew N. Busch, MA FMRT Group, Winston Salem, NC</i>
12:15 to 1:15	Lunch ( <i>provided in building</i> ) *
1:15 to 2:15	<b>Sex Offender Registration and Notification Act (SORNA) [60 min]</b> <i>Nicole Pittman, Stoneleigh and Rosenberg Fellow Director, Center on Youth Registration Reform Impact Justice, Oakland, CA</i>
2:15 to 2:30	Break ( <i>light snack provided</i> )
2:30 to 3:30	<b>Juvenile Expunction: What's the Deal? [60 min.]</b> <i>Eric Zogry, Juvenile Defender Office of the Juvenile Defender, Raleigh, NC</i>
3:30 to 4:30	<b>The Ethics of Defending Juvenile Sex Cases: Communication &amp; Competence (Ethics) [60 min.]</b> <i>John Basinger, Attorney Salisbury, NC</i>

**CLE HOURS: 6** (Includes 1 hour of ethics/professional responsibility)

\* IDS employees may not claim reimbursement for lunch



## ONLINE RESOURCES FOR INDIGENT DEFENDERS

### ORGANIZATIONS

**NC Office of Indigent Defense Services**

<http://www.ncids.org/>

**UNC School of Government**

<http://www.sog.unc.edu/>

**Indigent Defense Education at the UNC School of Government**

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education>

### TRAINING

**Calendar of Live Training Events**

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/calendar-live-events>

**Online Training**

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/online-training-cles>

### MANUALS

**Orientation Manual for Assistant Public Defenders**

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/orientation-manual-assistant-public-defenders-introduction>

**Indigent Defense Manual Series** (collection of reference manuals addressing law and practice in areas in which indigent defendants and respondents are entitled to representation of counsel at state expense)

<http://defendermanuals.sog.unc.edu/>

### UPDATES

**On the Civil Side Blog**

<http://civil.sog.unc.edu/>

**NC Criminal Law Blog**

<https://www.sog.unc.edu/resources/microsites/criminal-law-north-carolina/criminal-law-blog>

**Criminal Law in North Carolina Listserv** (to receive summaries of criminal cases as well as alerts regarding new NC criminal legislation)

<http://www.sog.unc.edu/crimlawlistserv>



## TOOLS and RESOURCES

**Collateral Consequences Assessment Tool** (centralizes collateral consequences imposed under NC law and helps defenders advise clients about the impact of a criminal conviction)

<http://ccat.sog.unc.edu/>

**Motions, Forms, and Briefs Bank**

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/motions-forms-and-briefs>

**Training and Reference Materials Index** (includes manuscripts and materials from past trainings co-sponsored by IDS and SOG)

<http://www.ncids.org/Defender%20Training/Training%20Index.htm>

## Issues In the Assessment of Juvenile Sex Offenders

Matthew N. Busch, MA, LPA, HSP-PA

John F. Warren III, Ph.D., PA-C, ABPP

“... the bulk of community sexual violence involves individuals that are not so designated, and identified juvenile sex offenders are unlikely to persist in sexual offending, or present a greater risk of other serious offending. The results described here suggest that restrictive public policies that target juvenile sex offenders are unlikely to substantially benefit community safety.” (Caldwell, 2007)

“Juvenile sex offenders are a district type of sex offender compared to adults.” (Hand, Devers, & Winokur, 2016).

### I. Notable characteristics of juvenile sex offenders

A. Non-sexual criminal behavior is common (Hand, Devers, & Winokur, 2016)

B. Recidivism rates are low

1. Two sex offender treatment programs for incarcerated juvenile sex offenders in Virginia found 31% in one group and 47% in the other where re-arrested for a non-sexual offense. Less than 5% in either group were re-arrest for a sex offense. (Waite, Keller, McGarvey, Wieckowski, Pinkerston, & Brown, 2005)
2. Other researchers found sexual recidivism rate for juvenile sex offenders ranging from 7% to 13% depending on the study (Lobanov-Rostovsky, 2014)

### II. Juvenile sex offenders are a heterogeneous group differing in many ways. Key areas of difference to assess include: (Hand, Devers, & Winokur, 2016)

A. The type of behaviors exhibited by the juvenile

B. The juvenile's history of maltreatment

C. The juvenile's level of sexual knowledge and experience

1. In a study of 1,600 juvenile sex offenders across 30 states (ncjrs.com, 2016)
  - a. Only one third viewed sex as a way of expressing love and caring
  - b. 23.5% saw it as a means of power and control
  - c. 9.4% viewed it as a way to release anger
  - d. 8.4% saw it as a means to hurt, degrade, and / or punish another

- D. The juvenile's academic functioning
- E. The juvenile's cognitive and neurological functioning
- F. The juvenile's current mental health status as well as at the time of the alleged offense. The following are commonly correlated with juvenile sexual aggression.
  - 1. Anxiety
  - 2. Aggression
  - 3. Depression
  - 4. Mental health
  - 5. Narcissism
  - 6. Pessimism
  - 7. Sexual dysfunction
  - 8. Self-sufficiency
  - 9. Oppositional defiant disorder
  - 10. Conduct disorder
  - 11. Substance abuse
  - 12. Developmental disabilities
  - 13. Learning disabilities / increased likelihood of receiving special education services
  - 14. Autism spectrum disorders
  - 15. Bipolar disorders
  - 16. Reactive attachment disorder
  - 17. Posttraumatic stress disorder
  - 18. Biological deficits (One study cited by Hand et. all found)
    - a. 25% experienced pregnancy and birth complications
    - b. 15% were exposed to maternal alcohol use during pregnancy
    - c. 20% were exposed to maternal drug use during pregnancy
    - d. 14% had a history of head trauma
- G. The juvenile's relationship(s) with his/her parent(s)
- H. The juvenile's level of functioning within his/her family and culture
- I. Females are more likely to have been sexual abused; have an earlier age of onset; and are more likely to have witnessed traumatic events than their male counterparts

### III. Risk factors for the development of sexually aggressive behavior

In adolescents that represent mitigating factors

- A. Number of incident of abuse experienced (Hand, Devers, & Winokur, 2016)
- B. Exposure to domestic violence
- C. Parenting styles
- D. Instability including

1. Early placement in a foster home or residential facility
2. Numerous placements or changes in living situation

#### IV. General risk factors for the development of sexually aggressive behavior that represent mitigating factors

##### A. Individual (cdc.gov, 2016)

1. Substance use
2. Delinquency
3. Empathy deficits
4. A generally aggressive nature and normalization of violence
5. Early sexual initiation
6. Coercive sexual fantasies
7. A preference for impersonal sex
8. Sexual-risk taking
9. Exposure to sexually explicit media pornography
10. Hostility towards the opposite sex
11. Practice of traditional gender role
12. Hyper-masculinity / Aggressive sexuality
13. Mental health and personality traits
  - a. Depression and pessimism
  - b. Anxiety
  - c. Narcissism
  - d. Sexual dysfunction
  - e. Impulsivity
  - f. Conduct Disorder and antisocial personality traits

##### B. Relationship Factors (cdc.gov, 2016)

1. Familial violence
2. Physical, sexual, or emotional abuse
3. May impair
  - A. The development of empathy
  - B. The ability to accurately perceive emotions in others;
  - C. The development of models for appropriate social behavior.
4. Emotionally unsupportive family
5. Poor parent-child relationships, particularly with father
6. Associating with hyper-masculinity, delinquent, and sexually aggressive peer
7. Violent or abusive intimate relationships
8. Gang membership (Borowsky, Hogan, & Ireland, 1997)
9. Anabolic steroid use (Borowsky, Hogan, & Ireland, 1997)
10. Excessive unstructured / unsupervised time (Borowsky, Hogan, & Ireland, 1997)

##### C. Community Factors (cdc.gov, 2016)

1. Poverty
  2. Little opportunity for employment
  3. Poor institutional support from police and judicial system
  4. Tolerance for sexual violence in the community
  5. Weak consequences for sexual violence perpetrators in the community
- D. Societal Factors (cdc.gov, 2016)
1. Social norms supporting sexual violence
  2. Social norms supporting male superiority and sexual entitlement
  3. Social norms supporting women's inferiority and sexual submission
  4. Weak laws / policies regarding sexual violence and gender equality
  5. High levels of crime and non-sexual violence
- E. Maturation delays (cdc.gov, 2016)
1. Cognitive (Gillespie, 2012)
    - a. Concrete thinking
    - b. Difficulty anticipating consequences of their action
    - c. Risk taking associated with adolescent "immortality"
  2. Psychosocial
  3. Biologic
- F. Protective Factors (Borowsky, Hogan, & Ireland, 1997)
1. Males
    - a. Emotional health
    - b. Social connections with friends and adults
  2. Females - Academic achievement
- IV. Risk Factors for Recidivism (Hand, Devers, & Winokur, 2016)
- A. Antisociality
  - B. Sexual deviancy
  - C. Criminal history
  - D. Offense characteristics
  - E. Victims characteristics
  - F. Psychological and behavioral characteristics

## References

- Borowsky, I. W., Hogan, M., & Ireland, M. (1997). Adolescent sexual aggression: risk and protective factors. *Pediatrics*, 100(6)E7.
- Caldwell, M. F. (2007). Sexual offense adjudication and sexual recidivism among juvenile offenders. *Sex Abuse*, DOI 10.1007/s11194-007-0942-7



Characteristics of juveniles who have committed sex offenses. ncjrs.gov. Accessed 7/27/2016.

Hand, G. A., Devers, L. N., & Winokur, K. P. Sexually offending children an empirical overview. [childonchildsexualabusepreventiontaskforce.homestead.com/JRC-Presentation\\_on\\_Sexually\\_Offending\\_Children.pptx](http://childonchildsexualabusepreventiontaskforce.homestead.com/JRC-Presentation_on_Sexually_Offending_Children.pptx). Accessed 7/27/2016.

Gillespie, L. (2012). Adolescent development and tanner staging. [clevelandclinicmeded.com](http://clevelandclinicmeded.com). Accessed 7/27/2016.

Lobanov-Rostovsky, C. (2014). Chapter 3: Recidivism of juveniles who commit sexual offenses. smart.gov. Accessed 7/27/2016.

Sexual violence: risk and protective factors. cdc.gov. Accessed 7/27/2016.

Waite, D., Keller, A., McGarvey, E. L., Wieckowski, E., Pinkerston, R., and Brown, G. L. (2005). Juvenile sex offender re-arrest rates for sexual, violent nonsexual and property crimes: A 10 - year follow-up. *Sexual Abuse: A Journal of Research and Treatment*, 17/3, 313-331.

## Impact on Access to Educational Opportunities & Extra-Curricular Activities

- **Elementary/Secondary Education**
  - Principal notified when: (1) petition alleges felony, (2) j transferred to adult court, (3) case alleging felony dismissed/disposed, or (4) disposition is modified/vacated
  - School may suspend/expel based on pending delinquency petition if alleged act violates school rules *or* if j is considered a danger to himself/others
  - According to NC High School Athletic Association: adjudication of felony = no high school sports
- **Access to Higher Education**
  - Colleges seem more focused on crim convictions rather than juv adjudications; however, some questions may require disclosure (ex: "Have you ever in your life been arrested for a violation of a law other than a traffic violation?")

## Impact on Future Court Proceedings & Sentences

- **Subsequent Juvenile Proceedings**
  - Prior adjudications may be used in future juv court proceedings & may enhance dispositions in such
- **Adult Criminal Court**
  - Juv record may be used in adult crim proceedings & may enhance penalties in such (ex: D.A. may share info in juv record w/ court for plea negotiations etc - w/out a court order!)
  - If later placed on adult probation before age 25, P.O. can look at prior juv adjudication of a felony to determine likelihood of crim activity while on probation

## Possible Registration as a Sex Offender

- If 11+, adjudicated guilty of sex offense, & found to be a danger to society, may be ordered to register as a sex offender
  - Qualifying offenses: 1st/2nd degree rape or sex offense, attempted rape/sex offense
- Registration Requirements: (1) initial registration w/ sheriff, (2) notification of any address change, (3) semiannual verification of residence
- Registration requirement automatically terminates on kid's 18th bday or when juvenile jurisdiction ends (whichever first)
- Registration info is not public record; access only available to law enforcement agencies & local boards of education
- If convicted as adult for committing/attempting sexually violent offense or offense against a minor, subject to adult registration requirements

## Possible Ineligibility to Enlist in Military

Generally cannot enlist in armed forces if have felony conviction (and recruiters ask specifically about juv adjudications); secretary can authorize exceptions "in meritorious cases" - applicant may request moral waiver (each branch has separate waiver procedures)

## Effect on Employment Opportunities

Don't have to disclose juv proceedings on job application if asked about crim convictions (juv proceedings are not crim prosecutions)

## Negative Impact on Immigration Proceedings

Delinquency adjudications are not crim convictions, therefore should not result in deportation. However, adjudications may affect immigration in other ways (ex: preventing finding of "good moral character")

## Possible Loss of Public Benefits & Privileges

- **Possible Eviction from Public Housing**
  - Eviction of household possible if any 1 tenant/guest engages in crim activity that threatens health/safety of others, threatens others' peaceful enjoyment of premises, or involves illegal drugs
  - Arrests that don't result in conviction are valid considerations, thus juv records may be considered in admissions process
- **Possible Loss of Driving Privileges**
  - Delinquency adjudication is grounds for a juv court to prevent offender from obtaining a driver's license for as long as the court has jurisdiction over the kid (or shorter; in discretion of court)

## **Collateral Consequences of Juvenile Delinquency in North Carolina Reference Manual**

*Juvenile delinquency proceedings are not criminal prosecutions, therefore juvenile delinquency adjudications do not constitute criminal convictions. However, these adjudications have indirect ("collateral") consequences that can adversely impact many aspects of the juvenile's future. Under North Carolina law, there is currently no legal requirement for a judge to discuss collateral consequences with the juvenile, the juvenile's parents, or the juvenile's attorney as part of the plea or admission colloquy; thus, providing juvenile clients with information regarding these consequences is tremendously important. This document provides an overview of various collateral consequences of juvenile delinquency in North Carolina.*

### **Elementary/Secondary Education and Extra-Curricular Activities**

#### **NOTIFICATION TO PRINCIPAL**

Juvenile court counselors are required to notify the juvenile's school principal when: (1) a delinquency petition alleges that the juvenile committed a felony other than a motor vehicle offense, (2) the juvenile is transferred to adult court, (3) the petition is dismissed, or (4) any order/disposition is modified or vacated. § 7B-3101(a).

#### **SUSPENSION AND EXPULSION**

Juvenile records received by schools pursuant to statutory notice requirements may only be used for improvement of educational opportunities or for safety purposes, and should not be the sole basis for a decision to suspend or expel a student. § 115C-404(b).

However, state school board policies authorize the suspension/expulsion of a student based on a pending delinquency petition if the alleged act violates school rules OR if the student is considered to be a danger to himself or others, regardless of whether or not the alleged act occurred on school grounds. § 115C-390.2.

Expelled students and students suspended for 365 days ("long-term suspension") may petition for readmission after 180 calendar days, and the student shall be readmitted if he/she demonstrates that his/her presence in school no longer constitutes a threat to the safety of other students and staff. § 115C-390.12.

#### **PARTICIPATION IN EXTRA-CURRICULAR ACTIVITIES**

Member schools of the North Carolina High School Athletic Association are required to prohibit students adjudicated delinquent for a felony offense from participating in extracurricular sports. See NCHSAA Student Athlete Eligibility Checklist.

### **Post-Secondary Education and Federal Financial Aid**

#### **COLLEGE APPLICATIONS**

Most colleges and universities seem to be more focused on criminal convictions rather than juvenile adjudications. However, some application questions may require disclosure (ex: "have you ever in your life been arrested for a violation of a law other than a traffic violation?"). Beware of questions that do not explicitly ask about *convictions*, these answers may lead to disclosure of juvenile adjudications!

## ELIGIBILITY FOR FEDERAL FINANCIAL AID

When applying for financial aid for college, applicants are asked to disclose drug convictions that occurred while receiving federal student aid (these types of convictions may render the applicant ineligible for financial aid for a specified length of time based on offense history and severity). However, convictions won't be considered if they were removed from the applicant's record OR if they occurred before the applicant's 18<sup>th</sup> birthday (unless tried as an adult). See [FAFSA Application](#).

Because convictions are not considered in the application process if they occurred before the applicant's 18<sup>th</sup> birthday and the applicant was not tried as an adult (i.e. applicant was tried in juvenile court, in which case there is no conviction to disclose because adjudication ≠ conviction), disclosure of juvenile adjudications is not required. Further, the question is not likely applicable anyway, as the majority of offenders under age 18 would not have been receiving federal financial aid for college at the time of adjudication (especially in NC, as an offender must be under 16 to be tried in juvenile court).

## Use of Juvenile Record in Subsequent Juvenile Proceedings

### SUBSEQUENT JUVENILE PROCEEDINGS

Prior juvenile adjudications may be used in subsequent juvenile proceedings, and may enhance dispositions in such proceedings. Prosecutors may share information in a juvenile's record with law enforcement, magistrates, and the courts. [§ 7B-3000\(b\)](#).

## Use of Juvenile Record in Adult Criminal Court

### ENHANCED PENALTIES

An offender's juvenile record may potentially be used in adult criminal proceedings, and may enhance penalties in such proceedings. Adjudication of a felony/A1 misdemeanor offense at age 13 or older is admissible in adult criminal court for a person under 21 for the purpose of determining pretrial release, plea negotiations, and plea acceptance decisions. [§ 7B-3000\(e\)](#). Further, adjudication of an A-E felony offense is admissible against the offender in adult court as character evidence under Rule 404(b) and as an aggravator for felony or capital cases. [§ 7B-3000\(f\)](#). However, note that adjudication for a lower-level misdemeanor offense cannot be used against the offender in adult criminal court.

### PROBATION

If the offender is later placed on adult probation before age 25, the offender's assigned parole officer is authorized to look at the offender's juvenile record for the adjudication of a felony offense in order to assess risk related to supervision. [§ 7B-3000\(e1\)](#).

## Sex Offender Registry

A juvenile offender may be ordered to register as a sex offender if the offender is: (1) 11+ years old, (2) adjudicated guilty of committing or attempting to commit 1<sup>st</sup>/2<sup>nd</sup> degree rape or sex offense, and (3) found to be a danger to society. [§ 7B-2509](#); [§ 14-208.26](#).

Juvenile registration requirements: (1) initial registration with county sheriff, (2) notification to sheriff of any address change, and (3) semiannual verification of the juvenile's residence. §§ 14-208.26, 14-208.27, 14-208.28

The registration requirement automatically terminates on the juvenile's 18<sup>th</sup> birthday, or when juvenile jurisdiction ends (whichever occurs sooner). § 14-208.30.

Juvenile registration information is not public record; access to information is only available to law enforcement agencies and local boards of education. § 14-208.29.

If tried and convicted as an adult for committing/attempting a sexually violent offense or an offense against a minor, the offender is subject to adult registration requirements. § 14-208.32.

North Carolina does not comply with the federal Sex Offender Registration and Notification Act (SORNA) with regard to juvenile sex offenders. However, defenders must be aware of, and notify a client about the possible need for sex offender registration for serious sex offense adjudications. This situation may arise if the client moves to a state that is SORNA compliant. <http://www.smart.gov/sorna.htm>

## Employment Applications and Military Enlistment

### EMPLOYMENT APPLICATIONS

Applicants are not required to disclose juvenile proceedings/adjudications on employment applications if asked about criminal convictions (because juvenile proceedings ≠ criminal prosecutions, and juvenile adjudications ≠ criminal convictions).

### MILITARY ENLISTMENT

As a general rule, a person cannot enlist in the armed forces if they have ever been convicted of a felony, and recruiters ask specifically about juvenile adjudications; however, the secretary may authorize exceptions "in meritorious cases" and the applicant may request a moral waiver. U.S.C.S. § 10-504(a). Note that each branch has separate waiver procedures.

## Immigration Proceedings

A juvenile delinquency adjudication does not automatically constitute a conviction for immigration purposes (unless under 18 and charged as adult), and therefore may not result in deportation or serve as a bar to obtaining U.S. citizenship. See U.S.C.I.S. Policy Manual.

However, adjudications may affect the naturalization process in other ways (ex: preventing requisite finding of "[good moral character](#)"). Consultation with an immigration attorney is recommended.

## Public Benefits and Privileges

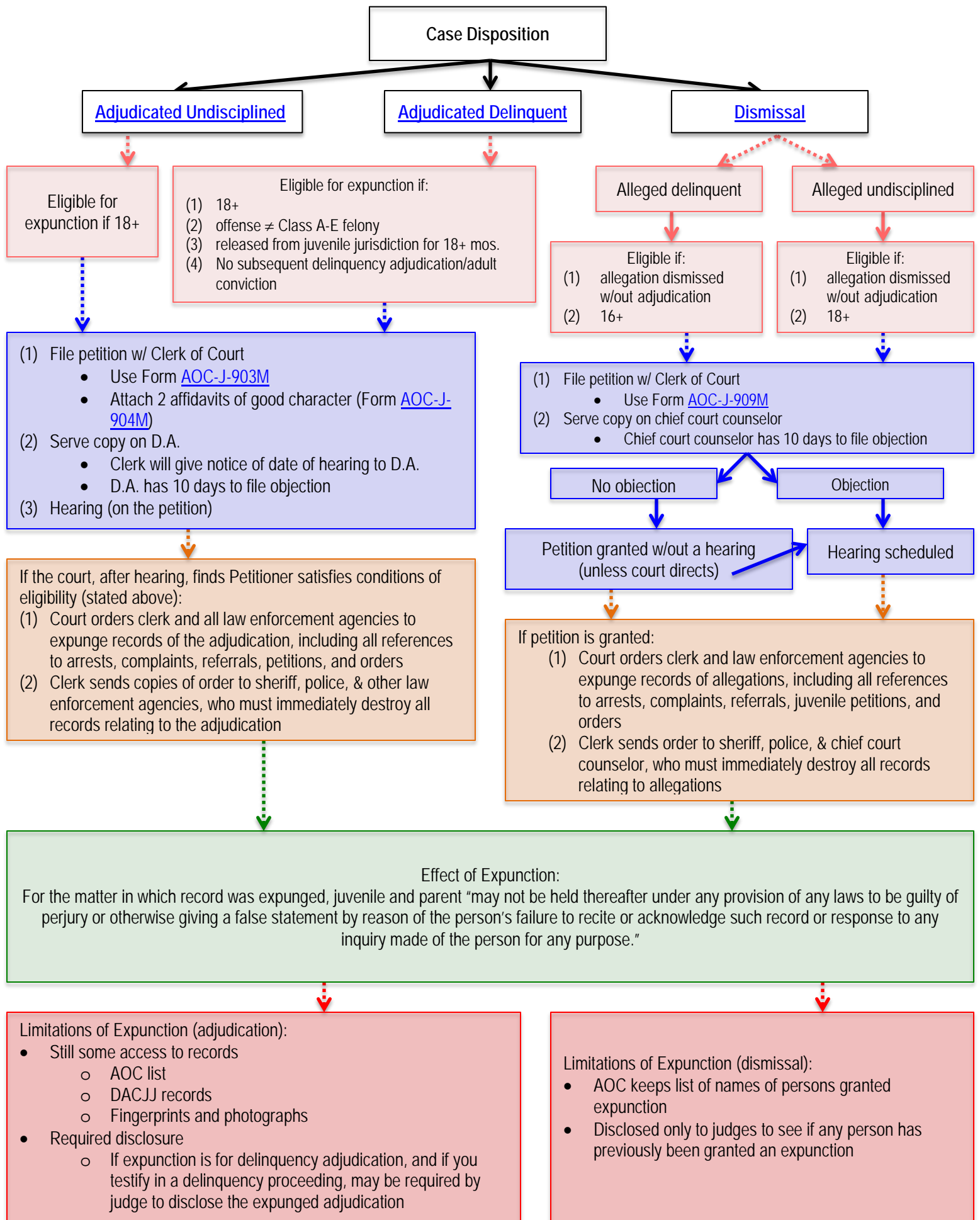
### PUBLIC HOUSING

The housing authority has broad discretion to evict (or deny the application of) an entire household based on the action of any one tenant, or any guest of any one tenant. Grounds to evict include:

engaging in criminal activity that threatens the health/safety of others, threatening others' peaceful enjoyment of the premises, and activity involving illegal drugs. § 157-29(e). Arrests that do not result in conviction are valid considerations in the admission and eviction processes, therefore juvenile records may be considered.

#### DRIVING PRIVILEGES

A delinquency adjudication is sufficient grounds for a juvenile court to prevent an offender from obtaining a driver's license for as long as the court has jurisdiction over the juvenile (or shorter; in discretion of the court). § 7B-2506(9).





## DON'T FORGET



Your juvenile record can have a negative effect on you for a long time. You could have a hard time getting a job, applying for college or even getting in to the military.

The good news is you may be eligible for an expunction—a legal process to erase the details of your juvenile court case from your record.

If you are 18 years old and it has been at least 18 months since you have been under juvenile court supervision (aka probation) you should go to [ncjuveniledefender.wordpress.com](http://ncjuveniledefender.wordpress.com) to find out if your are eligible.

## REMEMBER

You were adjudicated in: \_\_\_\_\_ County

Name of Offense: \_\_\_\_\_ Class: \_\_\_\_\_

Your probation ends on: \_\_\_\_\_



This material is provided for informational purposes only and does not constitute legal advice or opinion. While you do not have a right to appointed counsel to file an expunction with the court, you can complete the process on your own or hire a lawyer. For more information, please visit [www.ncjuveniledefender.wordpress.com](http://www.ncjuveniledefender.wordpress.com).

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# NATIONAL JUVENILE JUSTICE NETWORK

## Policy Platform

### SEX OFFENSE REGISTRATION AND RELATED LAWS: TREATING YOUTH FAIRLY

JULY 2016

#### Policy Recommendation

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NJJN recommends that all youth\* and adults who committed sexual offenses as youth be exempt and/or removed from sex offense registries, public notification laws, and residency restriction laws.

#### Model Policy for Removing Youth from Registries

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In order to implement NJJN's policy recommendation, we recommend the following best practices:

- Youth currently on sex offense registries should be removed and no longer subject to public notification requirements or residency restrictions. No additional youth should be placed on registries or subjected to public notification or residency restrictions.
- Any statutory change to remove youth from sex offense registries, public notification requirements, and residency restrictions should be automatically applied retroactively.
- A process should be put in place for individuals to petition to be removed from a registry in cases where they have been inappropriately placed on it in contravention of the above policy and counsel should be appointed to represent these individuals.

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\* Throughout this policy platform, the term "youth" refers to anyone adjudicated delinquent or convicted of an act which occurred when they were under the age of 18 years old.

## Background

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As Americans, we believe in taking practical, responsible approaches to rehabilitate youth in trouble with the law while keeping our communities safe. In fact, we have an opportunity now to adopt realistic, sensible policies to ensure that youth who commit sex offenses receive the support and services they need to become productive, law-abiding members of society.

Following several high-profile cases in the 1980s and 1990s, many states—and Congress, most recently through the Adam Walsh Act—created registration and notification laws to track adults convicted of sex offenses and publicize their whereabouts.<sup>1</sup> Naturally, protecting youth and creating safer communities are of utmost concern to all and require effective public policies. However, the widespread practice of registering youth who have committed sex offenses and subjecting them to notification laws actually creates a difficult maze with a lot of entrances, but not many exits—and lots of dead ends.

It simply doesn't make sense to put youth into this maze, because research shows that placing youth who have committed sex offenses on registries and subjecting them to public notification and residency restrictions does not in fact keep children and communities safe—it has no public safety benefits and can actually expose the youth and their communities to greater harm.<sup>2</sup> For these and additional reasons, the Federal Advisory Committee on Juvenile Justice<sup>3</sup> recently recommended that “Existing federal law should be amended to explicitly exempt juveniles (all persons who were below the age of 18 at the time of their offense) from all sex offender registration, community notification, and residency restriction laws.”<sup>4</sup>

The consequences to youth of being placed on registries—sometimes for life—are profound: youth and their families are often the targets of threats and violence;<sup>5</sup> and youth are frequently ostracized, prevented from attending school, and are subject to such strict residency requirements that “many [youth] are in effect banished from their neighborhoods.”<sup>6</sup> Often denied education, housing, and jobs, it can become nearly impossible for these young people to ever live normal, productive lives. A majority of registered youth interviewed for a 2013 report described many negative impacts which they attributed to registration, including feelings of depression, isolation, and suicidal ideation. Nearly one-fifth of youth interviewed attempted suicide and three had committed suicide.<sup>7</sup>

The maze of registration serves no purpose. The incidence of sexual reoffending by youth is exceedingly low and has declined further in recent years. The latest empirical findings reviewing studies from 1943 to 2015 found that 95 percent of youth adjudicated for sexual offenses did not recidivate, or commit any further sexual offenses. For youth adjudicated between 2000 to 2015, this rate decreased even further—only 2.75 percent sexually recidivated.<sup>8</sup> Multiple studies on juvenile registration show no evidence that registering youth adjudicated for sex offenses reduces the already very low recidivism rate for such youth, or deters future sexual offenses.<sup>9</sup> Rather, registration and notification policies have been noted to “stigmatize and isolate children with no identifiable public benefits.”<sup>10</sup>

Instead of reducing sex offenses, the threat of registration may lead fewer families to seek help, thereby potentially increasing sexual harm. Since most child sexual abuse is intra-familial, notification laws and inclusion of youth on registries may lead to an underreporting of sexual abuse and failure to seek out treatment, as family members seek to protect each other from punishment and registration.<sup>11</sup>

Placing youth on registries clogs databases, squanders valuable law enforcement time and resources, and distracts the law enforcement system from attending to more serious public safety concerns.<sup>12</sup> Sex offense registries and public notification needlessly damage the lives of youth, and have no known public safety benefits. Instead, we need to redesign our juvenile justice system to eliminate the maze by closing entrances and creating clear pathways out of the system, so that the youth who do enter it have the opportunity to exit it and move on to contribute to their communities.

## Outreach, Training, and Research

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- Rather than using scarce funds to place and track youth on sex offense registries
- , states and the federal government should invest funds in prevention and intervention programs for youth and families.
- Victims of sexual abuse should have access to affordable, confidential, and competent clinical care and other supports.
- States and the federal government should support and fund outreach efforts to help parents learn about prevention and identification of sexually inappropriate or dangerous behavior.
- States and the federal government should fund education, outreach, and training for teachers, social workers, youth workers, mental health providers, health care professionals, and the faith-based community so that they can better understand normative adolescent behavior as well as the risks of sexual offending, and recognize the signs of sexual abuse of children.
- States and the federal government should support further research on youth who commit sex offenses, identifying behaviors that should not be labeled as sex offenses, and identifying effective interventions. Efforts should be focused on more effective individual treatment to reduce recidivism, rather than elaborate, broad-based controls, such as registries and public notification.

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<sup>1</sup> Adam Walsh Child Protection and Safety Act of 2006 (AWA), Pub. L. No. 109-248. One of the key provisions of the AWA is the Sex Offender Registration and Notification Act (SORNA), which standardized registration and community notification practices and required jurisdictions to include youth. 42 U.S.C. §16911 (8) (2006). Currently, 39 states place juveniles on registries for people who have committed sex offenses. The Center on Youth Registration Reform at Impact Justice, “How the U.S. Includes Children in Sex Offender Registration & Notification Schemes: A 50 State Breakdown,” last updated November 2015, <http://bit.ly/28QgeIW>.

<sup>2</sup> “Summary of Research Briefing by Elizabeth J. Letourneau, Ph.D.,” *Family Services Research Center, Medical University of South Carolina* (June 29, 2011). This summary document includes references to several studies on recidivism rates for youth convicted of sex offenses, the harms of registries for youth who have committed sex offenses, and their effectiveness. Public notification laws in particular have been found to actually lead to increased recidivism. J. J. Prescott, & J. E. Rockoff, “Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?,” *Journal of Law and Economics*, Vol. 54, No. 1 (2011): 31; Association for the Treatment of Sexual Abusers, “Adolescents Who Have Engaged In Sexually Abusive Behavior: Effective Policies And Practices,” October 30, 2012, <http://bit.ly/28T080s>

<sup>3</sup> The Federal Advisory Committee on Juvenile Justice (FACJJ) is composed of appointed representatives of the nation’s state advisory groups and it advises the President and Congress on matters related to juvenile justice, evaluates the progress and accomplishments of juvenile justice activities and projects, and advises the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Administrator on the work of OJJDP.

<sup>4</sup> Recommendation from the Research/Dual Status Subcommittee to the Federal Advisory Committee on Juvenile Justice (FACJJ) and adopted by the FACJJ on May 18, 2016, <http://bit.ly/28Po1He>.

<sup>5</sup> Fifty-two percent of youth experienced violence or threats of violence against them or their families, which they directly attributed to their registration. Nicole Pittman, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US” (Human Rights Watch, May 2013), 51, <http://bit.ly/107hYSm>.

<sup>6</sup> Pittman, “Raised on the Registry,” 50.

<sup>7</sup> Pittman, “Raised on the Registry,” 51; In a new study, youth currently or previously registered reported significantly higher rates of seriously considering and/or attempting suicide than nonregistered youth. Comments on the Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, submitted by Researchers with Expertise on Juvenile Sexual Offending (June 7, 2016): 3, citing Letourneau, Harris, Shields, Walfield, & Kahn, 2016), <http://bit.ly/290mAE1>.

<sup>8</sup> Caldwell conducted a metanalysis of 106 data sets in 98 reports that included a total of 33,783 youth from the years 1943 - 2015. The weighted sexual recidivism rate was 4.97 percent over a mean follow-up of 4.92 years; the 33 more recent studies conducted between 2000 and 2015 showed an even lower sexual recidivism rate of 2.75 percent. Michael F. Caldwell, “Quantifying the decline in juvenile sexual recidivism rates,” *Psychology, Public Policy, and Law* (forthcoming). A study of registered and non-registered male youth found a sexual offense reconviction rate of less than one percent over four years. E. J. Letourneau, & K. S. Armstrong, “Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders,” *Sexual Abuse: A Journal of Research and Treatment*, 20 (2008): 393-408. Another study of male youth with sex crime convictions found a sexual offense reconviction rate of less than three percent over nine years. E. J. Letourneau, et al., “The Influence of Sex Offender Registration on Juvenile Sexual Recidivism,” *Criminal Justice Policy Review*, 20 (2009): 136-153. Also see J. R. Worling, et al., “20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually,” *Behavioral Science and the Law* Jan.-Feb. 28(1) (2010): 46-57, finding that fewer than one in ten youth sexually reoffend after completing sex-specific treatment.

<sup>9</sup> Comments on the Proposed Supplemental Guidelines for Juvenile Registration Under the Sex Offender and Registration and Notification Act, submitted by Youth Justice Alliance (June 9, 2016): 5, n. 13, <http://bit.ly/28Qa4sy>, citing Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Debajyoti Sinha, and Kevin S. Armstrong, “The influence of sex offender registration on juvenile sexual recidivism,” *Criminal Justice Policy Review* 20:2 (2009): 136-153; Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Kevin S. Armstrong, and Debajyoti Sinha, “Do sex offender registration and notification requirements deter juvenile sex crimes?” *Criminal Justice & Behavior* 37:5 (2010): 553-569; Michael F. Caldwell and Casey Dickinson, “Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders,” *Behavioral Sciences & the Law* 27:6 (Nov/Dec 2009) 941-95.

<sup>10</sup> Comments on the Proposed Supplemental Guidelines for Juvenile Registration (Youth Justice Alliance), 5, n. 16, citing Mark Chaffin, “Our Minds Are Made Up – Don’t Confuse Us with the Facts: Commentary on Policies Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders.”

<sup>11</sup> “Testimony: Detective Bob Shilling,” *House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, Sex Offender Registration and Notification Act (SORNA)* (March 10, 2009): 4, <http://bit.ly/28Qkk1N>.

<sup>12</sup> “Testimony: Detective Bob Shilling,” 4.

# NATIONAL JUVENILE JUSTICE NETWORK

## Policy Platform

### CONFIDENTIALITY OF YOUTH IN THE JUVENILE JUSTICE SYSTEM

AUGUST 2016

#### Policy Recommendation

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The National Juvenile Justice Network (NJJN) recommends that the law enforcement and court records and related information associated with youth under the age of 18 who come into contact with the justice system be kept from any and all public disclosure. Our recommendation pertains to the records, wherever they are kept, of youth in contact with both the juvenile and adult systems. We recommend, further, that limits be put in place regarding the sharing of information between government agencies, law enforcement, courts, and schools. Any records that are created as a result of a youth's justice system involvement should be automatically sealed and reviewed for expungement when the youth is discharged from court supervision. Furthermore, we recommend that juvenile court proceedings be kept presumptively closed.

#### Background

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Increased public safety begins with practical solutions that help our young people to thrive, divert them from the justice system, and pave the way for strong communities with plenty of opportunity for all those who live in them. Sending youth into the justice system is like placing them in a maze without exits. Once they are in the system, it's difficult for them to get out. When records of their involvement with the juvenile justice system are not kept confidential, their path to education, job training, housing, and other resources -- proven to help them stay on the right track -- can be seriously hindered or altogether blocked for years, or even throughout their lives.<sup>1</sup>

In addition to these barriers, the harmful stigma of a juvenile court record can cause adults and peers to view the youth negatively, damaging positive relationships he or she may have had with classmates and teachers, preventing adequate reintegration into communities, and leading to further delinquent behavior.<sup>2</sup> Delinquency records are also increasingly shared with and considered by criminal courts for purposes of pretrial release, detention, and sentencing.<sup>3</sup> And, research shows that disclosing these records to the public does not improve community safety.<sup>4</sup> We need to redesign the system so that it has more pathways to the resources youth need to reenter their communities successfully.

Protecting youth from a label of criminality was part of the reason why the juvenile justice system was created at the end of the nineteenth century. It was widely understood even then that, while adults and youth are both capable of significant behavior change, youth are still maturing and therefore, their behavior while they are young should not be held against them for the rest of their lives. Following establishment of separate juvenile courts, confidentiality became an important component of juvenile justice systems in order to ensure youth could be held accountable without damaging their chances of becoming productive members of society.<sup>5</sup> The idea that youth are different from adults and need to be treated differently by the justice system has been reinforced by the U.S. Supreme Court in several recent landmark cases.<sup>6</sup>

Unfortunately, the confidentiality of youth in the juvenile justice system has been significantly eroded over the years, while at the same time, the negative impacts (or “collateral consequences”) of a juvenile record have become harsher and more numerous.<sup>7</sup> A growing number of states no longer limit access to records or prohibit the use of juvenile adjudications in subsequent criminal proceedings, and many do not keep juvenile court proceedings private at all.<sup>8</sup> Additionally, many youthful offenses are recorded and made public on sex offender registries for years, if not a lifetime. Even a youth’s DNA is now sometimes collected and held indefinitely in law enforcement databases.<sup>9</sup>

This trend of confidentiality erosion has coincided with the increase in digital recordkeeping, online databases of information, and an increase in computerized background checks by employers, schools, housing authorities, and many others, making it ever easier and more damaging for a youth’s juvenile records to be revealed.<sup>10</sup> Protecting confidentiality is the best way to ensure that a youth’s past does not harm their future and gives them the greatest chance to successfully transition to a productive adult life.

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<sup>1</sup> Riya Saha Shah and Lauren Fine, “Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records” (Philadelphia, PA: Juvenile Law Center, 2014), 4, <http://bit.ly/1xvmhYY>. See also, Benjamin Chambers and Annie Balck, “Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System” (Chicago, IL: Catherine T. and John D. MacArthur Foundation, Models for Change, Dec. 2014), 12, <http://bit.ly/kids-are-different>; Brief of Children’s Law Center, Inc., et.al., as Amici Curiae In Support of Neither Party, *State ex rel. Cincinnati Inquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457; Juvenile Justice Resource Hub, “Re-entry: Key Issues/What Challenges Do Returning Youth Face?” accessed Feb. 17, 2016, <http://jjie.org/hub/reentry/key-issues/>



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<sup>2</sup> Kristin N. Henning, "Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?" *New York University Law Review*, vol. 79: 527 (2004), <http://bit.ly/1UcFXtU>.

<sup>3</sup> James B. Jacobs, "Juvenile Criminal Record Confidentiality," *New York University Public Law and Legal Theory Working Papers*, paper 403 (2013), 11, <http://bit.ly/25RDgqv>.

<sup>4</sup> Chambers & Balck, "Because Kids are Different," 12.

<sup>5</sup> Henning, "Eroding Confidentiality in Delinquency Proceedings," 520-611, 526-7; Melissa Sickmund and Charles Puzzanchera, "Juvenile Offenders and Victims: 2014 National Report" (Pittsburgh, PA: National Center for Juvenile Justice, 2014), 97, <http://1.usa.gov/1DhEoyR>; "From its very outset, the juvenile court aimed not just to reform young offenders, but also to ensure that efforts at rehabilitation were not thwarted by a stigma of criminality that could serve as an obstacle to becoming a productive member of society." Illinois Juvenile Justice Commission, "Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois" (April 2016), 17, <http://bit.ly/1tkxc89>.

<sup>6</sup> The Campaign for the Fair Sentencing of Youth, "U.S. Supreme Court," accessed Feb. 25, 2016, <http://bit.ly/1UJU89U>; see also, *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2016), which held that its ban in *Miller v. Alabama* on mandatory sentences of life without parole for those who committed an offense before the age of 18, applied retroactively.

<sup>7</sup> Juvenile Justice Information Exchange, "Re-entry: Key Issues/What Challenges Do Returning Youth Face?" (Juvenile Justice Resource Hub), accessed Feb. 25, 2016, <http://jjie.org/hub/reentry/key-issues/>; Juvenile Justice Information Exchange, "Re-entry: Reform Trends/Reducing the Collateral Consequences of a Delinquency Adjudication" ((Juvenile Justice Resource Hub) accessed Feb. 25, 2016, <http://bit.ly/re-entryfn199>.

<sup>8</sup> Riya Saha Shah and Lauren Fine, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement" (Philadelphia, PA: Juvenile Law Center, 2014), 6, <http://bit.ly/14wgc2w>; Sickmund & Puzzanchera, "Juvenile Offenders and Victims: 2014 National Report," 97-8.

<sup>9</sup> See Henning, "Eroding Confidentiality in Delinquency Proceedings," 537-8.

<sup>10</sup> Illinois Juvenile Justice Commission, "Burdened for Life," 8-9.





## **Safeguarding the Confidentiality of Youth in the Justice System**

### **RECOMMENDATIONS AND RESOURCES**

**AUGUST 2016**

The National Juvenile Justice Network (NJJN) recommends that the law enforcement and court records and related information associated with youth under the age of 18 who come into contact with the justice system be kept from any and all public disclosure. Our recommendation pertains to the records, wherever they are kept, of youth in contact with both the juvenile and adult systems. We recommend, further, that limits be put in place regarding the sharing of information between government agencies, law enforcement, courts, and schools. Any records that are made as a result of a youth's justice system involvement should be automatically sealed and reviewed for expungement when the youth is discharged from court supervision. Furthermore, we recommend that juvenile court proceedings be kept presumptively closed.

Because confidentiality for youth encompasses a broad range of issues from arrest and court records to placement on gang databases and registries for youth who have committed sex offenses, we have created specific recommendations with accompanying rationales, below, for each area of concern. Resources for further information are provided at the end of the document.

## Law Enforcement and Court Records\*

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Protecting the confidentiality of a youth's law enforcement and associated court records is key to furthering their lives as productive members of their communities, by reducing barriers to employment, higher education, housing, and military service. Without special protections, a juvenile record can "act like a symbolic millstone around a youngster's neck."<sup>1</sup>

When records are not kept strictly confidential, this information can proliferate -- particularly when available online, making it difficult, if not impossible, to remove evidence of a youthful mistake. Youth seeking college admission or employment can be thwarted by background checks by private companies that maintain online databases of offense information. This information often contains inaccuracies, is out of date, or doesn't reflect the fact that the record has been sealed or expunged.<sup>†</sup> Even FBI and state police background checks can be inaccurate and incomplete, with the burden on the individual to correct inaccuracies.<sup>2</sup> Laws that tightly restrict access to juvenile records, both during and after court proceedings, and that seal or expunge juvenile records after the case has been closed, provide youth with the best opportunities for a successful future.

### Recommendation

NJJN concurs with the core principles recently proposed by the Juvenile Law Center for confidentiality and access to juvenile record information.<sup>3</sup> The key points that NJJN recommends are summarized below:

- Law enforcement, court, juvenile facility, and adult jail records for youth should not be available for inspection by the public and should never be available online.

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\* **Definition of Law Enforcement and Court Records:** Law enforcement records generally include records created or stored by a law enforcement agency, such as arrest records, victim and witness statements, photographs, fingerprints, and DNA samples. Court records include records that the juvenile court or the juvenile probation office create and store and in addition to records of what transpired at trial, they can include detailed personal information to assist the court in planning for the youth's treatment and supervision such as a youth's psychological, educational, and family information and the result of risk and needs assessments and behavioral health evaluations. *Riya Saha Shah and Lauren Fine, "Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records"* (Philadelphia, PA: Juvenile Law Center, 2014): 6, <http://bit.ly/1xvmhYY>.

<sup>†</sup> **Definition of sealing and expungement:** "Sealing" a juvenile record generally means that the records are closed to the general public but remain accessible to certain agencies and individuals, although criteria for access differs by jurisdiction. "Expungement" generally refers to erasing a juvenile record as if it never existed so that it is no longer accessible to anyone. In some cases, though not in all, both physical and electronic records are destroyed. *Riya Saha Shah and Lauren Fine, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement"* (Philadelphia, PA: Juvenile Law Center, 2014): 22-24, <http://bit.ly/28uGNtv>.

- Access to records should be limited to individuals connected to the case with a reason to learn the information, such as youth and their parents/guardians/legal custodians, the youth's defense attorney, juvenile court and probation personnel, and prosecutors.
- Limitations should be placed on the type of juvenile record information released to government agencies, including: schools; child welfare and other social services agencies, and adult courts (once youth age out of the juvenile court system). Limitations should also be placed on access by law enforcement to juvenile court records.
- Juvenile record information that is released should be safeguarded -- access should be limited to a small number of necessary personnel; limitations should be placed on how the information can be used; and sanctions should be applied for disclosure of information to inappropriate personnel. These protections should remain in place even if the youth turns 18 years old while the case is ongoing.
- Law enforcement and court records for youth should be automatically sealed when the youth is discharged from court supervision, even if the youth is over 18 years old at that point. Sealed records should be completely closed to the general public.
- Youth records should become eligible for expungement at the time youth are discharged from court supervision.
- Both sealing and expungement should be available free of charge; youth should not be responsible for initiating the process; and youth should be notified when the process is complete. If the state determines that the youth's records can't be sealed or expunged, the youth should be notified and appointed an attorney to assist in appealing the decision.

Additionally, NJJN recommends that identifiable juvenile court records be excluded from all public record requests, including those under state right-to-know laws or the Freedom of Information Act (FOIA), and only aggregate data and statistical information without individual identifiers be released for the purpose of research and/or data analysis. States should have policies in place to track who is accessing these records, what records are released, when, and why, to make sure there is accountability for any improper release of records.<sup>4</sup> Lastly, NJJN recommends that states and localities prohibit sending juvenile arrest record information to the FBI, as it then becomes available to a wide array of parties conducting background checks. FBI rap sheets generally don't differentiate between juvenile and adult arrests and don't always indicate how the case was resolved, such as if the case was dismissed, increasing the challenges posed to youth seeking employment, admission to college, and professional licensing.<sup>5</sup>

## Access by Schools

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One of the most common exceptions to record confidentiality is the release of arrest and court records to schools – statutes in at least 33 states and the District of Columbia allow for the release of juvenile record information to school personnel.<sup>6</sup> While some states require school officials to request this information, in other states, law enforcement or the courts notify school officials of certain types of arrests and/or juvenile court involvement of youth.<sup>7</sup> Once the

information is provided to the schools, some jurisdictions provide no safeguards on who has access to the information and how it can be used.<sup>8</sup>

Providing this confidential information to schools can cause significant negative consequences to the youth, such as outright expulsion. In other cases, the stigma of juvenile court involvement can cause negative reactions by school staff and alienation from staff and students that leads many youth to drop out.<sup>9</sup> These negative consequences can result from notification of arrest information alone, even though a youth has not even gone through the court process. Yet further information about the case, such as if it is dismissed or that the youth will be adjudicated as an adult, may not be automatically provided to the school.<sup>10</sup>

### **Recommendation**

NJJN recommends that law enforcement and courts not be required or permitted to notify schools of youth arrests or juvenile justice involvement, and that records only be released to schools when they concern the youth's educational needs. Schools should only be allowed to access information necessary to provide for the youth's educational planning or reentry. Additionally, schools should strictly limit access to this information and require that the information is only shared with school officials on a need-to-know basis, with sanctions applied for disclosure of information to inappropriate personnel.

## **Court Proceedings**

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NJJN recognizes that opening the juvenile court to certain members of the public can promote system accountability, and that public understanding of the system is beneficial. However, as with juvenile records, confidentiality of court proceedings is necessary in order to safeguard a youth's privacy and protect them from the stigma and collateral consequences of juvenile justice involvement. If the court proceedings are open, community knowledge of and attendance at the event can foreclose future education and work options for youth. Additionally, open court proceedings invite media attention, which not only may make the case common knowledge, but will likely lead to direct identification of individual youth. Even if the media is requested to respect the confidentiality of the youth participants, they may not feel bound to adhere to this request if the proceedings are presumptively open to the public.

Confidential court proceedings are needed to safeguard a youth's privacy whether tried in juvenile or adult court. However, confidentiality is very difficult to attain in the adult court setting because adult courts are not geared towards accommodating private proceedings. For this and the other reasons detailed in our policy platform, [“Youth in the Adult System,”](#) NJJN opposes processing youth in adult courts.

### **Recommendation**

NJJN recommends that juvenile court proceedings be presumptively closed to the public. Judges may open proceedings to researchers, media, individuals that the youth wishes to attend, and others with a bona fide interest in the workings of the juvenile court system, under the following circumstances: the youth who is before the court agrees and the judge, after hearing from counsel for the youth, determines that there would be no harm to the youth or the fairness of the process. Even when the proceedings are opened, the names, addresses, telephone numbers, photographs or other identifying information of the children and families in question should not be made public in any way.<sup>11</sup> A decision to keep the proceedings closed should never be made in order to benefit the judge. For minors proceeding in the adult court system, the court should take steps to protect the youth's confidentiality to the greatest extent possible and the names of youth being tried as adults should not be publicly released.

## **Registration and Notification of Youth Who Commit Sex Offenses**

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Placing youth who have committed sex offenses on registries and notifying communities of their status clearly undermines the confidentiality of the juvenile justice system. Furthermore, the consequences to youth of being placed on the registry – sometimes for life -- are profound; these youth are frequently ostracized and they and their families are threatened with violence,<sup>12</sup> prevented from attending school, and are subject to such strict residency requirements that “many are in effect banished from their neighborhoods.”<sup>13</sup> Often denied education, housing, and jobs, it can become nearly impossible for these young people to ever live a normal, productive life.

Rather than offering youth an opportunity for rehabilitation, registration can saddle them with penalties that last well into adulthood and compromise their long-term chances of gaining employment, cultivating positive social networks, and developing into mentally and emotionally healthy adults.<sup>14</sup> Additionally, most youth who commit a sex offense will never commit another.<sup>15</sup> Multiple studies on juvenile registration show no evidence that registering youth adjudicated for sex offenses reduces the already very low recidivism rate for such youth, or deters future sexual offenses.<sup>16</sup> Rather, registration and notification policies have been noted to “stigmatize and isolate children with no identifiable public benefits.”<sup>17</sup> Registering and notifying the public about these youth is quite costly,<sup>18</sup> clogs databases, squanders valuable law enforcement time and resources, and distracts law enforcement from attending to more serious public safety concerns.<sup>19</sup>

### **Recommendation**

NJJN recommends that all youth (and adults who committed sexual offenses as youth) be exempt and/or removed from sex offense registries, public notification laws, and residency restriction laws.

In order to implement NJJN's policy recommendation, we recommend the following best practices:

- Youth currently on sex offense registries should be removed and no longer subject to public notification requirements. No additional youth should be placed on registries or subjected to public notification.
- Any statutory change to remove youth from sex offense registries should be automatically applied retroactively.
- A process should be put in place for individuals to petition to be removed from a registry in cases where they have been inappropriately placed on it in contravention of the above policy and counsel should be appointed to represent these individuals.

## DNA Records

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The government's collection of DNA from youth involved in the juvenile and criminal justice system has become widespread. Twenty-nine states require DNA collection from youth adjudicated delinquent in juvenile court (20 of these states collect it for all felonies and 9 states for a subset of felonies). Of these states, 19 even require youth arrested for a variety of misdemeanor offenses to submit DNA.<sup>20</sup> Law enforcement also collects DNA from youth by consent in some cases, without the knowledge or permission of the youth's parents.<sup>21</sup>

A youth's DNA profile is generally not subject to the same protective rules extended by many states to a youth's court record, such as the expungement of records and destruction of physical records such as fingerprints. Once collected, a youth's DNA is entered into one or more government databases, such as the federal Combined DNA Information System (CODIS) or state databases. While federal law provides for expungement of DNA profiles from CODIS under certain circumstances, there is no mechanism for destruction of the DNA sample. Once in CODIS, "law enforcement presumptively retains the seized genetic sample indefinitely, and available expungement mechanisms that put the burden on juveniles to seek expungement are almost never utilized."<sup>22</sup> For expungement from state databases, the burden is on the youth in every state except Montana to request expungement; in practice, few DNA profiles are ever expunged.<sup>23</sup>

DNA collection from youth serves to entangle the youth in the criminal justice system indefinitely, harming the protective confidentiality of the juvenile justice system.<sup>24</sup> The collection of the DNA sample itself may stigmatize youth and lead to self-labeling by communicating to them that the state believes they will commit crimes in the future. Finally,

youth exhibit “deference to authority figures” and have a “diminished ability to understand and exercise their legal rights,” which limits their ability to knowingly and voluntarily waive their constitutional rights and consent to DNA collection.<sup>25</sup>

### **Recommendation**

NJJN recommends DNA not be collected from youth. Where already collected, NJJN recommends strong protections against the sharing of this information, storing records locally rather than in state and federal databases, and requiring the sealing and expungement of these records when a youth’s juvenile or criminal record is sealed or expunged.

## **Fingerprints and Photographs**

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Currently all states and the District of Columbia require the fingerprinting of youth alleged or adjudicated delinquent, though most states have various restrictions on youth fingerprinting, including restrictions based on age, the type of offense, previous prosecution as an adult, and court order requirements.<sup>26</sup> Photographing youth is often done at the same time as fingerprinting.<sup>27</sup> At least 30 states allow the names and photos of youth they consider likely to repeat violent offenses to be released to the public.<sup>28</sup>

In 2006, the FBI expanded its fingerprint database to include misdemeanor and juvenile offenses.<sup>29</sup> While state law enforcement agencies are not required to provide the FBI with these records, the FBI is now permitted to store them in its National Crime Information Center (NCIC) database on the same basis as adult records.<sup>30</sup>

The Department of Justice has stated that fingerprinting youth is “one of the most intrusive procedures in the juvenile justice process.”<sup>31</sup> Fingerprinting also makes youth more vulnerable to being treated suspiciously by law enforcement based on past mistakes and past unwarranted investigations of the youth. This is particularly important as some states now keep fingerprint information in central state and federal repositories, making the youth’s information available to an ever-widening law enforcement community.

### **Recommendation**

NJJN recommends against the collection of youth fingerprints and photographs. Where collected, NJJN recommends strong protections against the sharing of this information, storing records locally rather than in state and federal databases, and requiring the sealing, expungement, and destruction of these records when a youth’s juvenile or criminal record is sealed or expunged.



## Gang Databases

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Local, state, and federal databases on gangs and gang members have proliferated,<sup>32</sup> raising significant concerns around violations of youth privacy, due process, lack of accountability, and racial disparities, as well as confidentiality. Increasingly, law enforcement agencies create gang databases for intelligence purposes; thus the information in the database is not tied to a youth's arrest, conviction, or even an investigation.<sup>33</sup> Depending on the jurisdiction, youth can be placed on a gang database by law enforcement, school police, school security, and school staff, based on mere suspicion of gang involvement, such as having a particular hairstyle or jewelry.<sup>34</sup>

For youth, many negative consequences flow from being placed on a gang database. “Known gang members” are the first to be questioned for offenses without a known assailant, are more likely to be charged in criminal court rather than juvenile court, and are likely to receive a more severe sentence.<sup>35</sup>

While gang databases are not public, they are generally accessible to police officers, probation and parole officers, schools, and social services personnel. The California gang database (“CalGang”) was expanded statewide in 1997 and is now accessed by over 6,000 law enforcement officers in at least 58 counties.<sup>36</sup> In addition, there are concerns that this information is occasionally sent to employers and others, either purposefully or inadvertently.<sup>37</sup> The California Youth Justice Coalition surfaced information that CalGang was shared with employers, landlords, and public housing and school administrators, causing evictions and exclusion from services.<sup>38</sup>

As with DNA profiles and fingerprints discussed above, gang databases further enmesh youth in the criminal justice system. However, there are even fewer protections for youth regarding gang databases than there are regarding DNA profiles and fingerprints. Many youth are unaware that they have been placed on a gang database unless they wind up in court, and once they find out, there generally is no process to have themselves removed.<sup>39</sup>

### **Recommendation**

NJJN recommends that youth not be placed on gang databases. For those states that already have youth on gang databases, NJJN recommends the following protections while they work to change this practice:

- Only place youth on local law enforcement databases, not statewide or federal databases.
- Provide strong penalties for sharing this information outside of the law enforcement community.
- Provide notification to youth that they are on a gang database and information on how they can file a petition with the court to be removed. Youth should be provided with legal counsel to assist them with this process.



## For More Information

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For additional information on these topics, we encourage you to review the following resources:

- American Bar Association, [“Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records”](#) (August 2015)
- Benjamin Chambers and Annie Balck, [“Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System”](#) (December 2014)
- Kevin Lapp, [“As Though They Were Not Children: DNA Collection from Juveniles”](#) (December, 2014)
- Kristin N. Henning, [“Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?”](#) Georgetown University Law Center (2004; reprinted January 2010)
- Human Rights Watch, [“Raised on the Registry: the Irreparable Harm of Placing Children on Sex Offender Registries in the US”](#) (May 2013)
- Illinois Juvenile Justice Commission, [“Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois”](#) (January 2016)
- James B. Jacobs, [“Juvenile Criminal Record Confidentiality”](#) (NELLCO Legal Scholarship Repository, New York University School of Law, June 1, 2013)
- Juvenile Justice Information Exchange, “Juvenile Justice Resource Hub: Re-entry,” <http://jjie.org/hub/reentry/>
- [Juvenile Law Center](#) has several helpful publications on this topic:
  - [“Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement”](#)
  - [“Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records”](#)
  - [“Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records”](#)
- Melissa Sickmund, Charles Puzzanchera, eds., [“Juvenile Offenders and Victims: 2014 National Report”](#) (Office of Juvenile Justice and Delinquency Prevention; the National Center for Juvenile Justice, December 2014)
- National Juvenile Justice Network [“Perils of Registering Youth Who Commit Sex Offenses”](#) (Washington, DC: November 14, 2014)
- Youth Justice Coalition, [“Tracked and Trapped”](#) (RealSearch Action Research Center, December, 2012)

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<sup>1</sup> Riya Saha Shah and Lauren Fine, “Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement,” 9, n. 17, <http://bit.ly/28uGNtv>.

<sup>2</sup> Inaccurate private databases: Riya Saha Shah & Jean Strout, “Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records” (Juvenile Law Center, 2016), 7-8, 12, <http://jlc.org/future-interrupted>. In extreme cases, some states have sold juvenile record information to private companies. Inaccurate FBI and police records: Shah and Strout, “Future Interrupted,” 17-18.

<sup>3</sup> Riya Saha Shah and Lauren Fine, “Juvenile Records,” 20, 43, <http://bit.ly/28uGNtv>; Riya Saha Shah and Lauren Fine, “Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records” (Philadelphia, PA: Juvenile Law Center, 2014), 4, <http://bit.ly/1xvmhYY>.

<sup>4</sup> Shah & Strout, “Future Interrupted,” 8-9; Illinois Juvenile Justice Commission, “Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois,” 50, <http://bit.ly/1OjBdDG>, citing Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records § V(e) (American Bar Association 2015).

<sup>5</sup> Illinois Juvenile Justice Commission, “Burdened for Life,” 36-7.

<sup>6</sup> Shah and Strout, “Future Interrupted,” 10, n. 80.

<sup>7</sup> As of the end of the 2008 legislative session, 46 states had school notification laws. See Melissa Sickmund & Chaz Puzzanchera, “Juvenile Offenders and Victims: 2014 National Report,” 98, <http://1.usa.gov/1DhEoyR>.

<sup>8</sup> Shah & Fine, “Juvenile Records,” 16-17.

<sup>9</sup> David S. Kirk and Robert J. Sampson, “Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood,” *Sociology of Education* 86(1) (American Sociological Association, 2013), 39, <http://bit.ly/1U2Dn7r>.

<sup>10</sup> Illinois Juvenile Justice Commission, “Burdened for Life,” 47-8.

<sup>11</sup> National Association of Counsel for Children, “Policy Statement: Confidentiality of Juvenile Court Proceedings and Records” (April 25, 1998), <http://bit.ly/28uG37O>.

<sup>12</sup> Fifty-two percent of youth experienced violence or threats of violence against them or their families, which they directly attributed to their registration. Nicole Pittman, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US” (Human Rights Watch, May 2013), 51, <http://bit.ly/107hYSm>.

<sup>13</sup> Pittman, “Raised on the Registry,” 50.

<sup>14</sup> National Juvenile Justice Network, “Perils of Registering Youth who Commit Sex Offenses” (Washington, DC: November 14, 2014), 2, <http://bit.ly/1vatrSk>; see also, “The Negative Impact of Registries on Youth: Why Are Youth Different than Adults?,” *Justice Policy Institute* (September 2, 2008), <http://bit.ly/1XPYmBf>.

<sup>15</sup> Pittman, “Raised on the Registry,” 30. A study of registered and non-registered male youth found a sexual offense reconviction rate of less than one percent over four years. E.J. Letourneau and K.S. Armstrong, “Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders,” *Sexual Abuse: A Journal of Research and Treatment*, 20 (2008), 393-408. Another study of male youth with sex crime convictions found a sexual offense reconviction rate of less than three percent over nine years. E. J. Letourneau, et al., “The Influence of Sex Offender Registration on Juvenile Sexual Recidivism,” *Criminal Justice Policy Review*, 20 (2009), 136-153. Also see J.R. Worling, et al., “20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually,” *Behavioral Science and the Law*, 28 no. 1 (2010): 46-57, finding that fewer than one in ten youth sexually reoffend after completing sex-specific treatment.

<sup>16</sup> Comments on the Proposed Supplemental Guidelines for Juvenile Registration Under the Sex Offender and Registration and Notification Act, submitted by Youth Justice Alliance (June 9, 2016): 5, n. 13, <http://bit.ly/28Qa4sy>, citing Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Debajyoti Sinha, and Kevin S. Armstrong, “The influence of sex offender registration on juvenile sexual recidivism,” *Criminal Justice Policy Review* 20:2 (2009): 136-153; Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Kevin S. Armstrong, and Debajyoti Sinha, “Do sex offender registration and notification requirements deter juvenile sex crimes?” *Criminal Justice & Behavior* 37:5 (2010): 553-569; Michael F. Caldwell and Casey Dickinson, “Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders,” *Behavioral Sciences & the Law* 27:6 (Nov/Dec 2009) 941-95.

<sup>17</sup> Comments on the Proposed Supplemental Guidelines for Juvenile Registration (Youth Justice Alliance), 5, n. 16, citing Mark Chaffin, “Our Minds Are Made Up – Don’t Confuse Us with the Facts: Commentary on Policies Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders.”

<sup>18</sup> National Juvenile Justice Network, “Perils of Registering Youth Who Commit Sex Offenses,” 2; citing National Conference of State Legislatures (NCSL), “Cost-Benefit Analyses of SORNA Implementation,” NCSL Report (2010), <http://bit.ly/1oNZZdD>; There is an even higher net cost when there is public notification of the youth’s sexual offense as well as being placed on the registry. In terms of public notification, no economic benefits could be identified, so the net benefit was identified as -10 to -40 billion dollars per year. Richard B. Belzer, “The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification,” *R Street Policy Study* No. 41 (Sept. 2015): 8, <http://bit.ly/1U7Xdnk>.

- <sup>19</sup> “Testimony: Detective Bob Shilling,” *House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, Sex Offender Registration and Notification Act (SORNA)* (March 10, 2009), 4.
- <sup>20</sup> Note that some states only collect DNA from youth over a certain age or who have been adjudicated delinquent for particular offenses. Kevin Lapp, “As Though They Were Not Children: DNA Collection from Juveniles,” *Tulane Law Review*, 89 (2014): 437-8, 454, <http://bit.ly/1Xhf63k>.
- <sup>21</sup> Note that youth have a “diminished ability to exercise their rights and understand the consequences of consenting.” Lapp, “As Though They Were Not Children: DNA Collection from Juveniles,” 486.
- <sup>22</sup> Lapp, 465, 476-77.
- <sup>23</sup> Lapp, 445, n. 54.
- <sup>24</sup> Lapp, 476.
- <sup>25</sup> Lapp, 465.
- <sup>26</sup> Linda A. Szymanski, “Fingerprinting of Alleged or Adjudicated Juvenile Delinquents,” *NCJJ Snapshot*, Vol. 10, No. 12 (Pittsburgh, PA: National Center for Juvenile Justice, Dec. 2005), <http://bit.ly/28uVjBr>; Sickmund & Puzzanchera, “Juvenile Offenders and Victims: 2014 National Report,” 98.
- <sup>27</sup> James B. Jacobs, “Juvenile Criminal Record Confidentiality,” *New York University Public Law and Legal Theory Working Papers*, paper 403 (2013), 16-17, <http://bit.ly/2atH4op>; Office of Juvenile Justice and Delinquency Prevention, “Juvenile Justice Reform Initiatives in the States, 1994-1996: Juvenile Proceedings and Records,” <http://1.usa.gov/1Pn62SM>.
- <sup>28</sup> Jacobs, “Juvenile Criminal Record Confidentiality,” 18.
- <sup>29</sup> James B. Jacobs, *The Eternal Criminal Record* (Boston, MA: Harvard University Press, 2015), 100.
- <sup>30</sup> Lapp, 481, n. 253; Fox News, “FBI Expands Fingerprint Database to Misdemeanors, Juvenile Offenders,” Sept. 26, 2006, <http://fxn.ws/1sAPKky>.
- <sup>31</sup> U.S. Dept. of Justice, National Institute of Justice, Bureau of Justice Statistics “Juvenile Records and Recordkeeping Systems,” (Nov. 1988): v, <http://1.usa.gov/21gxqbk>.
- <sup>32</sup> James B. Jacobs, “Gang Databases: Contexts and Questions,” *Criminology and Public Policy*, vol. 8, issue 4 (The American Society of Criminology, 2009), 705, <http://bit.ly/1XQb2Ia>; Units to collect and disseminate gang data present in roughly 1 in 4 jurisdictions with gang problems including 51 percent of larger cities. Rebecca Rader Brown, “The Gang’s All Here: Evaluating the Need for a National Gang Database,” *Columbia Journal of Law and Social Problems* (2009): 300, <http://bit.ly/1U2Tylt>; 1995 study found that 70 percent of the police departments and 20 percent of the prosecutors’ offices studied used an automated system for storing gang information and of the police departments reporting a gang problem, 78 percent used a database. Julie Barrows & C. Ronald Huff, “Gangs and Public Policy: Constructing and Deconstructing Gang Databases,” *Criminology and Public Policy*, vol. 8, issue 4 (The American Society of Criminology, 2009), 683, <http://bit.ly/21gxJ5Y>.
- <sup>33</sup> Jacobs, “Gang Databases: Contexts and Questions,” 705; An individual can be added to a gang database without having ever been charged or convicted of a crime. Brown, “The Gang’s All Here: Evaluating the Need for a National Gang Database,” 299.
- <sup>34</sup> Youth Justice Coalition, “Tracked and Trapped” (Dec. 2012), 4, 15, <http://bit.ly/1UoNGq4>; Jacobs, “Juvenile Criminal Record Confidentiality,” 19-20.
- <sup>35</sup> Jacobs, “Juvenile Criminal Record Confidentiality,” 19.
- <sup>36</sup> Youth Justice Coalition, “Tracked and Trapped,” 3.
- <sup>37</sup> Jacobs, “Juvenile Criminal Record Confidentiality,” 19-20.
- <sup>38</sup> Youth Justice Coalition, “Tracked and Trapped,” 6.
- <sup>39</sup> Youth Justice Coalition, “Tracked and Trapped,” 5.

Document:In re T.S., 133 N.C. App. 272

## In re T.S., 133 N.C. App. 272

### Copy Citation

Court of Appeals of North Carolina

April 21, 1999, Heard in the Court of Appeals ; May 18, 1999, Filed

NO. COA98-928

#### Reporter

**133 N.C. App. 272** | 515 S.E.2d 230 | 1999 N.C. App. LEXIS 408

In the Matter of T.S., **Juvenile**.

**Prior History:** Appeal by respondent from order entered 12 March 1998 by Judge Russell G. Sherrill, III ▼  
, in Wake County District Court, **Juvenile** Session.

**Disposition:** Reversed and remanded for entry of order of dismissal.

### Core Terms

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arousing, adult, sexual desires, gratifying, indecent, inferred, **juvenile**, sexual, liberties, presenting  
evidence, motion to dismiss, lewd

### Case Summary

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#### Procedural Posture

Respondent **juvenile** appealed from an order of the Wake County District Court (North Carolina),  
finding him a delinquent child for willfully committing a lewd and lascivious act upon the body of  
another child.

This section was originally enacted by Session Laws 1997-516, s. 1A, as G.S. 7A-647(4) and by Session Laws 1998-202, s. 11, as G.S. 7B-2508.1 and was recodified as this section at the direction of the Revisor of **Statutes**.

Session Laws 2015-181, s. 48 provides: "This act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the **statutes** that would be applicable but for this act remain applicable to those prosecutions."

#### **EFFECT OF AMENDMENTS. --**

Session Laws 2015-181, s. 26, effective December 1, 2015, and applicable to offenses committed on or after that date, rewrote section.

General **Statutes** of North Carolina

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**Content Type:** Statutes and Legislation

**Terms:** nc juvenile sex case legislature needs to makes statutes more clear

**Narrow By:** Court: North Carolina

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## Overview

Respondent **juvenile** was found a delinquent child by the **juvenile** court for committing a lewd and lascivious act upon the body of another child, to wit, respondent was found guilty of coercing a younger child into performing sex acts with him. At the time of the incident respondent was nine years old and the other child was three. On appeal, respondent argued that there was insufficient evidence to find him responsible for the crime. The court reversed on the ground that there was insufficient evidence to prove an element of the crime, that the act was performed for sexual gratification. Sexual gratification could not be inferred from the act itself without further evidence of intent and so the court reversed respondent's conviction and remanded for an entry of dismissal.

## Outcome

Respondent **juvenile**'s appeal was granted, and the court reversed the lower court's order finding him a delinquent child for willfully committing a lewd and lascivious act upon the body of another child. The court held that there was insufficient evidence to prove all the required elements of the crime.

## ▼ LexisNexis® Headnotes

Criminal Law & Procedure > ... > Sex Crimes ▼ > Sexual Assault ▼ > General Overview ▼

Criminal Law & Procedure > **Juvenile** Offenders ▼ > **Juvenile** Proceedings ▼ > General Overview ▼


**HN1** ⚡ See N.C. Gen. Stat. § 14-202.2 (Cum. Supp. 1998). *Shepardize* - Narrow by this Headnote

Criminal Law & Procedure > **Juvenile** Offenders ▼ > **Juvenile** Proceedings ▼ > General Overview ▼

Criminal Law & Procedure > **Juvenile** Offenders ▼ > Sentencing ▼ > Confinement Practices ▼

**HN2** ⚡ In a **juvenile** hearing, the evidence presented is evaluated using the same standards as in an adult criminal proceeding. *Shepardize* - Narrow by this Headnote

Criminal Law & Procedure > ... > Sexual Assault ▼ >  Abuse of Children ▼ > General Overview ▼

Criminal Law & Procedure > ... > Sexual Assault ▼ >  Abuse of Children ▼ > Elements ▼

Criminal Law & Procedure > **Juvenile** Offenders ▼ > General Overview ▼

**HN3** ⚡ A lewd act by adult standards may be innocent between children, and unless there is a showing of the child's sexual intent in committing such an act, it is not a crime under N.C. Gen. Stat. § 14-202.2. *Shepardize* - Narrow by this Headnote

## ▼ Headnotes/Syllabus

### Headnotes

Indecent Liberties--children's statute--intent--sufficiency of evidence

The trial court erred in the prosecution of a nine-year-old for taking indecent liberties against a three-year-old under N.C.G.S. § 14-202.2 by denying defendant's motion to dismiss where the State's evidence was insufficient to support a finding of purpose. Although intent may be inferred from the act itself under the adult statute, sexual ambitions must not be assigned to a child's actions without some evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting. Although the record includes scant evidence of respondent's purpose, there was testimony that respondent was mimicking behavior he had seen by others and there is no evidence indicating that he acted for the purpose of arousing or gratifying sexual desires.

**Counsel:** Attorney General Michael F. Easley, by Assistant Attorney General Sarah Y. Meacham ▼, for the State.

James R. Ansley ▼ for Respondent-appellant.

**Judges:** LEWIS ▼, Judge. Judges TIMMONS-GOODSON ▼ and HORTON ▼ concur.

**Opinion by:** LEWIS ▼

### Opinion

[272] LEWIS ▼, Judge.

Respondent was charged on 31 December 1997 in a **juvenile** petition with violation of N.C. Gen. Stat. § 14-202.2 (Cum. Supp. 1998). The petition alleged that "on or about the 17th day of August 1997, the child unlawfully and willfully did commit a lewd and lascivious act upon the body of [the victim] . . . for the purpose of arousing and gratifying sexual desire." At the time of the offense, respondent was nine years of age and the victim was three. The petition alleged that by virtue of this crime, respondent was a delinquent child as defined by N.C. Gen. Stat. § 7A-517(12) (Cum. Supp. 1998).

The matter was heard on 12 March 1998, and respondent pled "not responsible." No record was made of the proceedings, but the [273] summary of evidence as provided in the record indicates that the victim's mother, a neighbor, and a Cary police officer testified for the State. Quotes are from the evidence as summarized and agreed to by the parties. The State's evidence indicated that on 17 August 1997, the victim's family watched a NASCAR race on television at the home of respondent's neighbors. The victim's mother testified that the children played outside for several hours, and after returning home the victim told her "something funny happened today." The mother further testified that her son told her that respondent told him to pull his pants down and sucked his "pee-pee." The victim's mother testified she called a friend, B., to discuss what her son had told her. B. was a neighbor of respondent who had ongoing problems with respondent's family. B. told the victim's mother to ask the child specifically "if (respondent) touched his pee-pee." B. then confronted respondent and respondent's father. B. testified that respondent denied and then admitted the act, saying he had seen other boys in the neighborhood "do this type of

thing." Respondent's father contacted the Cary Police Department.

Officer Guthrie of the Cary Police Department testified that respondent was quiet and shy, and that respondent stated that he "sucked" the younger boy's penis. He further testified that respondent said he had seen other children "doing it" in the woods. Officer Guthrie asked respondent how many times "this" had happened before, and respondent answered "two times," including the alleged incident. When Officer Guthrie asked the victim if respondent sucked his "pee pee," the victim pointed to his pants. The victim told Officer Guthrie that "this" had never happened before.

Respondent presented evidence. Respondent's father testified that respondent never said he "sucked the boy's penis." Another neighbor testified that respondent had not previously behaved in a manner to indicate "this type of action." Detective Tingen of the Cary Police Department investigated the incident. He testified that respondent made no admissions to him during the course of interviews conducted both with and without respondent's father present.

At the close of the State's evidence and again at the close of all evidence, respondent moved to dismiss for the State's failure to prove all elements of the charge in the petition. Specifically, respondent asserted that the State had produced no evidence that the act was "for the purpose of arousing or gratifying sexual desire." Both motions **[274]** were denied. The trial court found the following facts, in their entirety:

Respondent contested the allegation. From evidence presented, the Court found beyond a reasonable doubt that respondent committed the act alleged.

Based on these findings of fact, the trial court concluded as a matter of law, "said **juvenile** [was] within [the court's] **juvenile** jurisdiction as Delinquent [sic]."

Respondent argues three assignments of error. He alleges that the trial court erred in denying his motion to dismiss, first at the close of the State's evidence and second at the close of all evidence. Finally, he alleges that the trial court erred in its conclusion of law that the **juvenile** was responsible, because each element was not proved beyond a reasonable doubt. The assignments of error have a common basis, that the State has failed to show the act was committed for the purpose of arousing or gratifying respondent's sexual desire.

This is the first time the "Indecent liberties between children" statute (hereinafter "Children's statute") has reached our Court. The statute provides:

(a) A person who is under the age of 16 years is guilty of taking indecent liberties with children if the person either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire.

(b) A violation of this section is punishable as a Class 1 misdemeanor.

**HN1** N.C. Gen. Stat. § 14-202.2 (Cum. Supp. 1998). The adult version of this crime, N.C. Gen. Stat. § 14-202.1 (1993) (hereinafter "Adult statute"), applies to individuals over age 16 and at least five years older than the child victim. The Children's statute act requirements in sections (1) **[275]** and (2) are identical to provisions of the Adult statute, except the Children's statute denotes an additional requirement that a lewd or lascivious act under (a)(2), like an immoral, improper, or indecent liberty under (a)(1), also be for the purpose of sexual arousal or gratification. Language requiring such purpose is present in the Adult statute under only (a)(1). Therefore, the essential elements of indecent liberties between children under G.S. 14-202.2(a)(2) are: (1) a perpetrator under age 16; (2) who willfully commits or attempts a lewd or lascivious act upon the body of a child; (3) where the child is at least three years younger than the perpetrator; (4) for the purpose of arousing or gratifying sexual desire. *Cf. State v. Rhodes*, 321 N.C. 102, 104, 361 S.E.2d 578, 580 (1987) (listing essential elements for adult indecent liberties conviction).



**HN2** In a **juvenile** hearing, the evidence presented is evaluated using the same standards as in an adult criminal proceeding. See *In re Cousin*, 93 N.C. App. 224, 225, 377 S.E.2d 275, 276 (1989). In reviewing a motion to dismiss, the evidence is viewed in the light most favorable to the State. See *In re Stowe*, 118 N.C. App. 662, 664, 456 S.E.2d 336, 337 (1995). If a rational trier of fact could find every element of the crime beyond a reasonable doubt from the evidence presented, a motion to dismiss is properly denied in **juvenile** court just as in adult criminal proceedings. See *id.* at 664, 456 S.E.2d at 337-38. However, as in adult proceedings, if the evidence does not support each element of the crime, the charge must be dismissed. See *In re Alexander*, 8 N.C. App. 517, 520, 174 S.E.2d 664, 666 (1970) (holding nonsuit "no less required in a case in which a **juvenile** is involved" than it would be in a case against an adult when evidence is insufficient).

Although not present in the summary, both parties agree that respondent was nine years old and the victim was three years old at the time of the incident. While there is sufficient, though hearsay, evidence to support that the act in fact occurred, there is no evidence indicating that respondent acted for the purpose of arousing or gratifying his sexual desires. The State asserts that although no direct evidence of respondent's purpose of arousal or sexual gratification was presented, such intent should be inferred from the very act itself, as has been done in certain of our cases interpreting the Adult statute. See e.g., *Rhodes*, 321 N.C. at 105, 361 S.E.2d at 580 (allowing defendant's act of intercourse to support inference of purpose to arouse or gratify); *State v. Connell*, 127 N.C. App. 685, 690, 493 S.E.2d 292, 295 (1997) (allowing evidence of defendant touching victim's genitals and [276] defendant's later exculpatory statements to support inference that he intended to satisfy his sexual desires), *disc. review denied*, 347 N.C. 579, 502 S.E.2d 602 (1998); *State v. Jones*, 89 N.C. App. 584, 598, 367 S.E.2d 139, 147 (1988) (holding that evidence that defendant took victim to an isolated room and touched her genitals was sufficient to infer he acted for the purpose of arousing or gratifying his sexual desires). We agree that intent is seldom provable through direct evidence. See *State v. Creech*, 128 N.C. App. 592, 598, 495 S.E.2d 752, 756, *disc. review denied*, 348 N.C. 285, 501 S.E.2d 921 (1998). However, we do not believe that intent to arouse or gratify sexual desires may be inferred in children under the same standard used to infer sexual purpose to adults.

The trial summary provided in the record includes scant evidence of respondent's purpose in performing fellatio. There was testimony that respondent was mimicking behavior he had seen by others in the woods. The State urges that Officer Guthrie's testimony that respondent told him this act had occurred twice indicates the nine year old had a purpose to arouse or gratify his sexual desires. We do not know whether, when, or with whom the first act took place. The State's conclusory argument ignores that *both* alleged incidents may have been without the purpose to arouse or gratify. If such were the case, there is no evidence of an essential element of the crime.

Furthermore, we are persuaded by the plain language of the statute that the purpose to arouse or gratify sexual desires should not be inferred from the act alone between children. The legislature could have merely lowered the age requirements in the Adult statute if it intended the two classes of indecent liberties perpetrators, children and adults, to receive equal consideration. Instead, an entirely new statute was enacted, and the clause "for the purpose of arousing or gratifying sexual desire" was added in (a)(2) in the Children's statute where it does not appear in the Adult statute. **HN3** We believe that this addition indicates a legislative recognition that a lewd act by adult standards may be innocent between children, and unless there is a showing of the child's sexual intent in committing such an act, it is not a crime under G.S. 14-202.2.

We note that civil courts also treat adults and children differently when applying presumptions. Our courts presume that a child of respondent's age is incapable of negligence. *Bell v. Page*, 271 N.C. 396, 400, 156 S.E.2d 711, 715 (1967) (holding that there is a rebuttable presumption that a person between ages seven and fourteen is incapable [277] of contributory negligence). The child's discretion, maturity, knowledge, and experience interact in rebutting the presumption. See *Hoots v. Beeson*, 272 N.C. 644, 649, 159 S.E.2d 16, 20 (1968). It would be incongruous to presume that because of his age respondent is incapable of negligence in his actions, and yet presume that in spite of his age respondent had or sought to arouse sexual desires by his actions. We will not put words in the Legislative mouth by saying a presumption exists here. That branch can speak for itself.

Accordingly, we hold that without some evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting, sexual ambitions must not be assigned to a child's actions. Adults can and should be presumed to know the nature and consequences of their acts; this is not always the case with children. The common law recognizes this in its age distinctions for negligence liability, and the General Assembly recognized this when it insisted that sexual purpose be shown under *both* sections of the Children's statute.

We are not asked to and do not hold that a nine year old is incapable of acting for the purpose of arousing or gratifying his sexual desires. We have no evidence on this question. We do not believe, however, that the State may rest on an allegation of the act alone between, for example, a four year old and a one year old, to infer sexual purpose. We hold that the element "for the purpose of arousing or gratifying sexual desire" may not be inferred solely from the act itself under G.S. 14-202.2. The evidence presented by the State in respondent's case was insufficient to support a finding of the element of purpose. The motions to

dismiss should have been granted at the conclusion of the State's case or after all the evidence. We need not reach respondent's third assignment of error.

Reversed and remanded for entry of order of dismissal.

Judges TIMMONS-GOODSON ▼ and HORTON ▼ concur.

**Content Type:** Cases

**Terms:** sexual battery juvenile

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Document:N.C. Gen. Stat. § 7B-2509

## N.C. Gen. Stat. § 7B-2509

### Copy Citation

Current through Session Laws 2016-3, 2016 2nd Extra Session.

**General Statutes of North Carolina CHAPTER 7B. JUVENILE CODE DIVISION 02 .  
UNDISCIPLINED AND DELINQUENT JUVENILES ARTICLE 25. DISPOSITIONS**

### § 7B-2509. Registration of certain delinquent juveniles

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In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes.

### History

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1997-516, s. 1A; 1998-202, s. 11; 2015-181, s. 26.

### ▼ Annotations

### Notes

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**EDITOR'S NOTE. --**

This section was originally enacted by Session Laws 1997-516, s. 1A, as G.S. 7A-647(4) and by Session Laws 1998-202, s. 11, as G.S. 7B-2508.1 and was recodified as this section at the direction of the Revisor of Statutes.

Session Laws 2015-181, s. 48 provides: "This act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

#### **EFFECT OF AMENDMENTS. --**

Session Laws 2015-181, s. 26, effective December 1, 2015, and applicable to offenses committed on or after that date, rewrote section.

General Statutes of North Carolina

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Professional Conduct, Section .02, Attorney A to retain him in the prior professional relationship with : to conclude that Ms. X believed would be treated as confidential. l to her communications although representation. Rule 4(b)(3) prohibits it for the advantage of a third per- not consent to the use of the infor- conflict of interest and is disquali- rs. Rule 5.1(c).

#### Inquiry #5:

May lawyers in different law firms share the use of electronic transfer equipment if the funds of the clients of different law firms will be temporarily mingled in one deposit account?

#### Opinion #5:

No, this procedure will jeopardize the integrity of the record kept required for trust accounts. Rule 10.2.

#### RPC 248

April 4, 1997

#### Mortgage Brokerage Owned by Lawyers

*Opinion rules that a lawyer who owns stock in a mortgage brokerage corporation may not act as the settlement agent for a loan brokered by the corporation. Nor may the other lawyers in the firm certify title or act as settlement agent for the client.*

#### Inquiry #1:

Attorneys A and B are shareholders in Corporation X, a mortgage brokerage. May Attorney C, a member of Attorney A and Attorney B's law firm, be a shareholder in Corporation X, certify title and/or act as settlement agent for a closing in which the mortgage was brokered by Corporation X?

#### Opinion #1:

No. Attorney A and Attorney B may not certify title or act as settlement agent because Attorney A and Attorney B's personal interest in seeing Corporation X receives its fee or commission for placing the loan could conflict with the client-borrower's desire to close only when it is in his or her interest to do so. See RPC 49 and RPC 188. The conflict of interest of Attorney A and Attorney B is imputed to Attorney C, and he is also disqualified from certifying the title and/or acting as a settlement agent for the closing. See Rule 5.11(a).

#### Inquiry #2:

May Attorney A and Attorney B act as "mere settlement agents" of a mortgage brokered by Corporation X if another lawyer, who is not a shareholder in Corporation X, certifies title and there is full disclosure as well as a waiver of any conflict of interests by the borrower?

#### Opinion #2:

No. The conflict between Attorney A and Attorney B's personal interests and the interests of the borrower may materially impair the judgment of Attorneys A and B. The risk to the client-borrower is so great that no lawyer should proceed, regardless of whether the client desires to consent. See RPC 5.1(b), and Rule 5.11(a).

#### RPC 249

April 4, 1997

#### Communication with a Child Represented by GAL and Attorney Advocate

*Opinion rules that a lawyer may not communicate with a child who is represented by a GAL, and an attorney advocate unless the lawyer obtains the consent of the attorney advocate.*

#### Inquiry #1:

Joey is ten years old. He is represented by a GAL and an attorney advocate. May the attorney advocate communicate with the child?

#### Opinion #1:

Rule 7.4(1) provides that, during the course of his or her representation of a client, a lawyer is prohibited from communicating or causing another to communicate about the subject of the representation with a party the lawyer represents to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so. Joey is represented by an attorney, and the attorney advocate's consent must be obtained before any communication by Attorney M with Joey.

#### Opinion #2:

The permission of the attorney for DSS sufficient to allow Attorney M to interview Joey without the consent of the attorney advocate?

#### Opinion #2:

No. The attorney for DSS does not represent Joey.

#### Opinion #3:

The district attorney intends to prosecute the mother for child abuse. The district attorney would like to interview Joey without informing or obtaining consent of the GAL or the attorney advocate. May the district attorney interview Joey under these circumstances?

#### Opinion #3:

No. The comment to Rule 7.4 states, "This rule also covers any person, other than a party to a formal proceeding, who is represented by counsel concerning the matter in question." See also RPC 87.

#### Opinion #4:

For the district attorney instruct a sheriff's deputy to interview Joey without informing or obtaining the consent of the GAL or the attorney advocate?

#### Opinion #4:

No. An attorney may not instruct an agent to do that which the attorney himself cannot do. See Rule 3.3.

#### Opinion #5:

May the attorney for DSS interview Joey without informing or obtaining consent of the GAL or the attorney advocate?

#### Opinion #5:

No. See opinion #1 above.

#### Opinion #6:

The GAL is also an attorney, would any of the above opinions be different?

#### Opinion #6:

No. If an attorney advocate was appointed, the GAL is not acting in the capacity of an attorney for the juvenile. Rule 7.4(d) requires the consent of the attorney representing the client prior to direct communication with the client.

#### Opinion #7:

The court appoints a GAL for Joey but does not appoint an attorney advocate. May the attorney for Joey's mother, the district attorney, or the attorney for DSS interview Joey without the consent of the GAL?

#### Opinion #7:

No. See opinion #1 above.

#### RPC 250—Withdrawn

July 18, 1997

Withdrawn October 24, 1997

Editor's Note: RPC 250 was adopted on July 18, 1997. It was subsequently withdrawn by the State Bar Council on October 24, 1997. It was proposed and subsequently adopted in Opinion 10.

#### RPC 251

July 18, 1997

#### Representation of Multiple Claimants

*Opinion rules that a lawyer may represent multiple claimants in a personal injury case, even though the available insurance coverage for each claimant is different, provided each claimant gives informed consent to the representation against the interests of any client in the division.*

#### Inquiry #1:

Attorney A represents four unrelated accident victims arising out of an accident in which they were riding collided with an auto. Claimants are liable for the accident and the claimants. Inadequate settlement offers were made. May Attorney A continue to represent all claimants fully, provided each claimant gives informed consent to the representation against the interests of any client in the division?

#### Opinion #1:

Yes, provided the claimants give informed consent.

The representation of multiple claimants in a personal injury case, even though the available insurance coverage for each claimant is different, provided each claimant gives informed consent to the representation against the interests of any client in the division, is impermissible. See Rule 5.1(a). There may be no crossclaims between the claimant and the attorney. Limited insurance funds from which multiple claimants are competing for compensation between insurance proceeds. A lawyer who represents multiple claimants becoming an advocate for the claimants, the expense of the other claimants. Nevertheless, the lawyer's representation of multiple claimants is not involve directly antagonistic interests as the former conflict.

Rule 5.1(b) permits a lawyer to represent multiple claimants if the lawyer is materially limited to another client, if the lawyer reasonably believes that the lawyer's representation of the client will not be adversely affected and the lawyer is including an explanation of the risks and the lawyer is facilitating an acceptable division of the insurance proceeds.