The Collateral Consequences of an Adjudication

Lisa Campbell,
Defender Association of Philadelphia

The Pennsylvania Juvenile Collateral Consequences Checklist

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WHAT IS A COLLATERAL CONSEQUENCE?

- U.S. v. Romero – Vilca, 850 F. 2d 177 (3d Cir. 1988) defines a collateral consequence as: "one that is not related to the length or nature of the sentence imposed on the basis of the plea."

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1. IS A JUVENILE ADJUDICATION OF DELINQUENCY A CRIMINAL CONVICTION?

- No. *Under North Carolina law, a delinquency adjudication is not a criminal conviction*. N.C. Gen. Stat. § 7B-2412. However, for many practical purposes, delinquency adjudications are treated like criminal convictions.

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2. WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT EMPLOYMENT OPPORTUNITIES?

Employment Applications:

- A delinquency adjudication "shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights." N.C. Gen. Stat. § 7B-2412.
- Many employment applications only ask potential employees to reveal past criminal convictions, which do not include delinquency adjudications.

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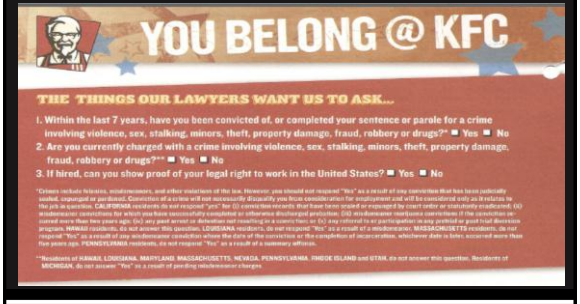
2. WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT EMPLOYMENT OPPORTUNITIES?



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2. WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT EMPLOYMENT OPPORTUNITIES? (CONT.)

Although a delinquency adjudication is not a conviction, it is sometimes in the interest of an applicant to reveal the adjudication to a potential employer. Employers have ways to access this information. For example:

- The Administrative Office of Pennsylvania Courts has a website where many counties still post information about juvenile adjudications, making it accessible to potential employers. Leaving a delinquency adjudication out of a job application may appear dishonest to an employer if it is discovered. Whenever possible, delinquency adjudications should be expunged to avoid this dilemma.

3. ARE JUVENILE ADJUDICATIONS OF DELINQUENCY PUBLIC KNOWLEDGE?

No. "All public records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court." N.C. Gen. Stat. § 7B-3000(b). The exception applies to attorneys, probation, etc.

Contrast this with Pennsylvania's law, in which adjudications become a matter of public record if the charge is a felony and the child is 14 years or older, or if the child is 12 or older and is adjudicated of certain serious offenses. 42 Pa. C.S. § 6307(b)(1).

4. ARE THE HEARINGS IN JUVENILE COURT OPEN TO THE PUBLIC?

Yes. "All hearings authorized or required pursuant to this Subchapter **shall be open to the public** unless the court closes the hearing or part of the hearing for good cause, upon motion of a party or its own motion. If the court closes the hearing or part of the hearing to the public, the court may allow any victim, member of a victim's family, law enforcement officer, witness or any other person directly involved in the hearing to be present at the hearing." N.C. Gen. Stat. § 7B-2402 (emphasis added).

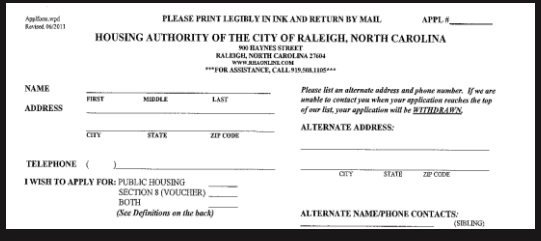
5. WILL PUBLIC ASSISTANCE BENEFITS AND PUBLIC HOUSING BE IMPACTED BY A JUVENILE ADJUDICATION OF DELINQUENCY?

- A delinquency adjudication can affect eligibility for public benefits and housing.
  - Public housing authorities have the right to evict families of delinquent children, even if their delinquent conduct does not occur on public housing property. See *HUD v. Rucker,* 535 U.S. 125, 133-136 (2002).
  - Also, anyone subject to a lifetime registration requirement under a state sex offender registration statute is ineligible for federally assisted housing. 42 U.S.C. § 13663.

5. WILL PUBLIC ASSISTANCE BENEFITS AND PUBLIC HOUSING BE IMPACTED BY A JUVENILE ADJUDICATION OF DELINQUENCY?

- In North Carolina:
  - In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes.
    N.C. GEN. STAT. § 157-29(e).

SAMPLE HOUSING APPLICATION



AppHome.wpd
Revised: 06/2013

PLEASE PRINT LEGIBLY IN INK AND RETURN BY MAIL APPL #_____

HOUSING AUTHORITY OF THE CITY OF RALEIGH, NORTH CAROLINA
900 HAYNES STREET
RALEIGH, NORTH CAROLINA 27604
WWW.RHAONLINE.COM
FOR ASSISTANCE, CALL 919.508.1105

NAME _____
FIRST MIDDLE LAST

ADDRESS _____
CITY STATE ZIP CODE

TELEPHONE ( ) _____

I WISH TO APPLY FOR: PUBLIC HOUSING _____
SECTION 8 (VOUCHER) _____
BOTH _____
(See Definitions on the back)

Please list an alternate address and phone number. If we are unable to contact you when your application reaches the top of our list, your application will be WITHDRAWN.

ALTERNATE ADDRESS:
_____
_____
CITY STATE ZIP CODE

ALTERNATE NAME/PHONE CONTACTS:
_____ (SIBLING)

SAMPLE HOUSING APPLICATION

SIGNATURE: _____ DATE: _____

NOTE: A criminal history report/background check is required to determine eligibility of all applicants. A tenant history will be checked on all past housing tenants. *Fraud Warning: Title 18, Section 1001 of the United States code, states that a person who knowingly and willingly makes false statements to any department or agency of the United States is guilty of a felony.

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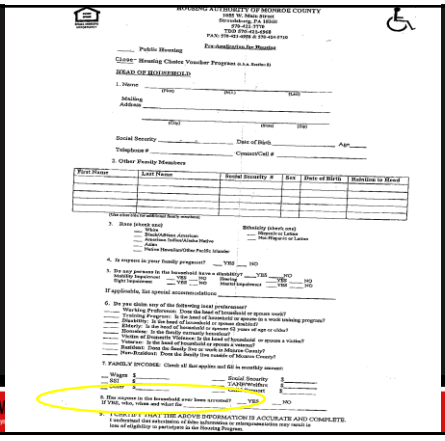

HOUSING AUTHORITY OF MONROE COUNTY

Public Housing

Housing Choice Voucher Program

HEAD OF HOUSEHOLD

1. Name

Mailing Address

Social Security _____ Date of Birth _____ Age ____

Telephone # _____ Cyrano/Cell # _____

2. Other Family Members

First Name	Last Name	Social Security #	Sex	Date of Birth	Relation to Head

3. Race (check one)

Ethnicity (check one)

4. Is anyone in your family pregnant? ___ YES ___ NO

5. Do any persons in the household have a disability? ___YES ___NO

6. Do you claim any of the following local preferences?

7. FAMILY INCOME: Check all that applies and fill in monthly amount:

8. Has anyone in the household ever been arrested? ___ YES ___ NO
If YES, who, when and what for _____

9. I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND COMPLETE.
I understand that submission of false information or misrepresentation may result in loss of eligibility to participate in the Housing Program.

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SAMPLE HOUSING APPLICATION

8. Has anyone in the household ever been arrested? ___ YES ___ NO
If YES, who, when and what for _____

9. I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND COMPLETE.
I understand that submission of false information or misrepresentation may result in loss of eligibility to participate in the Housing Program.

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6. CAN A YOUNG MAN OR YOUNG WOMAN ENLIST IN THE MILITARY IF HE OR SHE HAS BEEN ADJUDICATED DELINQUENT OF AN OFFENSE?

A delinquency adjudication may affect an application for military service as follows:

- **A delinquency adjudication is considered a conviction for a criminal offense** under Army regulations. *Army Regulation 601-210,* ch. 4, available at http://www.apd.army.mil/pdffiles/r601_210.pdf

6. CAN A YOUNG MAN OR YOUNG WOMAN ENLIST IN THE MILITARY IF HE OR SHE HAS BEEN ADJUDICATED DELINQUENT OF AN OFFENSE? (CONT.)

- The Air Force, Navy and Marines examine delinquency adjudications on a **case-by-case basis.**
  - See *Air Force Instruction 36-2002*, at 31 attachment 4 (1999), available at http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2911.pdf;
  - *Navy Recruiting Manual-Enlisted 2-95-2-98* (2002), available at http://usmilitary.about.com/library/pdf/navrecruit.pdf;
  - *Military Personnel Procurement Manual, MCO P1100, 72C 3-95-3-105* (2004), available http://www.marines.mil/news/publications/Documents/MCO%20P1100.72C%20W%20ERRATUM.pdf.

6. CAN A YOUNG MAN OR YOUNG WOMAN ENLIST IN THE MILITARY IF HE OR SHE HAS BEEN ADJUDICATED DELINQUENT OF AN OFFENSE? (CONT.)

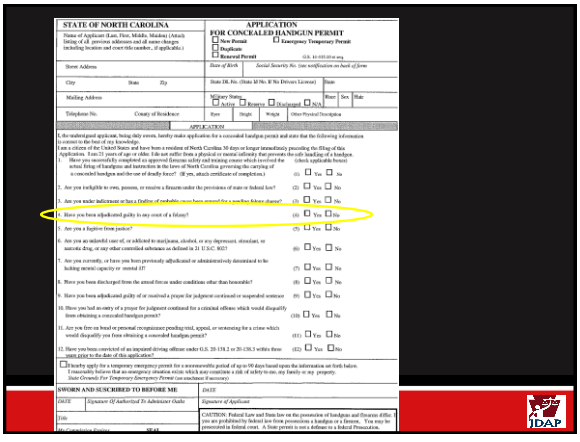
- Expungement: Military recruiters frequently assist young recruits in getting their juvenile records expunged if those records are not lengthy and the juvenile offenses are not extremely serious.
- Felonies: Those convicted of felonies are not eligible for the military without special approval from the Secretary of Defense. 10 U.S.C. § 504(a).

7. CAN A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ABILITY OF A PERSON TO OBTAIN A LICENSE TO CARRY A FIREARM?

Arguably no. "A sheriff can deny a permit" to applicants who have been "adjudicated guilty" of felonies and certain misdemeanors. N.C. Gen. Stat. § 14-415.12(b)(3), (b)(8).

7. CAN A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ABILITY OF A PERSON TO OBTAIN A LICENSE TO CARRY A FIREARM? (CONT.)

- A juvenile previously adjudicated delinquent does not appear to qualify as a felon in possession of a firearm as the statute specifically requires conviction. N.C. Gen. Stat. § 14-415.1(b).
- This combines with the clear "adjudications are not convictions" rule to disqualify adjudications.



STATE OF NORTH CAROLINA

APPLICATION
FOR CONCEALED HANDGUN PERMIT
☐ New Permit ☐ Emergency Temporary Permit
☐ Duplicate
☐ Renewal Permit

Name of Applicant (Last, First, Middle, Maiden) (Attach listing of all previous addresses and all name changes, including location and court title number, if applicable.)

Street Address

City State Zip

Mailing Address

Telephone No. County of Residence

Date of Birth | Social Security No. (see notification on back of form)

State DL No. (State Id No. If No Drivers License) | State

Agency Status: ☐ Active ☐ Reserve ☐ Deployed ☐ N/A | Race | Sex | Hair

Eyes | Height | Weight | Other Physical Description

APPLICATION

I, the undersigned applicant, being duly sworn, hereby make application for a concealed handgun permit and state that the following information is correct to the best of my knowledge.
I am a citizen of the United States and have been a resident of North Carolina 30 days or longer immediately preceding the filing of this application. I am not prohibited by state or federal law from possessing a handgun or a firearm. You may be prosecuted in federal court. A State permit is not a defense to a federal Prosecution.

a. Have you successfully completed an approved firearms safety and training course which included the actual firing of handguns and instruction in the laws of North Carolina governing the carrying of a concealed handgun and the use of deadly force? (If yes, attach certificate of completion.) (a) ☐ Yes ☐ No

b. Are you ineligible to own, possess, or receive a firearm under the provisions of state or federal law? (2) ☐ Yes ☐ No

3. Are you under indictment or has a [illegible] been entered for a pending felony charge? (3) ☐ Yes ☐ No

4. Have you been adjudicated guilty in any court of a felony? (4) ☐ Yes ☐ No

5. Are you a fugitive from justice? (5) ☐ Yes ☐ No

6. Are you an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substances as defined in 21 U.S.C. 802? (6) ☐ Yes ☐ No

7. Are you currently, or have you been previously adjudicated or administratively determined to be lacking mental capacity or mental ill? (7) ☐ Yes ☐ No

8. Have you been discharged from the armed forces under conditions other than honorable? (8) ☐ Yes ☐ No

9. Have you been adjudicated guilty of or received a prayer for judgment continued or suspended sentence (9) ☐ Yes ☐ No

10. Have you had an entry of a prayer for judgment continued for a criminal offense which would disqualify from obtaining a concealed handgun permit? (10) ☐ Yes ☐ No

11. Are you free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify you from obtaining a concealed handgun permit? (11) ☐ Yes ☐ No

12. Have you been convicted of an impaired driving offense under G.S. 20-138.2 or 20-138.3 within three years prior to the date of this application? (12) ☐ Yes ☐ No

☐ I hereby apply for a temporary emergency permit for a nonrenewable period of up to 90 days based upon the information set forth below. I reasonably believe that an emergency situation exists which may constitute a risk of safety to me, my family or my property.
State Grounds For Temporary Emergency Permit (see enclosure if necessary)

SWORN AND SUSCRIBED TO BEFORE ME

DATE | Signature Of Authorized To Administer Oaths

Title

My Commission Expires SEAL

DATE

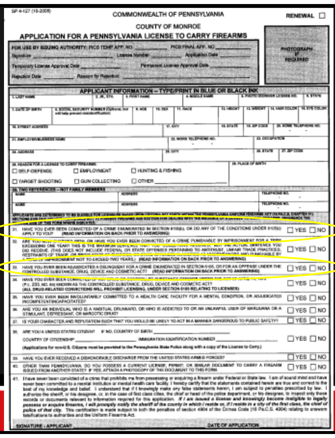
Signature of Applicant

CAUTION: Federal Law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, You may be prosecuted in federal court. A State permit is not a defense to a federal Prosecution.

SAMPLE FIREARM APPLICATION

4. Have you been adjudicated guilty in any court of a felony?

(4) ☐ Yes ☐ No



SP 4-127 (10-2005)

COMMONWEALTH OF PENNSYLVANIA

RENEWAL ☐

COUNTY OF MONROE

APPLICATION FOR A PENNSYLVANIA LICENSE TO CARRY FIREARMS

PHOTOGRAPH IF REQUIRED

APPLICANT INFORMATION – TYPE/PRINT IN BLUE OR BLACK INK

☐ SELF-DEFENSE ☐ EMPLOYMENT ☐ HUNTING & FISHING

☐ TARGET SHOOTING ☐ GUN COLLECTING ☐ OTHER

31. HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105(b), OR DO ANY OF THE CONDITIONS UNDER 6105(c) APPLY TO YOU? (READ INFORMATION ON BACK PRIOR TO ANSWERING) ☐ YES ☐ NO

33. HAVE YOU EVER BEEN ADJUDICATED A DELINQUENT FOR A CRIME ENUMERATED IN SECTION 6105, OR FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? (READ INFORMATION ON BACK PRIOR TO ANSWERING) ☐ YES ☐ NO

SIGNATURE - APPLICANT

DATE OF APPLICATION

SAMPLE FIREARM APPLICATION

31. HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105(b), OR DO ANY OF THE CONDITIONS UNDER 6105(c) APPLY TO YOU? (READ INFORMATION ON BACK PRIOR TO ANSWERING)

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SAMPLE FIREARM APPLICATION

33. HAVE YOU EVER BEEN ADJUDICATED A DELINQUENT FOR A CRIME ENUMERATED IN SECTION 6105, OR FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? (READ INFORMATION ON BACK PRIOR TO ANSWERING)

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8. WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT DRIVING PRIVILEGES?

"[A judge may] [o]rder that the juvenile shall not be licensed to operate a motor vehicle in the State of North Carolina **for as long as the court retains jurisdiction over the juvenile** or for any shorter period of time. The clerk of court shall notify the Division of Motor Vehicles of that order.

N.C. Gen. Stat. § 7B-2506(9) (emphasis added).

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8. WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT DRIVING PRIVILEGES? (CONT.)

Contrast Pennsylvania's examples…

- Driving Under the Influence: Juvenile adjudications of delinquency for driving while under the influence of drugs or alcohol result in mandatory license suspension. 75 Pa. C.S. § 3804.
  - In addition, the use of alcohol or a controlled substance to a degree that renders the user incapable of safe driving may result in limited or long-term ineligibility for a driver's license. 75 Pa. C.S. § 1503.
- Truancy: Notably, a truancy finding in violation of Pennsylvania's compulsory attendance requirements also subjects youth to temporary license suspension or temporary ineligibility for a driving permit. 24 P.S. § 13-1333.

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9. WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGH SCHOOLS OR HIGH-SCHOOL LEVEL TECHNICAL OR TRADE SCHOOLS?

A student's juvenile record may not be the sole reason for a suspension or expulsion but may be taken into account "to protect the safety of or to improve the education opportunities for the student or others."

N.C. Gen. Stat. § 115C-404(b).

9. WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGH SCHOOLS OR HIGH-SCHOOL LEVEL TECHNICAL OR TRADE SCHOOLS? (CONT.)

"If the student graduates, withdraws from school, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal shall return all documents not destroyed in accordance with subsection (a) of this section to the juvenile court counselor and, if applicable, shall provide the counselor with the name and address of the school to which the student is transferring."

N.C. Gen. Stat. § 115C-404(c).

10. WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGHER EDUCATION, INCLUDING COLLEGES, VOCATIONAL SCHOOLS, TECHNICAL SCHOOLS OR TRADE SCHOOLS? (CONT.)

- **Higher Education: A delinquency adjudication does not bar access to higher education in most cases.** If the institution's application asks for the person's arrest history, juvenile arrests must be included.
  - However, an increasing number of institutions accept the Common Application, which asks whether the person has been convicted of a misdemeanor, felony, or other crime. **This question does not require that the applicant include delinquency adjudications.** See *Juvenile Court Judges' Commission 2008 Juvenile Delinquency Records Handbook and Expungement Guide* at p. 10.

SAMPLE COLLEGE APPLICATION

THE COMMON APPLICATION

2011-12 FIRST-YEAR APPLICATION

For Spring 2012 or Fall 2012 Enrollment

APPLICANT

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

Preferred name, if not first name (only one) _____ Former last name(s) _____

Birth Date _____ ○ Female ○ Male US Social Security Number, if any _____
mm/dd/yyyy *Required for US Citizens and Permanent Residents applying for financial aid via FAFSA*

Preferred Telephone ○ Home ○ Cell Home (_____) _____ Cell (_____) _____
Area/Country/City Code *Area/Country/City Code*

E-mail Address _____ IM Address _____

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SAMPLE COLLEGE APPLICATION

Disciplinary History

① Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in a disciplinary action? These actions could include, but are not limited to: probation, suspension, removal, dismissal, or expulsion from the institution. ○ Yes ○ No

② Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime? ○ Yes ○ No
[Note that you are not required to answer "yes" to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise ordered by a court to be kept confidential.]

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

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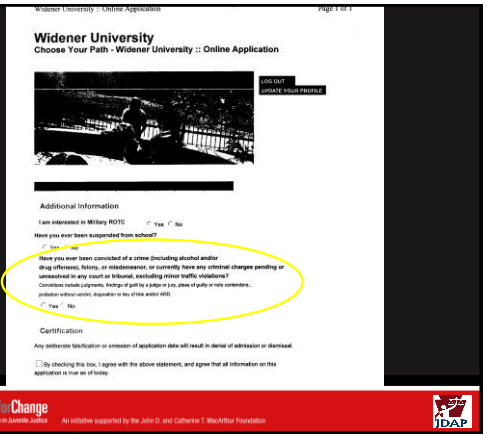
Widener University :: Online Application Page 1 of 1

Widener University

Choose Your Path - Widener University :: Online Application

LOG OUT
UPDATE YOUR PROFILE

Additional Information

I am interested in Military ROTC ○ Yes ○ No

Have you ever been suspended from school?

○ Yes ○ No

Have you ever been convicted of a crime (including alcohol and/or drug offenses), felony, or misdemeanor, or currently have any criminal charges pending or unresolved in any court or tribunal, excluding minor traffic violations?

Convictions include judgments, findings of guilt by a judge or jury, pleas of guilty or nolo contendere, probation without verdict, disposition in lieu of trial and/or ARD.

○ Yes ○ No

Certification

Any deliberate falsification or omission of application data will result in denial of admission or dismissal.

☐ By checking this box, I agree with the above statement, and agree that all information on this application is true as of today.

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SAMPLE COLLEGE APPLICATION

Have you ever been convicted of a crime (including alcohol and/or drug offenses), felony, or misdemeanor, or currently have any criminal charges pending or unresolved in any court or tribunal, excluding minor traffic violations?

Convictions include judgments, findings of guilt by a judge or jury, pleas of guilty or nolo contendere, probation without verdict, disposition in lieu of trial and/or ARD.

○ Yes ○ No

Certification

Any deliberate falsification or omission of application data will result in denial of admission or dismissal.

10. WILL A JUVENILE ADJUDICATION OF DELINQUENCY RESTRICT ACCESS TO HIGHER EDUCATION, INCLUDING COLLEGES, VOCATIONAL SCHOOLS, TECHNICAL SCHOOLS OR TRADE SCHOOLS? (CONT.)

- **Financial Aid: A delinquency adjudication does not automatically bar access to federal student financial aid.** A criminal conviction for possessing or selling illegal drugs while the person was receiving federal student grants, loans or work-study can restrict access to financial aid. See 20 U.S.C. § 1091(r); see also *Free Application for Federal Student Aid FAQ* at http://www.fafsa.ed.gov/faq003.htm.

FROM FAFSA APPLICATION

Student Aid Eligibility Drug Convictions

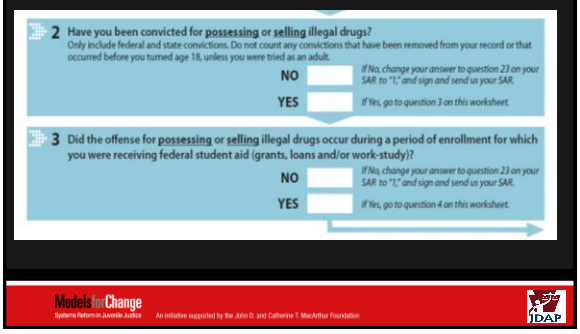
❑ I have never attended college

❑ I have never received federal student aid

❑ I have never had a drug conviction

If you did not check any of these boxes, you will be asked more questions online.

QUESTION 2-6 FROM FAFSA DRUG WORKSHEET



2 Have you been convicted for **possessing** or **selling** illegal drugs?
Only include federal and state convictions. Do not count any convictions that have been removed from your record or that occurred before you turned age 18, unless you were tried as an adult.

NO ☐ *If No, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

YES ☐ *If Yes, go to question 3 on this worksheet.*

3 Did the offense for **possessing** or **selling** illegal drugs occur during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study)?

NO ☐ *If No, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

YES ☐ *If Yes, go to question 4 on this worksheet.*

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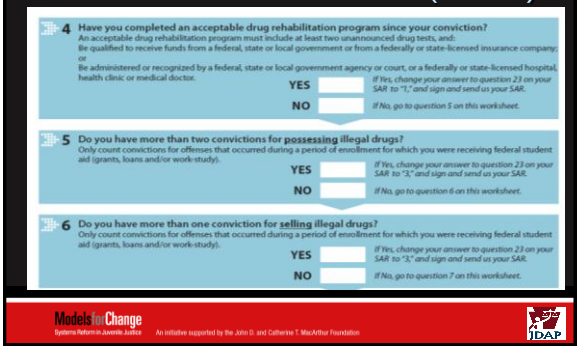
QUESTION 2-6 FROM FAFSA DRUG WORKSHEET (CONT.)



4 Have you completed an acceptable drug rehabilitation program since your conviction?
An acceptable drug rehabilitation program must include at least two unannounced drug tests, and:
Be qualified to receive funds from a federal, state or local government or from a federally or state-licensed insurance company; or
Be administered or recognized by a federal, state or local government agency or court, or a federally or state-licensed hospital, health clinic or medical doctor.

YES ☐ *If Yes, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

NO ☐ *If No, go to question 5 on this worksheet.*

5 Do you have more than two convictions for **possessing** illegal drugs?
Only count convictions for offenses that occurred during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study).

YES ☐ *If Yes, change your answer to question 23 on your SAR to "3," and sign and send us your SAR.*

NO ☐ *If No, go to question 6 on this worksheet.*

6 Do you have more than one conviction for **selling** illegal drugs?
Only count convictions for offenses that occurred during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study).

YES ☐ *If Yes, change your answer to question 23 on your SAR to "3," and sign and send us your SAR.*

NO ☐ *If No, go to question 7 on this worksheet.*

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11. ARE THERE FINANCIAL BURDENS PLACED ON ADJUDICATED CHILDREN AND THEIR FAMILIES?

- Juveniles may be held responsible for court costs. N.C. Gen. Stat. § 7B-3506.

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11. ARE THERE FINANCIAL BURDENS PLACED ON ADJUDICATED CHILDREN AND THEIR FAMILIES? (CONT.)

- Juveniles may be held responsible for restitution up to $500.00. N.C. Gen. Stat. § 7B-2506(4). "[H]owever, the court shall not require the juvenile to make restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution." *Id.*

12. DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN NORTH CAROLINA?

Yes, under certain circumstances.

> "A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

N.C. Gen. Stat. § 14-208.6B.

12. DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN NORTH CAROLINA? (CONT.)

> "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. 14-27.2 (first-degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or 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."

N.C. Gen. Stat. § 7B-2509.

12. DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN NORTH CAROLINA? (CONT.)

Title I of the Adam Walsh Child Protection and Safety Act, known as the Sex Offender Registration and Notification Act (SORNA) requires each state to implement registration and notification standards for juveniles adjudicated delinquent of certain sex offenses. A number of states have promulgated SORNA regulations but are still not in compliance.

12. DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN NORTH CAROLINA? (CONT.)

SORNA requires the following juveniles to register as **sex offenders for LIFE:**

- Those who are age 14 or older at the time of the offense
- Those who are adjudicated delinquent of certain serious sex offenses
- Those who are adjudicated delinquent of a sexual act, defined by SORNA as "[a]ny degree of genital or anal penetration, and/or any oral-genital or oral-anal contact"
- Those for whom the court determines that the sexual act was accomplished by force, by threat of death or serious bodily injury, or by kidnapping, rendering the other person unconscious, or drugging the other person.

12. DOES A JUVENILE ADJUDICATION OF DELINQUENCY FOR A SEX OFFENSE SUBJECT A JUVENILE TO REGISTRATION AS A SEX OFFENDER IN NORTH CAROLINA? (CONT.)

<u>Removal from the Registry:</u> A Juvenile **may be removed from the registry after 25 years if he or she:**

- Does not acquire any new sex offense or felony conviction for 25 years,
- Completes probation without revocation, **and**
- Completes sex offender treatment.

13. DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT?

- In North Carolina: "Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (f) or (g) of this section." N.C. Gen. Stat. § 15A-266.3A(a).

13. DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT? (CONT.)

- These samples are taken at the time of arrest, when fingerprinted, or, if arrested without a warrant, when "a probable cause determination has been made pursuant" to N.C. Gen. Stat. § 15A-511(c)(1). See N.C. Gen. Stat. § 15A-266.3A(b).
- The offenses under subsections (f) and (g) include murder, armed robbery, burglary, certain enumerated sex offenses, certain assaults, and stalking. Also included are conspiracy and attempt, amongst other inchoate offenses. N.C. Gen. Stat. § 15A-266.3A(f)-(g).

13. DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT? (CONT.)

The statue also provides for the expunction of DNA records from the database if :

a. The charge has been dismissed.
b. The person has been acquitted of the charge.
c. The defendant is convicted of a lesser-included misdemeanor offense that is not an offense included in subsection (f) or (g) of this section.
d. No charge was filed within the statute of limitations, if any.
e. No conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring.

N.C. Gen. Stat. § 15A-266.3A(h)(1).

13. DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT? (CONT.)

- The language of the statue regarding collecting the samples does not preclude juveniles with qualifying arrests as they are still within the meaning of "any person" who is arrested.
- However, because an adjudication is not a conviction, all juveniles who are subject to adjudicatory hearings (rather than transfer to superior court) are eligible for expunction. That said, because of the required three year no-conviction period for eligibility, the juvenile sample arguably could still be kept for these three years.

13. DOES A JUVENILE ADJUDICATION OF DELINQUENCY MANDATE THAT THE CHILD SUBMIT A DNA SAMPLE THAT WILL BE KEPT BY LAW ENFORCEMENT? (CONT.)

- A juvenile whose case is transferred to Superior Court is subject to this provision as any adult arrestee.

N.C. Gen. Stat. § 7B-2201(b).

14. HOW CAN A JUVENILE ADJUDICATION OF DELINQUENCY BE EXPUNGED?

- **Juvenile records do not automatically disappear on a child's 18th birthday.**
- Juvenile records can be expunged under the following circumstances:

14. HOW CAN A JUVENILE ADJUDICATION OF DELINQUENCY BE EXPUNGED? (CONT.)

Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

(1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.

(2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

N.C. Gen. Stat. § 7B-3200(b).

14. HOW CAN A JUVENILE ADJUDICATION OF DELINQUENCY BE EXPUNGED? (CONT.)

The petition must include:

(1) An affidavit by the petitioner that the petitioner has been of good behavior since the adjudication and, in the case of a petition based on a delinquency adjudication, that the petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state;

(2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good….

N.C. Gen. Stat. § 7B-3200(c),

15. WILL A JUVENILE WHO HAS BEEN ADJUDICATED DELINQUENT BE ALLOWED TO VOTE?

Yes, because a delinquency adjudication is not a conviction.

- A young person who turns 18 while completing the terms of his or her treatment, rehabilitation or supervision is permitted to register and vote. He or she may vote regardless of whether the delinquency adjudication is for conduct that would be a felony or a misdemeanor if committed by an adult, and regardless of whether he or she is in placement.
- For the limitations on voting and registration for persons with **criminal convictions,** go to: www.aclupa.org/issues/votingissues/votingrightsofexfelons.

16. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT JURY SERVICE?

- Because a delinquency adjudication is not a conviction, a person adjudicated delinquent may serve on a jury once he/she reaches the age of 18.
- In Pennsylvania, a citizen may not serve as a juror if he or she has been convicted of a crime that could be punishable by more than one year in prison. 42 Pa. C.S. § 4502. *Be aware of the North Carolina equivalent.*

17. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT A YOUNG PERSON'S IMMIGRATION STATUS?

Assessing the immigration consequences of delinquency adjudications is very complicated.

- The general rule is that prior to entering an admission or proceeding to an adjudicatory hearing, the juvenile defense attorney handling the matter should always seek advice from an immigration attorney with relevant experience.
- In most cases, a delinquency adjudication in a juvenile court proceeding is not a criminal conviction for immigration purposes and will not trigger immigration consequences.

17. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT A YOUNG PERSON'S IMMIGRATION STATUS? (CONT.)

Bad Conduct: However, some delinquency adjudications are deemed "bad conduct" and can trigger harsh penalties, including ineligibility for legal immigrant status and vulnerability to deportation. **Offenses constituting "bad conduct" include but are not limited to:**

- drug trafficking (transfer, passage or delivery) 8 USC §1182(a)(2)(C)
- drug abuse or addiction 8 USC §1182(a)(1)(A)(iv)
- violation of an order of protection 8 USC §1227(a)(2)(E)(ii)
- sexual assault or behavior showing a mental condition that poses a current threat to self or others, including attempted suicide, torture, and repeated alcohol abuse-linked offenses 8 USC § 1182(a)(1)(A)(iii)
- prostitution 8 USC § 1182(a)(2)(D)
- false claim to U.S. citizenship 8 USC §§ 1182(a)(6)(C), 1882(a)(6)(F).

17. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT A YOUNG PERSON'S IMMIGRATION STATUS? (CONT.)

- Any child without current legal status, sometimes called an undocumented child, is subject to removal proceedings, regardless of his or her age.
- Padilla v. Kentucky: On March 31, 2010, the Supreme Court issued a landmark decision in *Padilla v. Kentucky*.
  - The Court found that criminal defendants must be advised of the immigration consequences of their criminal charges, and that the failure of defense counsel to fully advise the defendant constitutes ineffective assistance of counsel. For additional resources and practice advisories on the impact of this decision, please visit www.defendingimmigrants.org.

17. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT A YOUNG PERSON'S IMMIGRATION STATUS? (CONT.)

- Involvement in the juvenile justice system or the criminal justice system clearly places a child at risk of detection by federal authorities.
- If Immigration and Customs Enforcement (ICE) becomes aware that a child is subject to removal for lack of legal status, it may file an immigration "hold" or "detainer" with the facility or law enforcement agency that has custody of the child and may take custody upon his or her release.
- Also, detention facility staff may allow ICE officials to conduct interviews of children without informing their lawyers.
- **Non-citizen children have the 5th Amendment right to refrain from speaking to ICE officials and signing any forms. Attorneys who represent non-citizen children should advise them against speaking to ICE officials unless they are represented by attorneys with expertise in immigration law.** For additional resources, see www.defendingimmigrants.org.

18. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ADULT SENTENCE OF A YOUNG PERSON CONVICTED OF A CRIME AFTER THE AGE OF 18?

Sentencing Enhancements: Delinquency adjudications trigger sentencing enhancements in both the state and federal criminal systems. Under the Pennsylvania state system, the Sentencing Guidelines call for longer periods of incarceration for specific juvenile delinquency adjudications.

- See 42 Pa. C.S. § 2154(2); *Commonwealth v. Billett,* 370 Pa. Super. 125, 130-31, 535 A.2d 1182, 1185 (1988). **The relevant adult offense need not be a felony to trigger the enhancement.**

18. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ADULT SENTENCE OF A YOUNG PERSON CONVICTED OF A CRIME AFTER THE AGE OF 18? (CONT.)

In North Carolina, "The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible."

N.C. Gen. Stat. § 7B-3000(f).

18. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ADULT SENTENCE OF A YOUNG PERSON CONVICTED OF A CRIME AFTER THE AGE OF 18? (CONT.)

See the North Carolina training manual on structured sentencing for discussion on juvenile adjudications and their role in adult sentencing:

http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/sstrainingmanual_09.pdf

18. HOW WILL A JUVENILE ADJUDICATION OF DELINQUENCY AFFECT THE ADULT SENTENCE OF A YOUNG PERSON CONVICTED OF A CRIME AFTER THE AGE OF 18? (CONT.)

Federal Sentencing: A juvenile adjudication also may enhance a sentence in the federal criminal system. For example:

- Delinquency adjudications count toward the three convictions necessary to impose a mandatory 15-year prison term for a crime committed under 18 U.S.C. § 922 (i.e., crimes relating to the unlawful possession, sale, manufacture or transfer of firearms). See 18 U.S.C. § 924 (e)(2)(B).

Resources

- UNC Center for Civil Rights – Report on Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records (http://www.law.unc.edu/documents/civilrights/centerforcivilrightsexpungementreport.pdf)

Resources

- Think Before You Plea: Juvenile Collateral Consequences in the United States (http://www.beforeyouplea.com/nc)

Resources

- JLC Juvenile Records Expungement: A Guide for Defense Attorneys in Pennsylvania (http://www.jlc.org/files/publications/expungeguide.pdf)
- JLC Juvenile Record: A Know Your Rights Guide for Youth in Pennsylvania (http://www.jlc.org/files/publications/Youth%20Expungement%20FINAL.pdf)

Resources

- JCJC Juvenile Delinquency Records: Handbook and Expungement Guide (http://www.portal.state.pa.us/portal/server.pt/document/480500/12809-rd_pdf)

Models for Change
Systems Reform in Juvenile Justice
An initiative supported by the John D. and Catherine T. MacArthur Foundation
JDAP

Resources

- Find the PA Checklist at http://www.pajuvdefenders.org/publications/pennsylvania-juvenile-collateral-consequences-checklist
- Lisa Campbell lcampbell@philadefender.org

Models for Change
Systems Reform in Juvenile Justice
An initiative supported by the John D. and Catherine T. MacArthur Foundation
JDAP

Models for Change
Systems Reform in Juvenile Justice
MacArthur
The John D. and Catherine T. MacArthur Foundation

The Collateral Consequences of an Adjudication

Additional Materials
August 18, 2011

YOU BELONG @ KFC

KFC is an Equal Opportunity Employer. Applicants for all job openings are welcome and will be considered without regard to race, gender, age, national origin, color, religion, disability, military status, or any other basis protected by applicable federal, state or local law.

PLEASE TELL US ABOUT YOURSELF

Last Name _____ First Name _____ MI ____ Preferred Name _____

Current Address _____ City _____ State _____ Zip _____

Social Security Number ___ - ___ - ____ Are you under 18? ❑ Yes ❑ No If yes, how old are you? _____

Telephone (Home) ( ) Do you have appropriate work documents? ❑ Yes ❑ No

Telephone (Cell) ( )

WHAT WOULD YOU LIKE TO DO @ KFC?

- ❑ Team Member
- ❑ Shift Supervisor
- ❑ Assistant Unit Manager
- ❑ Restaurant General Manager

HOW MANY HOURS WOULD YOU LIKE TO WORK EACH WEEK?

- ❑ Less than 20 Hours
- ❑ 20 - 30 Hours
- ❑ 31+ Hours

Desired Wage $_____/hr

HAVE YOU WORKED AT KFC, A&W, LONG JOHN SILVER'S, PIZZA HUT, OR TACO BELL BEFORE?

- ❑ Yes
- ❑ No

If you were referred to KFC by an employee, who was it?

AVAILABILITY*

If hired, when could you begin work? _____

What hours can you work?

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
From:							
To:							

*If your religious beliefs or practices prohibit you from working a particular day or at particular time, KFC will make reasonable efforts to accommodate those beliefs or practices in accordance with applicable law.

WHERE ELSE HAVE YOU WORKED?

Company _____ Address _____ City _____ State _____ Zip _____

Telephone ( )_____ If you are currently employed there, may we contact? ❑ Yes ❑ No Last wage $_____/hr

When did you start?_____ When did you leave? _____ Why did you leave? _____

Supervisor's name _____ Position/Job _____

Company_____ Address _____ City _____ State _____ Zip _____

Telephone ( )_____ If you are currently employed there, may we contact? ❑ Yes ❑ No Last wage $_____/hr

When did you start? _____ When did you leave? _____ Why did you leave? _____

Supervisor's name _____ Position/Job _____

Please list a work, school or personal reference (not a family member) we may contact.

Name	Relationship to You	Type of Reference (Work, School or Personal)	Telephone
			Home ( )
			Work ( )

YOU BELONG @ KFC

THE THINGS OUR LAWYERS WANT US TO ASK...

1. Within the last 7 years, have you been convicted of, or completed your sentence or parole for a crime involving violence, sex, stalking, minors, theft, property damage, fraud, robbery or drugs?* ☐ Yes ☐ No
2. Are you currently charged with a crime involving violence, sex, stalking, minors, theft, property damage, fraud, robbery or drugs?* ☐ Yes ☐ No
3. If hired, can you show proof of your legal right to work in the United States? ☐ Yes ☐ No

*Crimes include felonies, misdemeanors, and other violations of the law. However, you should not respond "Yes" as a result of any conviction that has been judicially sealed, expunged or pardoned. Conviction of a crime will not necessarily disqualify you from consideration for employment and will be considered only as it relates to the job in question. CALIFORNIA residents do not respond "yes" for (i) conviction records that have been sealed or expunged by court order or statutorily eradicated, (ii) misdemeanor convictions for which you have successfully completed or otherwise discharged probation, (iii) misdemeanor marijuana convictions if the conviction occurred more than two years ago, (iv) any past arrest or detention not resulting in a conviction, or (v) any referral to or participation in any pretrial or post-trial diversion program. HAWAII residents do not answer this question. LOUISIANA residents do not respond "Yes" as a result of a misdemeanor. MASSACHUSETTS residents do not respond "Yes" as a result of any misdemeanor conviction where the date of the conviction or the completion of incarceration, whichever date is later occurred more than five years ago. PENNSYLVANIA residents do not respond "Yes" as a result of a summary offense.

*Resident of HAWAII, LOUISIANA, MARYLAND, MASSACHUSETTS, NEVADA, PENNSYLVANIA, RHODE ISLAND and UTAH do not answer this question. Residents of MICHIGAN do not answer "Yes" as a result of pending misdemeanor charges.

AGREEMENT

Please read, sign and date below.

Nature of My Employment. If I am hired by KFC, I agree that I will be an at-will employee, which means that either I or KFC may end my employment at any time, with or without cause or notice. I agree that no written materials or verbal statements by KFC will constitute an express or implied contract of continued employment and that this at-will relationship can only be modified in writing by KFC's President. I agree that, if hired, I will obey KFC's rules, including treating confidentially any information I learn during my employment.

My Participation in KFC's Drug Free Environment. I am not a current user of illegal drugs, and I agree I will never work under the influence of drugs or alcohol.

My Records and References. There is nothing in my background that would cause a risk to KFC's customers, employees, or property. I authorize KFC to conduct reference checks, criminal and driving records checks, and other consumer report investigations. I release all parties from any liability from providing such information to KFC. In this regard, I understand that conviction of a crime will not necessarily disqualify me from consideration for employment. I understand that the nature and date of the offense and the relevance of the offense to the position(s) applied for will determine my eligibility for employment.

Information Certification. I certify that the information I have provided to KFC is true and complete. I agree to notify KFC immediately if I am later charged with any of the crimes listed above or (if I am a delivery driver) with a driving offense. I agree that any false information or omission allows KFC to refuse to hire me, or to terminate my employment at any time.

Agreement to Arbitrate. Because of the delay and expense of the court systems, KFC and I agree to use confidential binding arbitration, instead of going to court, for any claims that arise between me and KFC, its related companies, and/or their current or former employees. Without limitation, such claims would include any concerning compensation, employment (including, but not limited to, any claims concerning sexual harassment or discrimination), or termination of employment. Before arbitration, I agree: (i) first to present any such claims in full written detail to KFC; (ii) next, to complete any KFC internal review process; and (iii) finally, to complete any external administrative remedy (such as with the Equal Employment Opportunity Commission). In any arbitration, the then prevailing employment dispute resolution rules of the American Arbitration Association will apply, except that KFC will pay the arbitrator's fees, and KFC will pay that portion of the arbitration filing fee in excess of the similar court filing fee had I gone to court.

Applicant's Signature _____ Date _____

INFORMATION FOR MARYLAND AND MASSACHUSETTS RESIDENTS. Under Maryland and Massachusetts law, and employer may not require or demand, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a lie detector or similar test. An employer who violates this law is subject to penalty.

INFORMATION FOR CONNECTICUT RESIDENTS. You are not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142. If your only criminal record consists of items that have been erased under the statutes listed above, then you may state on this form that you have not been arrested.

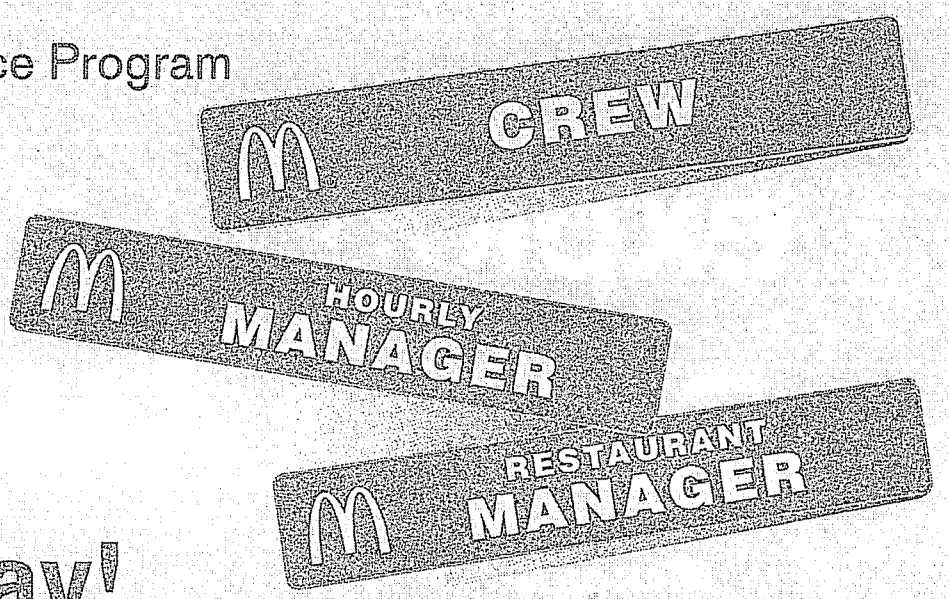

CREW
your name here
explore a golden opportunity
McDonald's USA, LLC Employment Application
McDonald's® is an equal opportunity employer committed to a diverse and inclusive workforce.
I'm lovin' it®

from here you can get ahead

Did you know? 30% of our franchise owners, 50% of our corporate staff, and 70% of our restaurant managers started as crew.

Here are some of the great benefits of working at McDonald's®:

- Competitive Wages
- Flexible Hours
- McDonald's® Insurance Program
- Free Uniforms



Apply today!

Learn more at www.mcdonalds.com

If hired, some of your responsibilities would include reporting to work on time, dressed neatly and cleanly. You would be helping us deliver friendly, accurate and fast service in a respectful, professional environment. We would want you to uphold and follow McDonald's® operational, quality and food safety standards and help make every customer feel like a valued guest.

McDonald's USA LLC (McOpCo) Employment Application *Your application will be considered active for 30 days–to be considered for a job after that you must reapply.*

First Name _____ MI___ Last Name_____ Home Phone (___) _____ Cell Phone (___) _____

Address _____ City _____ State _____ Zip _____

Email _____ Social Security Number _____ Are you over 18? Yes/No if not, birth date _____

Have you worked for McDonald's® before? Yes/No if yes, dates/location(s) _____ Reason for leaving _____

AVAILABILITY:

Total hours available per week _____

Are you legally able to be employed in the U.S.? Yes/No

Hours Available:	M	T	W	T	F	S	S
From							
To							

How did you hear about this employment opportunity? _____ How far do you live from restaurant? _____ Do you have transportation? _____

EMPLOYMENT HISTORY: (If not applicable, list work performed on a volunteer basis or personal references. Please attach a separate list of employers if more space is needed.)

May we contact your present employer? Yes/No

1) Company _____ Address _____ City _____ State _____ Zip _____
Phone Number (_____) _____ Job _____
Supervisor _____ Dates Worked: From _____ To _____
Rate of Pay _____ Reason For Leaving _____ **For McDonald's® Use Only** MGMT. REFERENCE CHECK DONE BY _____

2) Company _____ Address _____ City _____ State _____ Zip _____
Phone Number (_____) _____ Job _____
Supervisor _____ Dates Worked: From _____ To _____
Rate of Pay _____ Reason For Leaving _____ **For McDonald's® Use Only** MGMT. REFERENCE CHECK DONE BY _____

3) Company _____ Address _____ City _____ State _____ Zip _____
Phone Number (_____) _____ Job _____
Supervisor _____ Dates Worked: From _____ To _____
Rate of Pay _____ Reason For Leaving _____ **For McDonald's® Use Only** MGMT. REFERENCE CHECK DONE BY _____

SCHOOL MOST RECENTLY ATTENDED:

Name _____ Street Address _____

City _____ State _____ Zip _____ Phone Number (_____) _____

Teacher or Counselor we may contact as a reference _____ Dept. _____ Last Grade Completed _____

Grade Point Average _____ Graduated? Yes/No Now Enrolled? Yes/No

U.S. MILITARY: Branch of Service: _____ Date Entered _____ Date of Discharge _____ Highest Rank _____

Do you have service-related skills and experience applicable to civilian employment? Yes/No If yes, describe _____

GENERAL: What other relevant experience or training have you had and what other activities are you involved in? (Exclude organizations that indicate race, religion, age, or national origin of members.)

_____

IMPORTANT: COMPLETE REVERSE SIDE

Manager: Perforate and file separately.

McDonald's USA, LLC is an equal opportunity employer committed to a diverse workforce. In order to assist us in our efforts, we invite you to voluntarily provide responses to the following requests for information. Failure to respond will not subject you to adverse treatment. This form will be kept strictly confidential and will not be retained with your application. Information provided will be used only in accordance with law and for equal opportunity purposes.

Race/Ethnicity													
Hispanic or Latino		Not-Hispanic or Latino											
		Male						Female					
Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Please read the section below carefully before signing.

U.S. law requires that, if hired, you must furnish appropriate documentation establishing identity and employment eligibility, generally within 72 hours of starting work. For example, acceptable documents include: a U.S. Passport, or INS Forms 688 or 688A; a Social Security Card or birth certificate issued by government authority and a driver's license, school I.D. with photo or other government issued documentation establishing identity. Certain other documents are equally acceptable. Please consult a member of the management team and ask them for a copy of INS Form I-9 for a list of these documents.

California Employment Only:
You may exclude information regarding any conviction for which the record has been judicially ordered sealed, expunged or statutorily eradicated. You also may exclude information regarding any conviction that is more than two years old for a violation of California Health and Safety Code Sections 11357, 11360, 11364, 11365 or 11550 (or predecessor statutes) as they relate to marijuana.

Connecticut Employment Only:
Under Connecticut law, an employer cannot require an employee or prospective employee to disclose arrest, criminal charge or conviction records that have been erased. An employment application that asks an applicant about his or her criminal history must contain the following notice:
1. The applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to Sections 46b-146, 54-76o or 54-142a; 2. The criminal records subject to erasure pursuant to Sections 46b-146, 54-76o or 54-142a are records pertaining to a find of delinquency or that a child was a member of a family with services needs, an adjudication as a youthful offender, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon; and 3. Any person whose criminal records have been erased pursuant to Sections 46b-146, 54-76o or 54-142a shall be deemed to have never been arrested within the meaning of the general statutes with respect to those proceedings so erased and may so swear under oath.

Massachusetts Employment Only:
An applicant for employment with a sealed record on file with the commissioner of probation may answer "no record" with respect to any inquiry herein relative to prior arrests, criminal court appearances or convictions. In addition, any applicant for employment may answer "no record" with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution. It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law shall be subject to criminal penalties and civil liabilities.

Maryland Employment Only:
Under Maryland law, an employer may not require or demand, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a lie detector or similar test. An employer who violates this law is guilty of a misdemeanor.

***DURING THE PAST 5 YEARS, HAVE YOU EVER BEEN CONVICTED OF, PLED GUILTY TO OR PLED NO CONTEST TO A CRIME, EXCLUDING MISDEMEANORS AND TRAFFIC VIOLATIONS? Yes____ No ____**
IF YES, DESCRIBE IN FULL_____

***Answering yes will not necessarily bar you from employment. Applicants are not required to disclose sealed or expunged conviction records or the existence of such records.**
ARE YOU OR HAVE YOU EVER BEEN A SEX OFFENDER REGISTERED WITH ANY FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY, INCLUDING ANY LISTING ON A PUBLIC WEBSITE? Yes ___ No ___

1. I certify that I have read this application and the information on it is complete and correct. I understand that any omissions or misrepresentation of information is grounds for dismissal.
2. I authorize the persons, employers, schools and organizations listed on this application to give you any information concerning my employment and other pertinent information they may have, personal and otherwise, and release all parties from all liability and damages that may result from furnishing this to you.
3. I acknowledge that McDonald's reserves the right to amend or modify any of its handbooks or policies at any time and without prior notice. These policies do not create any promises or contractual rights between McDonald's and its employees. At McDonald's, employment is at will. This means an employee is free to terminate his/her employment at any time, without any reason, with or without cause, and McDonald's retains these same rights. The Vice President of Human Resources of the McDonald's USA, LLC is the only person who may make an exception to this, and any exception must be in writing, addressed to a particular individual, and signed by the officer.
4. McDonald's is an Equal Opportunity Employer. Various federal, state, and local laws prohibit discrimination on account of race, color, religion, sex, age, national origin, disability, sexual orientation, veterans status or other protected categories. It is this McDonald's policy to comply fully with these laws, as applicable, and information requested on this application will not be used for any purpose prohibited by law.
5. I understand that as a part of the procedure for my employment application an investigative consumer report may be made concerning my character, general reputation, personal characteristics and mode of living. Upon written request, additional disclosure concerning the complete nature and scope of the investigation will be provided. If I am denied a job based either wholly or in part because of information contained in an investigative consumer report, I will be provided the name and address of the reporting agency that supplies the information.

Signature _____ Date _____

The New York Times
nytimes.com

August 3, 2008

ESSAY

If You Run a Red Light, Will Everyone Know?

By BRAD STONE

WANT to vet a baby sitter? Need to peek into the background of a prospective employee? Curious about the past of a potential date?

Last month, PeopleFinders, a 20-year-old company based in Sacramento, introduced CriminalSearches.com, a free service to satisfy those common impulses. The site, which is supported by ads, lets people search by name through criminal archives of all 50 states and 3,500 counties in the United States. In the process, it just might upset a sensitive social balance once preserved by the difficulty of obtaining public documents like criminal records.

Academics have a term for the old inaccessibility of records like those for criminal convictions: "practical obscurity." Once upon a time, people in search of this data had to hire private investigators to navigate byzantine courthouses and rudimentary filing or computer systems, and to deal with often grim-faced legal clerks. In a way, the obstacles to getting criminal information maintained a valuable, ignorance-fueled civil peace. Convicts could start fresh after serving their time without strangers knowing their pasts, and there was little risk that unsophisticated researchers could confuse people with identical names.

Well, not anymore. The information on CriminalSearches.com is available to all comers. "Do you really know who people are?" the site blares in large script at the top of the page.

Databases of criminal convictions first moved online several years ago. But users of pay sites like Intelius.com and PeopleScanner.com had to enter their credit card numbers for access — often enough of an obstacle to discourage casual or improper inquiries.

According to Bryce Lane, president of PeopleFinders, the new site draws data directly from local courthouses and offers records of arrests and convictions in connection with everything from murder to minor infractions like blowing past a stop sign — at least for jurisdictions that include traffic violations in their criminal data. It also lets users view a map showing addresses and names of all those arrested or convicted of a crime in a specific neighborhood, and to place alerts that prompt e-mail when someone in their life gets busted or someone with a record moves in nearby.

"We are just trying to provide what's already out there in an easier fashion, for free," Mr. Lane said. "We think it's pretty helpful to families."

PeopleFinders, originally called Confi-Check, was founded in 1988 by Rob Miller, a former investigator for Intel. PeopleFinders has been selling records to consumers for the last decade and recently acquired a large public-records firm — Mr. Lane declines to say which one because the transaction was private — that allowed

it to introduce the expanded free service.

Mr. Lane concedes that his site contains some mistakes. Every locale has its own computer system, he notes, and some are digitizing and updating records faster than others.

A quick check of the database confirms that it is indeed imperfect. Some records are incomplete, and there is often no way to distinguish between people with the same names if you don't know their birthdays (and even that date is often missing).

To further test the site, I vetted some of my colleagues at The New York Times. One, who shall remain nameless, had a recent tangle with the law that the site labeled a "criminal offense," while adding no other information. Curious, I called my colleague with the date and city of the now very public ignominy. The person was stunned to know that the infraction — a speeding ticket — was easily accessible and described as criminal.

"I went to traffic school so this wouldn't appear on my record. I'm in shock. This blows me away," my colleague said, demanding that I ask PeopleFinders how to have the record removed. "I don't necessarily want you all knowing that I'm a fast driver."

PeopleFinders' response: take it up with the authorities. When they update their records, the change will automatically appear on CriminalSearches.com.

My colleague's quandary illustrates why privacy advocates work themselves into knots about this kind of site. In the past, Congress carefully considered how the public should use criminal records. Amendments to the Fair Credit Reporting Act in 1997 required that employers who hire investigators to obtain criminal records from consumer reporting agencies advise prospective employees of the search in advance, and disregard some types of convictions that are older than seven years.

"I don't think Congress stuck that in there randomly," says Daniel J. Solove, a professor of law at the George Washington University Law School and author of "Understanding Privacy." "Congress made the judgment that after a certain period of time, people shouldn't be harmed by having convictions stick with them forever and ever."

BUT now, of course, none of the old restrictions apply. The information is available from a variety of sources, and now free. Jurors can and almost certainly will be tempted to look up criminal pasts of defendants in their cases. And employers can conduct searches themselves without hiring investigators. Mr. Lane of PeopleFinders says that employers cannot legally use the database in making hiring decisions — but there is nothing to stop them.

A recent investigation at the Justice Department demonstrates how once-obscure, now easily accessible public information can be abused in egregious ways. The investigative report by the department's inspector general and internal ethics office said government lawyers mined sites like Tray.com and OpenSecrets.org, which report on individual political contributions, to discover political affiliations of job candidates.

But the Internet entrepreneurs who are making public records accessible have little patience for the privacy

worrywarts who are getting in the way of their business goals.

"I think people generally understand the 21st-century reality that this type of public information is going to be widely available," said Nick Matzorkis, the chief executive of ZabaSearch, a search engine that provides people's addresses and phone numbers, culled from public records. CriminalSearches.com "is another indication of the inevitability of the democratization of public information online," Mr. Matzorkis said.

Mr. Lane of PeopleFinders concurs and compares his site to the seat belt, saying it will make everyone safer.

Of course, that is easy for them to say. According to CriminalSearches.com, they are both clean.

Posted on Mon, Dec. 13, 2010

Innocent 'felon': Background check gave false info

By STEPHANIE FARR
Philadelphia Daily News
farrs@phillynews.com 215-854-4225

KEVIN HUTCHINSON openly admits that he pleaded guilty in 2002 to misdemeanor charges of simple assault, harassment and related offenses for fighting with his ex's new boyfriend.

"I know what I did was wrong," said Hutchinson, a William Penn High and Thompson Institute grad. "It's the first and only time I've ever been in trouble. It was a dark time in my life, and I put myself through a lot of unnecessary nonsense."

Hutchinson, 32, of North Philadelphia, even put it on his job application in September at GameStop, a video-game store at 22nd Street and Lehigh Avenue in North Philadelphia. So he was stunned when, after a month of employment, his manager called him into his office Oct. 19 and asked if anything was on his record that he hadn't disclosed.

"He said, 'If there was, would you be surprised?' " Hutchinson recalled. "I told him I'd be shocked, and a few minutes later, they fired me for nondisclosure of information."

Through no fault of his own, Hutchinson had fallen victim to what some experts say is a disturbing consequence of background checks - erroneous information gathered by careless or unscrupulous data brokers.

ALEJANDRO A. ALVAREZ / Staff photographer

Kevin Hutchinson, 32, of North Philadelphia, was fired from GameStop after a background check revealed a crime he didn't commit.

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Hutchinson said he repeatedly asked whether he was being fired for the 2002 charges. He said his manager emphatically told him, "No," but refused to tell him why he was being fired. Hutchinson said he never received a copy of his background check or a termination letter from GameStop.

A job sought at Walmart

About the same time, Hutchinson had an interview for an overnight-manager position at a suburban Walmart. After being out of steady work for more than a year, he had planned to work both jobs.

He gave the company permission to do a complete background check and disclosed in writing his misdemeanor convictions, he said.

A week later, Walmart sent him a denial letter and a copy of his background check conducted by General Information Services, a background-screening company based in South Carolina.

That background check said Hutchinson had been convicted in 1996 of felony cocaine possession in Gloucester County, Va., and sentenced to 10 years in prison.

"I have never even been to Gloucester County, Va.," Hutchinson said. "Back then, I was still in high school."

After receiving the report, Hutchinson said, he called GIS to dispute the information.

More than two weeks later, the company cleared his criminal-background check of the false felony-cocaine charge, according to GIS records he received.

On his own, Hutchinson had his fingerprints taken at the Pennsylvania State Police's Belmont Barracks and sent them to the Virginia State Police to demonstrate that he was not the man on their records, he said.

"GIS said they dealt with it, but I didn't want to leave any stone unturned," he said.

It was too late for employment at Walmart, where Hutchinson had been red-flagged not only for the false cocaine charge but also for his legitimate misdemeanors, he said.

And GameStop, where Hutchinson said the bosses knew about his misdemeanors when they hired him, refused to hire him back after the felony-cocaine charge was cleared.

"They told me I had to reapply to see if I could get another position with the company," he said. "Why should I have to reapply when you let me go off of false pretenses? You didn't even give me a chance to explain."

The *Daily News* was unable to confirm that GIS was the company that also conducted Hutchinson's criminal-background check for GameStop. A GIS spokesman said he could not disclose clients' names, and a GameStop corporate spokesman said in an e-mail that the company "does not provide *public.comment on employment matters.*"

Hutchinson, however, said a GIS representative told him by phone that the company also had conducted his GameStop background check. Hutchinson added that GameStop's human-resources department confirmed that they had used GIS.

Unemployment in jeopardy

Meanwhile, GameStop also is trying to appeal Hutchinson's unemployment benefits.

In a Dec. 3 letter to Pennsylvania unemployment-compensation authorities, a cost-management agency contracted by GameStop wrote that Hutchinson had been "discharged for falsification of his application. He did not list on his application a felony for drug possession and distributing."

Now, Hutchinson, who has not had steady work since April 2009, wonders how many other jobs for which he applied turned him down because of the inaccurate background check.

"I've applied for many different positions," he said. "God only knows how many positions I applied to and they saw this mistake and it got read over and over and over."

Unfortunately, to Lillie Coney, associate director of the Electronic Privacy Information Center in Washington, D.C., Hutchinson's is a familiar story.

"Background checks are pretty routine now, even for positions that don't require trust that they manage money or things of value," she said. "There's no way to know that the error rates are not off the charts."

Chris Lemens, general counsel for GIS, said the company has "fewer than two errors in 10,000" cases. He declined to say how many cases GIS completes in a day or a month.

And the "two errors," he said, are cases in which people received copies of their criminal-background checks from prospective employers and disputed them themselves.

'There may be thousands'

Coney said many people may never know about an inaccurate background check, especially if an employer never gave them a copy. If a person never got a job, he or she simply may have assumed *that someone else was more qualified, she said.*

"For every one person you hear this happens to, there may be thousands of people who don't know this happens," she said.

"This the worst-case scenario because you're not going to be brought to trial to argue your innocence because you've already been found guilty and you don't even know it."

Lemens, who said he was prohibited from speaking about specific cases, said GIS' background checks are not guaranteed accurate.

"Of course not," he said. "You know when you see in the movies there's some kind of instantaneous universal background check performed? There is nothing like that. This is a process performed by humans. . . . Whenever there is a human element, there could be inaccuracies."

Lemens said the company has run into situations in which court records are inaccurate or "even made up."

"We, of course, can't make sure the public records are accurate," he said.

That's part of the problem with data brokers, Coney said. "They know the documents they are getting have errors, but it does not stop them from using [them]," she said.

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"The core foundation of their business is telling their customers how many bad people they know about. They are not into telling someone what a wonderful person this is, because they don't want to be held accountable if something goes wrong."

Coney said the only way to manage the unregulated data-broker industry is to make it transparent and allow people to view their backgrounds regularly, as they can with their credit scores.

"Individuals are the only ones who are going to know if the information is accurate," she said.

No one is held accountable when a bad background report is produced and sent to an employer, Coney said.

"The problem is they are not getting penalized for doing this, so they keep using bad data practices," she said. "They are vilifying the names of the people who have no idea their names are even out there."

For Kevin Hutchinson, the problems persist.

"I don't want to be out of work," he said yesterday. "I wanted to work, I wanted to collect a paycheck, I wanted to work two jobs at one time. . . .

"Overall, it really has put my back against a wall, and the worst thing about it is it wasn't of my doing. I actually wish that some people in higher places could hear my story and see that some people actually do want to work."

Applform.wpd
Revised 06/2011

PLEASE PRINT LEGIBLY IN INK AND RETURN BY MAIL **APPL #_____**

HOUSING AUTHORITY OF THE CITY OF RALEIGH, NORTH CAROLINA

900 HAYNES STREET
RALEIGH, NORTH CAROLINA 27604
WWW.RHAONLINE.COM
FOR ASSISTANCE, CALL 919.508.1105

NAME _____
FIRST MIDDLE LAST

ADDRESS _____

_____
CITY STATE ZIP CODE

TELEPHONE ( )_____

I WISH TO APPLY FOR: PUBLIC HOUSING _____
SECTION 8 (VOUCHER) _____
BOTH _____
(See Definitions on the back)

Please list an alternate address and phone number. If we are unable to contact you when your application reaches the top of our list, your application will be WITHDRAWN.

ALTERNATE ADDRESS:

_____

_____
CITY STATE ZIP CODE

ALTERNATE NAME/PHONE CONTACTS:
_____ (SIBLING)
_____ (PARENT)
_____ (CO-WORKER)
_____ (FRIEND)

You MUST attach COPIES ONLY of the following verifications when returning your Application:
1. Certified Birth Certificates and Social Security Cards for **ALL** family members ******Mother's copy of Birth Certificate is ONLY acceptable for newborns******
2. Marriage License (if applicable, **copy only**)
3. Request for a preference (if applicable)
4. Driver's License or State –Issued ID for Head of Household **and ALL** other members 18 years of age and older **(copies only)**
5. Proof of eligible immigrant status (ex. Naturalization Certificate)

NOTE: Your signature below authorizes RHA to contact you by calling the above alternate contacts.

→ **Are you a CURRENT Public Housing Resident?**
CIRCLE ONE: YES NO

❖ **LIST ALL HOUSEHOLD MEMBERS (INCLUDE YOURSELF) —LIST ADDITIONAL FAMILY ON A SEPARATE SHEET IF NECESSARY**

NAME LAST, FIRST, M.I.	RELATIONSHIP	SEX	DATE OF BIRTH MM-DD-YY	PLACE OF BIRTH	SOCIAL SECURITY #
	HEAD OF HOUSEHOLD				

❖ **LIST ALL INCOME IN THE HOME (LIST ADDITIONAL INCOME ON A SEPARATE SHEET IF NECESSARY)**

NAME	EMPLOYER/SOURCE OF INCOME	START DATE	MONTHLY (GROSS)	WEEKLY (GROSS)	HOURLY (GROSS)	# of HOURS WORKED

→**Do you OR any member of your household need a handicapped accessible unit?** YES NO

→**What type of unit do you need? Please indicate below:**
a. Wheelchair access YES NO
b. Visual and/or hearing equipped YES NO
c. Other (comments) _____

→**Are you elderly, disabled or handicapped?** YES NO
[DEFINITIONS: *Elderly: 62 years or older; Disabled, or Handicapped: As defined by the Social Security Act*]
➢ **Are you interested in elderly or near-elderly high-rise facilities?** YES NO

→**Did you file a Federal Income Tax Return for 2009 and/or 2010?** YES NO

CIRCLE ONE:
→**RACE:** 1=WHITE 2=BLACK 3=AMERICAN INDIAN/ NATIVE ALASKAN 4=ASIAN/PACIFIC ISLANDER

→**ETHNICITY:** 1= HISPANIC 2 = NON-HISPANIC

→**Are you a legal resident of the USA?** YES NO

→**Are you a current Wake County TANF (Public Assistance) recipient?** YES NO

→ **Have you received government assisted housing before?** YES NO **(If YES,** List WHEN & WHERE)
Year(s): _____
Location(s): _____
_____

Past landlord history for the last two (2) years:
Name: _____ Name: _____
Address: _____ Address: _____
Phone # _____ Phone # _____

SIGNATURE: _____ **DATE:** _____

NOTE: A criminal history report/background check is required to determine eligibility of all applicants. A tenant history will be checked on all past housing tenants. ***Fraud Warning: Title 18, Section 1001 of the United States code, states that a person who knowingly and willingly makes false statements to any department or agency of the United States is guilty of a felony.**

2011 INCOME LIMITS FOR SECTION 8 AND PUBLIC HOUSING (MAXIMUM amount of household income to qualify for housing assistance)

1 PERSON - $27,600	2 PERSON - $31,550	3 PERSON - $35,500	4 PERSON - $39,400
5 PERSON - $42,600	6 PERSON - $45,750	7 PERSON - $48,900	8 PERSON - $52,050

HOW DID YOU HEAR ABOUT APPLYING FOR HOUSING WITH RALEIGH HOUSING AUTHORITY?

CHECK ONE:

1.☐Television/Media 2.☐Relative 3.☐Shelter 4.☐Public Housing Brochure

5.☐Church 6.☐Friend 7.☐Wake County Human Services (WCHS)

9.☐Internet 10.☐Other _____

PREFERENCES

RHA has implemented preferences for both Public Housing and Section 8 programs. If you wish to claim a preference, you must provide verification(s).

❖ ***Check all of the following preferences for which you qualify:***

☐ Elderly single (62 years or older)

☐ Elderly senior legally responsible for raising minor children

☐ Disabled

☐ Wake County Resident (*The applicant must provide proof of being a resident or employee of Wake County at time of application*).

☐ Working Family (**Public Housing Applicants ONLY**) ~ Must be working at least 35 hours per week and have been employed for at least the past 6 months.

Name of Employer _____

Telephone Number _____

Start Date _____

Number of Hours per Week _____

CRIMINAL BACKGROUND CHECKS

*Raleigh Housing Authority will conduct a criminal background check on **ALL** individuals 18 years of age or older. If the individual has **engaged** in any criminal activities within the time period listed below, the family may not be allowed to remain on the waiting list.*

1. *Misdemeanor within the last 5 years*
2. *Felony within the last 7 years*

FOR RHA USE ONLY

Pre-eligibility Checklist/Placement on Waiting List(s)

	ELIGIBLE (Y/N)	INITIALS
1. CRIMINAL RECORD CHECK	_____	_____
2. RHA PH DEBT CHECK	_____	_____
3. S/8 TERMINATION CHECK	_____	_____
4. TRESPASSED FROM RHA	_____	_____
5. SEX OFFENDER	_____	_____
ELIGIBLE/PLACE ON WL	DATE PRE-APP KEYED _____	_____
INELIGIBLE/SEND LETTER	DATE LETTER SENT _____	_____

PLEASE TEAR OFF AND KEEP THIS PAGE

IMPORTANT INFORMATION

- **To access information about your position on the "waiting list" or to have an application mailed to you, call the STATUS LINE NUMBER: (919) 831-6926.**
- **Visit our website at www.rhaonline.com to get additional information on RHA, the Section 8 program and Public Housing Communities.**
- **Additional applications can be printed from our website.**

WHAT IS SECTION 8?

Section 8 is a HUD-subsidized rental assistance program for very low-income families, also referred to as "Housing Choice Voucher Program" or "HAP" (Housing Assistance Payment Program). This is the program that enables you to secure housing in the private market.

- Your application will be placed on a waiting list by DATE and TIME of application.
- A voucher is issued allowing a family to search for affordable housing within program requirements, policies, and regulations.
- At this time, we are estimating our waiting list for Section 8 to be approximately 4-6 years from date of application.

WHAT IS PUBLIC HOUSING?

Public Housing is a multi-family housing development that is owned and managed by the Housing Authority of the City of Raleigh.

- Your application will be placed on a waiting list determined by DATE and TIME of application, BEDROOM SIZE and PREFERENCE.
- Availability of public housing is determined by vacancies in our existing public housing developments.
- At this time, we are estimating our waiting list for Public Housing to be approximately 1-2 years from date of application.

Our developments are as follows (also refer to photographs in lobby areas and our webpage (www.rhaonline.com) for more information):

- Kentwood Apartments, The Oaks, Mayview, Heritage Park, Meadowridge, Birchwood, Valleybrook, Eastwood Court, Stonecrest, Terrace Park, and Berkshire
- Glenwood Towers and Carriage House (High Rise facilities for elderly and near-elderly persons 50 years of age and older).

DEFINITIONS

ELIGIBILITY: Applicants must qualify as a family and/or as an eligible single person. Annual gross income must be within limits as established by HUD for this area, with adjustments for smaller and larger families. An eligible family is two or more persons related by blood, marriage, or operation of law. It includes elderly single persons; the remaining member of a tenant family; a displaced person; or a single individual. An ***elderly family*** is one whose head, spouse, or sole member is at least 62 years of age, disabled or handicapped, and may include unrelated elderly, disabled or handicapped persons living together.

COMPUTATION OF RENT: Eligible families pay a monthly rent equal to the greater of 30 percent of their monthly-adjusted income or 10% of unadjusted monthly income. If utilities are not included in the rent, the family receives a rent credit equal to the RHA's estimate of the cost of utilities.

WHAT TO BRING TO AN INTERVIEW

Please be prepared to bring copies of the items listed below and any other requested information to your interview once our office has contacted you:

- Verification of current and anticipated income
- Daycare verification
- Child Support printout (payment history for at least 1 year)
- Proof of medical expenses (elderly or disabled persons ONLY)
- Award letters for SS/SSI and TANF/AFDC
- Retirement Benefits notice
- Unemployment Benefits notice
- Four (4) consecutive paycheck stubs

***Fraud Warning: Title 18, Section 1001 of the United States code, states that a person who knowingly and willingly makes false or fraudulent statements to any department or agency of the United States is guilty of a felony.**

HOUSING AUTHORITY OF MONROE COUNTY
1055 W. Main Street
Stroudsburg, PA 18360
570-421-7770
TDD 570-421-6968
FAX: 570-421-6958 & 570-424-9710

Pre-Application for Housing

____ Public Housing

Close- Housing Choice Voucher Program (n.k.a. Section 8)

HEAD OF HOUSEHOLD

1. Name _____
(First) (M.I.) (Last)

Mailing Address _____

_____
(City) (State) (Zip)

Social Security ___-___-_____ Date of Birth _____ Age____

Telephone # _____ Contact/Cell # _____

2. Other Family Members

First Name	Last Name	Social Security #	Sex	Date of Birth	Relation to Head

(Use other side for additional family members)

3. Race (check one)
___ White
___ Black/African American
___ American Indian/Alaska Native
___ Asian
___ Native Hawaiian/Other Pacific Islander

Ethnicity (check one)
___ Hispanic or Latino
___ Not-Hispanic or Latino

4. Is anyone in your family pregnant? ___YES ___NO

5. Do any persons in the household have a disability? ___YES ____NO
Mobility Impairment ___YES ___NO Hearing ___YES ____NO
Sight Impairment ___YES ___NO Mental Impairment ___YES ____NO

If applicable, list special accommodations _____

6. Do you claim any of the following local preferences?
_____ Working Preference: Does the head of household or spouse work?
_____ Training Program: Is the head of household or spouse in a work training program?
_____ Disability: Is the head of household or spouse disabled?
_____ Elderly: Is the head of household or spouse 62 years of age or older?
_____ Homeless: Is the family currently homeless?
_____ Victim of Domestic Violence: Is the head of household or spouse a victim?
_____ Veteran: Is the head of household or spouse a veteran?
_____ Resident: Does the family live or work in Monroe County?
_____ Non-Resident: Does the family live outside of Monroe County?

7. FAMILY INCOME: Check all that applies and fill in monthly amount:

___ Wages $_____ ___ Social Security $_____
___ SSI $_____ ___ TANF/Welfare $_____
___ Other $_____ ___ Child Support $_____

8. Has anyone in the household ever been arrested? ___YES ___NO
If YES, who, when and what for _____

9. I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND COMPLETE.
I understand that submission of false information or misrepresentation may result in loss of eligibility to participate in the Housing Program.

Signature _____ Date _____

Revised 11/02/04 Application received by: _____

THE HOUSING AUTHORITY OF MONROE COUNTY, PENNSYLVANIA

"ONE STRIKE AND YOU'RE OUT"

Zero Tolerance Policy in Screening Applicants for Admission and Eviction of Tenants

Purpose - In accordance with provisions of U.S. Department of Housing and Urban Development Notice PIH 96-27 (HA) issued May 15, 1996, the Housing Authority of Monroe County, Pennsylvania (herein referred to as the HA) hereby adopts the Occupancy Provisions of the Housing Opportunity Program Extension Act of 1996, which was signed into law March 28, 1996. Section 9 of this law contains requirements related to safety and security in public housing that go beyond previous requirements related to screening of applicants, lease provisions, and evictions of tenants. These new requirements are consistent with HUD's determination to take every reasonable step to help Public Housing Authorities promote safer public housing. Accordingly the following procedures shall serve as additions, supplements, or changes, as appropriate, to the Authority's Admissions and Continued Occupancy Policies (ACOP), Section 8 Admin. Plan, the Dwelling Lease, and the Grievance Procedure:

SCREENING OF APPLICANTS

Policy - It is the policy of this Housing Authority that each applicant for housing in its dwelling units shall be screened in accordance with its existing policies contained in the Admissions and Continued Occupancy Policies (ACOP), Section 8 Administrative Plan and additionally that appropriate screening shall be conducted so that admission shall be denied to a public housing applicant who:

1. has a history of criminal activity involving crimes to persons or property and/or other criminal acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents;

2. was evicted from assisted housing within five (5) years of the projected date of admission because of drug-related criminal activity involving the personal use, possession for personal use or illegal manufacture, sale, distribution possession with intent to manufacture, sell, distribute a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802;

3. the HA determines an applicant is illegally using a controlled substance; or

4. the HA has reasonable cause to believe an applicant illegally uses a controlled substance or abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

5. Persons will be denied assistance if they have been convicted/evicted from a unit assisted under the Housing Act of 1937 due to **violent criminal activity** within the last ten (10) years prior to the date of the certification interview. **(Violent Criminal Activity includes any criminal activity that has as one of its element the use, attempted use, or threatened use of physical force against a person or property, and the activity is being engaged in by any family member.)**

Lifetime Denial for Public Housing and Section 8

1. The applicant or tenant was convicted of a sex offense.

2. An Applicant/Tenant was convicted of manufacturing or producing methamphetamine from Public Housing and Section 8 assisted housing where the PHA determines who is admitted.

The term "appropriate screening" refers to the HA's applying discretion to consider all available information when making a decision to deny admission.

To implement this policy, the HA, in addition to existing screening procedures, also will utilize the following procedures:

A. ***Criminal History*** - Public Housing & Section 8. The applicant, all adult household members, including live-in aides must sign a release allowing the HA to request a copy of a criminal history report from the National Crime Information Center. When a positive result comes back from the NCIC that individual will be given a FBI finger print card and asked to report to the local Sheriff's department to be finger printed. After this is accomplished the individual will bring the FBI finger print card back to the HA where it will be mailed to appropriate agent. The HA will cover the cost incurred with the FBI Finger Print card.

   If the HA uses information contained in a criminal history report as grounds for denying housing assistance and the applicant requests an informal hearing on the denial, a copy of the criminal history may be provided to the applicant at the hearing, if permitted by local state, or federal law, and the applicant shall be allowed to dispute the accuracy or relevancy of the criminal history report.

B. ***Illegal Use of Controlled Substance*** - Admission shall be denied to any person who the HA determines is illegally using a controlled substance. In addition to any information regarding illegal use of a controlled substance that appears on the criminal history report, the HA also shall rely upon information obtained from other sources, such as local police incident reports, landlords, employers, social service agencies, substance abuse centers, acquaintances (including current tenants) who may contact the

HA to volunteer information. The HA shall examine carefully all such information obtained from other sources to determine that there is reasonable cause to believe that the person's pattern of illegal use of a controlled substance may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. ***Alcohol Abuse*** - Admission shall be denied to any person when the HA determines that there is reasonable cause to believe that the person's pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. In making such determination, the HA shall rely upon relevant information obtained from local law enforcement agencies, social service agencies, landlords, employers, alcohol abuse centers, acquaintances (including current tenants) who may contact the HA to volunteer information, or any other appropriate source. The HA shall examine carefully all such information obtained to determine whether it has reasonable cause to believe that the persons pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

D. ***Waiver of Policies*** - The HA may waive policies prohibiting admission if the person demonstrates to the HA's satisfaction that the person no longer is engaging in illegal use of a controlled substance or abuse of alcohol and:

- Has successfully completed a supervised drug or alcohol rehabilitation program;
- Has otherwise been rehabilitated successfully; or
- Is participating in a supervised drug or alcohol rehabilitation program.

E. ***Ineligibility if Evicted for Drug-Related Activity*** - Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity involving the personal use or possession for personal use are ineligible for admission to public housing for a five (5) year period beginning on the date of such eviction.

Or

Persons will be denied assistance if they have been convicted/evicted from a unit assisted under the Housing Act of 1937 due to violent criminal activity within the last ten (10) years prior to the date of the certification interview.

The HA shall use information contained in its own files, or information obtained from other housing agencies to make a determination that the person is ineligible. This requirement may be waived if:

- The person demonstrates successful completion of a rehabilitation program approved by the HA, or

- The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs no longer is in the household because the person is incarcerated.

F. ***Disability Not an Issue*** - The purpose of the above applicant screening procedures is to prohibit admission to the HA's housing of any person that it determines to be likely to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. In considering elements leading to the determination, the HA shall not focus on whether the applicant happens to have a disability; rather, the focus shall be on whether the person's recent behavior indicated that he or she likely would continue to engage in behavior that would be in non-compliance with the dwelling.

Terminating Assistance to Tenants (Evictions)

Policy - It is the policy of this Housing Authority to appropriately evict a public housing resident whom:

- Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

- Engages in any drug-related or violent criminal activity on or off the HA's property; or

- The HA determines is illegally using a controlled substance, or the resident abuses alcohol or uses a controlled substance in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

- If while living in public housing or Section 8 assistance program the tenant commits a sexual crime.

- The HA determines that the tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a felony.

- Violating a condition of probation or parole imposed under Federal or State law.

The term "appropriately" refers to the HA's consistent application of discretion to consider all known circumstances in making its decision to evict.

The following procedures will be followed in implementing the provisions of this policy:

A. ***Applicability*** - The policy of the HA is to terminate the lease and evict any person who has been documented as engaging in one or more of the following:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA;
- Any other activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA;
- Any drug-related or violent criminal activity on or off the premises,
- Illegal use of a controlled substance; or
- Alcohol abuse that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

B. ***Documentation of Activities*** - In documenting instances of activities that may be cause for termination of tenancy and eviction, the HA shall make prompt investigation into reports from other residents, HA employees, local law enforcement officers, the general public, and published reports indication that a tenant is in non-compliance with provisions of this policy and the dwelling lease. In order to ascertain whether to proceed with termination of tenancy and eviction shall utilize the methods contained in the Section, Screening of Applicants, Paragraphs A., B., and C., of this One Strike Policy. In considering documentation obtained during its investigations, the HA should not focus on whether the tenant happens to have a disability.

C. ***Evictions A Civil Matter*** - In weighing the documentation and deciding whether to proceed with termination of tenancy and eviction proceedings in local court, the HA must determine whether sufficient grounds exist to initiate the action. Evictions are civil, not criminal, matters. The HA is not required to meet the criminal standard of "proof beyond a reasonable doubt." In order to terminate a lease and evict a tenant, a criminal conviction or arrest is not necessary. Before initiating termination of tenancy and eviction action, the HA should have sufficient documentation

to prove in court that a tenant has violated his or her dwelling lease before taking eviction action.

D. ***Due Process Rights*** - The HA can exclude from its grievance procedures any cases involving termination of tenancy for any activity, not just a criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA; or any drug-related criminal Activity on or off such premises, no just on or near such premises. Therefore, it shall be the policy of this HA to exclude the foregoing from the grievance procedure, and to proceed directly to court for eviction.

E. ***Notice of Termination of Tenancy and Eviction*** - Once the HA has determined that there is sufficient documented justification to proceed with termination of tenancy and eviction in cases involving (a) any criminal activity or other activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other Residents or employees of the HA, or (b) any drug-related or violent criminal activity on or off the HA's premises, the HA shall promptly issue notification to the tenant specifying:

1. That the tenant is in serious violation of the terms and conditions of the dwelling lease and are grounds for termination of tenancy;

2. The lease provisions that the tenant has violated;

3. That the HA is terminating the lease as of a specified date which shall be ten (10) days from the date of the notice;

4. That the termination action is not subject to the grievance procedure;

5. That if the tenant has not vacated the premises by the date specified in the notice, then the HA will file eviction proceedings in court; and

6. That prior to the judicial hearing, the tenant or his/her counsel may request copies of any relevant documents, records (including criminal records) upon which the HA is relying as basis for the termination of tenancy or eviction.

Modifications to the ACOP, Dwelling Lease, and Grievance Procedures

A. The Admissions and Continued Occupancy Policies (ACOP), the Dwelling Lease, and the Grievance Procedure are being modified to incorporate the provisions of the "One Strike and You're Out" policy.

B. The modifications referred to in A. above shall become effective following notice to tenants and the 30-day comment period.

C. Lease modification may be in the form of a new lease or a rider to the existing lease. Tenant will be required to execute the new lease/addendum no later than their next reexamination.

Other Considerations

A. ***Informing Applicants and Tenants*** - At the time an applicant makes inquiry or presents himself/herself to make application for housing, the HA shall inform the applicant of the "One Strike" provisions related to the application process. When a lease is executed, the explanation of lease provisions that is given to the new tenant will include the importance of abiding all terms of the lease, including the "One Strike" provisions. At the time of adoption of these policies, current residents will have been informed of the "One Strike" policy.

B. ***Cooperation from Residents*** - Residents shall be encouraged to come forward with complaints and information regarding any residents who are in violation of any provisions of the "One Strike" policy. Residents who furnish such information should be informed that if sufficient grounds for eviction appear to exist, then their testimony may be required in court, and they must agree to testify if needed.

C. ***Cooperation from Enforcement Agencies*** - Meetings should be arranged between the Housing Authority and the local Police Department to inform the law enforcement agency of public housing needs and problems, and work out administrative arrangements so that full and expeditious cooperation occurs. If such an arrangement is not currently in existence, the Housing Authority should request that police:

1. Promptly provide HA management with relevant incident reports for timely eviction processing;

2. Help the Housing Authority expedite drug identification in serious cases; and

3. Prepare for cases as needed with Housing Authority attorneys. To this end, the police personnel must know exactly what criminal activities are grounds for lease termination so they can keep the Housing Authority informed when such behavior occurs. The Police Department should be encouraged to provide police testimony in eviction cases involving criminal and/or disruptive behavior as an important part of the department's mission.

Where appropriate, the Housing Authority should use subpoenas to facilitate police testimony. Additionally, the Police Department should be requested to supply additional patrols to public housing communities with special needs, where it is economically feasible for the Police Departments to do so.

D. ***Confidentiality of Criminal Records*** - In administering the provisions of the "One Strike" policy, the Housing Authority shall establish a system to ensure that any criminal record received be maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

Scam Alert
Stop ID Theft Before It Hits
PAGE 22

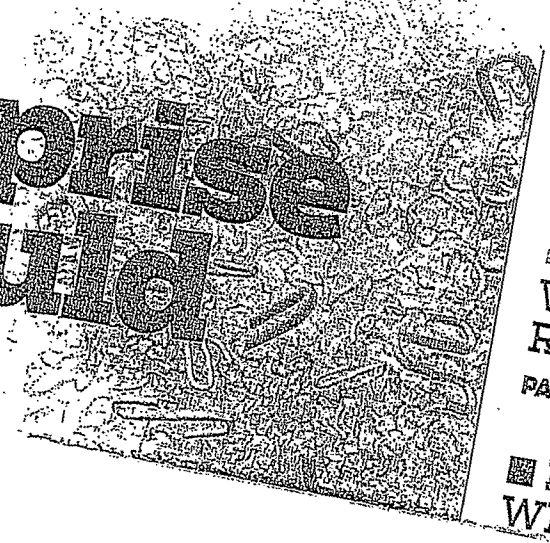
Outrage
My Nephew Almost Got Me Evicted
PAGE 6

Home Alone
You're Retired and Your Spouse Isn't. Now What?
PAGE 18

AARP Bulletin
YOUR HEALTH • YOUR MONEY • YOUR WORLD
SEPTEMBER 2010 Vol. 51 No. 7 aarp.org/bulletin

Alzheimer's Discovery

The Surprise That Could Change



Smart Phone Madness

What Are the Real Costs?
PAGE 14

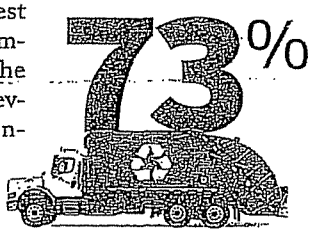
Exclusive Poll
What Would You

6 in 10

Number of American workers who believe they will get no Social Security benefits when they retire.

Background noise in public venues often makes hearing aids useless, but an increasingly available technology known as a "hearing loop" can change that. ■ In New York subways, station information booths have recently been fitted with hearing loops, thanks to the efforts of Janice Schacter, chair of the Manhattan-based Hearing Access Program, and nt Obama's stimulus package. "We had a shovel-ready project that nacter says. ■ A hearing loop is created when a wire is installed er of a room and plugged into an audio source. That wire then sends pper coil that's now standard in most hearing aids. (Older hearing retrofitted for about $250.) The technology is also in use in homes. loop systems ranges from $140 to $270. Find a list of vendors and t www.hearingloop.org. —Cathie Gandel

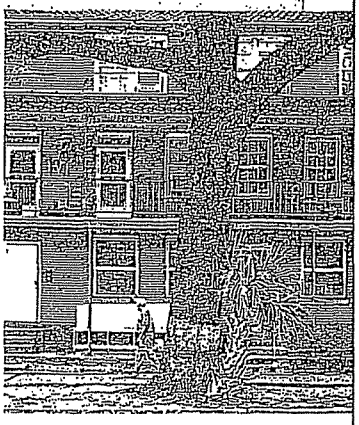
Composting has become a way of life for San Francisco residents since the city passed a law last year requiring residents and businesses to place food scraps into designated bins. The food waste is turned into compost and sold to area farms and vineyards. ■ "This is probably the strongest recycling and composting law in the country," says Kevin Drew, residential and special projects zero waste coordinator for the city. ■ Older residents and senior centers have been enthusiastic about the program, according to city officials. ■ Before the program, San Francisco was eliminating 73 percent of all landfill waste. The goal is zero waste by 2020. ■ Seattle, Portland, Ore., and Dubuque, Iowa, have similar programs. But only San Francisco levies a fine—as much as $100—for noncompliance. —Tauren Dyson



Urban Outrage

Eviction Threat for No Reason

Imagine living somewhere more than three decades, then being threatened with eviction because of the actions of a relative you have virtually no interaction with. ■ That's what Barbara Gabriel faced earlier this year, after the Housing Authority of New Orleans (HANO) gave her 10 days to vacate her two-bedroom dwelling. The eviction notice came after a nephew was arrested in connection with selling drugs in Gabriel's complex. His aunt's address came up as his own after a police check. ■ "I did not give him permission to use my address," says Gabriel, 58, who moved into the 600-unit Iberville public housing development in 1975. "He doesn't live with me and he is not on my lease." ■ Gabriel had been targeted under a "one strike and you're out" policy established by the U.S. Department of Housing and Urban Development in 1996. "One strike" allows housing authorities to evict tenants following one drug-related offense. ■ Desperate to stay in her home, Gabriel contacted Southwest Louisiana Legal Services attorney Renae Davis. Aided by three Rutgers School of Law students working pro bono, Davis successfully defended Gabriel against HANO in court in May. ■ "She didn't even know at the time that [her nephew] was anywhere near the premises when he was arrested," Davis says. "She was at work." ■ HANO filed an appeal, but "I'm almost certain that appeal is going to go away," HANO spokesman Keith Pettigrew says. "We're going to make this right." ■ That works for Gabriel. "I prayed so hard the whole time," she says of her legal ordeal. "I was scared I would lose my house." —Blair S. Walker



Barbara Gabriel has lived here for 35 years.

CLOCKWISE FROM TOP LEFT: MARIO TAMA/GETTY IMAGES; DAYMON GARDNER; CHRISTOPHER GOULD/GETTY IMAGES

COURTESY BROWN FAMILY

SP 4-127 (10-2008)

COMMONWEALTH OF PENNSYLVANIA

RENEWAL ☐

COUNTY OF MONROE

APPLICATION FOR A PENNSYLVANIA LICENSE TO CARRY FIREARMS

PHOTOGRAPH IF REQUIRED

FOR USE BY ISSUING AUTHORITY: PICS TEMP APP. NO. _____ PICS FINAL APP. NO. _____

Signature _____ License Number _____ Application Date _____

Temporary License Approval Date _____ Permanent License Approval Date _____

Rejection Date _____ Reason for Rejection: _____

APPLICANT INFORMATION – TYPE/PRINT IN BLUE OR BLACK INK

1. LAST NAME	2. JR., ETC.	3. FIRST NAME	4. MIDDLE NAME	5. PHOTO ID/DRIVER LICENSE NO.	6. STATE

7. DATE OF BIRTH	8. SOCIAL SECURITY NUMBER (Optional, but will help prevent misidentification)	9. AGE	10. SEX	11. RACE	12. HEIGHT	13. WEIGHT	14. HAIR COLOR	15. EYE COLOR

16. STREET ADDRESS	17. CITY	18. STATE	19. ZIP CODE	20. HOME TELEPHONE NO.
				- -

21. EMPLOYER/BUSINESS NAME	22. WORK TELEPHONE NO.	23. OCCUPATION
	- -	

24. ADDRESS	25. CITY	26. STATE	27. ZIP CODE

28. REASON FOR A LICENSE TO CARRY FIREARMS:

☐ SELF-DEFENSE ☐ EMPLOYMENT ☐ HUNTING & FISHING

☐ TARGET SHOOTING ☐ GUN COLLECTING ☐ OTHER _____

29. PLACE OF BIRTH

30. TWO REFERENCES – NOT FAMILY MEMBERS

NAME	ADDRESS	TELEPHONE NO.
		- -
NAME	ADDRESS	TELEPHONE NO.
		- -

APPLICANTS ARE DETERMINED TO BE ELIGIBLE FOR LICENSURE BASED UPON CRITERIA SET FORTH WITHIN THE PENNSYLVANIA UNIFORM FIREARMS ACT (18 PA.C.S. CHAPTER 61) SECTIONS 6105 DEALING WITH INDIVIDUALS NOT TO POSSESS FIREARMS AND SECTION 6109 DEALING WITH THE ISSUANCE OF A LICENSE TO CARRY FIREARMS. REFERENCE THE REVERSE SIDE OF THIS FORM WHERE INDICATED.

31. HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105(b), OR DO ANY OF THE CONDITIONS UNDER 6105(c) APPLY TO YOU? **(READ INFORMATION ON BACK PRIOR TO ANSWERING)** ☐ YES ☐ NO

32. ARE YOU NOW CHARGED WITH, OR HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR? THIS IS THE MAXIMUM SENTENCE THAT YOU "COULD HAVE RECEIVED," NOT THE ACTUAL SENTENCE YOU DID RECEIVE. (THIS DOES NOT INCLUDE FEDERAL OR STATE OFFENSES PERTAINING TO ANTITRUST, UNFAIR TRADE PRACTICES, RESTRAINTS OF TRADE, OR REGULATION OF BUSINESS; OR STATE OFFENSES CLASSIFIED AS MISDEMEANORS AND PUNISHABLE BY A TERM OF IMPRISONMENT NOT TO EXCEED TWO YEARS.) **(READ INFORMATION ON BACK PRIOR TO ANSWERING)** ☐ YES ☐ NO

33. HAVE YOU EVER BEEN ADJUDICATED A DELINQUENT FOR A CRIME ENUMERATED IN SECTION 6105, OR FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? **(READ INFORMATION ON BACK PRIOR TO ANSWERING)** ☐ YES ☐ NO

34. HAVE YOU EVER BEEN CONVICTED OF ANY DRUG OR CONTROLLED SUBSTANCE OFFENSE UNDER THE ACT OF APRIL 14, 1972 (P.L. 233, NO. 64) KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? **(ALL DRUG-RELATED CONVICTIONS WILL PROHIBIT LICENSING, UNDER SECTION 6109 RELATING TO LICENSES)** ☐ YES ☐ NO

35. HAVE YOU EVER BEEN INVOLUNTARILY COMMITTED TO A HEALTH CARE FACILITY FOR A MENTAL CONDITION, OR ADJUDICATED INCOMPETENT/INCAPACITATED? ☐ YES ☐ NO

36. ARE YOU AN INDIVIDUAL WHO IS A HABITUAL DRUNKARD, OR WHO IS ADDICTED TO OR AN UNLAWFUL USER OF MARIJUANA OR A STIMULANT, DEPRESSANT, OR NARCOTIC DRUG? ☐ YES ☐ NO

37. IS YOUR CHARACTER AND REPUTATION SUCH THAT YOU WOULD BE LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY? ☐ YES ☐ NO

38. ARE YOU A UNITED STATES CITIZEN? IF NO, COUNTRY OF BIRTH _____

COUNTRY OF CITIZENSHIP _____ IMMIGRATION IDENTIFICATION NUMBER _____ ☐ YES ☐ NO

(Applications for non-U.S. Citizens must be provided to the Pennsylvania State Police along with a copy of the License to Carry.)

39. HAVE YOU EVER RECEIVED A DISHONORABLE DISCHARGE FROM THE UNITED STATES ARMED FORCES? ☐ YES ☐ NO

40. OTHER THAN PENNSYLVANIA, DO YOU POSSESS A CURRENT LICENSE, PERMIT, OR SIMILAR DOCUMENT TO CARRY A FIREARM ISSUED FROM ANOTHER STATE? IF YES, ATTACH A PHOTOCOPY OF THE DOCUMENT TO THIS FORM. ☐ YES ☐ NO

41. I have never been convicted of a crime that prohibits me from possessing or acquiring a firearm under Federal or State law. I am of sound mind and have never been committed to a mental institution or mental health care facility. I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statements herein, I am subject to penalties prescribed by law. I authorize the sheriff, or his designee, or, in the case of first class cities, the chief or head of the police department, or his designee, to inspect only those records or documents relevant to information required for this application. ***If I am issued a license and knowingly become ineligible to legally possess or acquire firearms, I will promptly notify the sheriff of the county in which I reside or, if I reside in a city of the first class, the chief of police of that city.*** This certification is made subject to both the penalties of section 4904 of the Crimes Code (18 Pa.C.S. 4904) relating to unsworn falsifications to authorities and the Uniform Firearms Act.

SIGNATURE - APPLICANT DATE OF APPLICATION

Section 6105(a):
Effective November 22, 1995, 18 Pa.C.S. § 6105(a) prohibits persons convicted of any of the following offenses under 18 Pa.C.S. from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania. A conviction includes a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgement has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

Section 6105(b)

§908 Prohibited offensive weapons
§911 Corrupt organizations
§912 Possession of weapon on school property
§2502 Murder
§2503 Voluntary manslaughter
§2504 Involuntary manslaughter, if the offense is based on the reckless use of a firearm
§2702 Aggravated assault
§2703 Assault by prisoner
§2704 Assault by life prisoner
§2709.1 Stalking
§2716 Weapons of mass destruction
§2901 Kidnapping
§2902 Unlawful restraint
§2910 Luring a child into a motor vehicle or structure
§3121 Rape
§3123 Involuntary deviate sexual intercourse
§3125 Aggravated indecent assault
§3301 Arson and related offenses
§3302 Causing or risking catastrophe
§3502 Burglary
§3503 Criminal trespass, if the offense is graded a felony of the second degree or higher
§3701 Robbery
§3702 Robbery of motor vehicle
§3921 Theft by unlawful taking or disposition, upon conviction of the second felony offense
§3923 Theft by extortion, when the offense is accompanied by threats of violence
§3925 Receiving stolen property, upon conviction of the second felony offense
§4906 False reports to law enforcement authorities, if the fictitious report involved the theft of a firearm as provided in 4906(c)(2)
§4912 Impersonating a public servant if the person is impersonating a law enforcement officer
§4952 Intimidation of witnesses or victims
§4953 Retaliation against witness, victim or party
§5121 Escape
§5122 Weapons or implements for escape
§5501(3) Riot
§5515 Prohibiting of paramilitary training
§5516 Facsimile weapons of mass destruction
§6110.1 Possession of firearm by minor
§6301 Corruption of minors
§6302 Sale or lease of weapons and explosives

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

Section 6105(c):
Effective November 22, 1995, 18 Pa.C.S. § 6105(c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

ARE YOU A PERSON WHO:

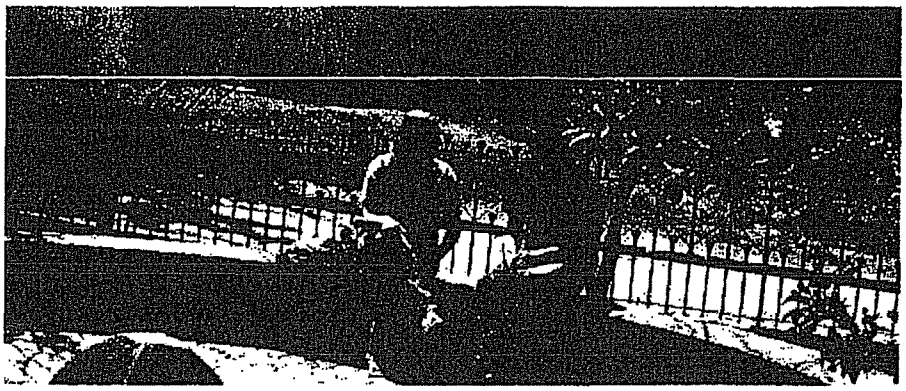
1. is a fugitive from justice; or
2. has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years; or
3. has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of Section 6105(a) shall only apply to transfers or purchases of firearms after the third conviction; or
4. has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act; or
5. being an alien, is illegally or unlawfully in the United States; or
6. is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provides for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms; or
7. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under 18 Pa.C.S. sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923; or
8. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in 18 Pa.C.S. § 6105(b) with the exception of those crimes set forth in paragraph 7. This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.
9. is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts) who has been convicted in any court of a misdemeanor crime of domestic violence by a person in any of the following relationships: (i) the current or former spouse, parent or guardian of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or (iv) a person similarly situated to a spouse, parent, or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph.

PRIVACY ACT NOTICE

Solicitation of this information is authorized under Title 18 Pa.C.S. § 6111. Disclosure of your social security number is voluntary. Your social security number, if provided, may be used to verify your identity and prevent misidentification. All information supplied, including your social security number, is confidential and not subject to public disclosure.

Widener University

Choose Your Path - Widener University :: Online Application



LOG OUT
UPDATE YOUR PROFILE

Additional Information

I am interested in Military ROTC ○ Yes ○ No

Have you ever been suspended from school?

○ Yes ○ No

Have you ever been convicted of a crime (including alcohol and/or drug offenses), felony, or misdemeanor, or currently have any criminal charges pending or unresolved in any court or tribunal, excluding minor traffic violations?

Convictions include judgments, findings of guilt by a judge or jury, pleas of guilty or nolo contendere, probation without verdict, disposition in lieu of trial and/or ARD.

○ Yes ○ No

Certification

Any deliberate falsification or omission of application data will result in denial of admission or dismissal.

☐ By checking this box, I agree with the above statement, and agree that all information on this application is true as of today.

< PREVIOUS | PRINT > | SAVE | SUBMIT >

A different kind of admissions process

Today's college applications are screening for criminal offenses and bad behavior.

By Kathy Boccella

Inquirer Staff Writer

GERALD S. WILLIAMS / Inquirer Staff Photographer
"If it was a crime of violence we would have to think seriously," says Arcadia University's associate vice president of enrollment, Mark Lapreziosa (left).

Along with SAT scores and extra-curricular activities, college-bound students increasingly are being asked to divulge information that may not be so flattering: their arrest and discipline records.

Since late summer, the Common Application, a form used by about 300 institutions, has asked students and guidance counselors whether the applicant has ever been convicted of a crime or disciplined at school.

Kids with rocky pasts may not make it beyond 12th grade.

In an effort to weed out troublemakers before they hit campus, colleges with their own forms also are requiring prospective students to disclose behavioral black marks. More, including Temple, Rowan and Rutgers Universities, are contemplating it.

The University of Pennsylvania put its admissions policy under review after the discovery in January that a 25-year-old child molester taking graduate courses was commuting from his Bucks County prison cell. Saint Joseph's University will ask about applicants' misdeeds beginning next year.

"It's an issue that's exploding," said Timothy Mann, dean of student affairs at Babson College, who is writing his doctoral dissertation on the subject.

The debate over whether to screen and for what is contentious. Opponents cite privacy issues and the risk of penalizing offenders twice. Education encourages rehabilitation, argues the United States Student Association, the nation's largest student group.

"Are we now putting institutions of higher education in the position of dispensing post-judicial punishment?" Barmak Nassirian of the American Association of Collegiate Registrars and Admissions Officers asked.

Offenders can still slip in. "No background check is foolproof," cautioned Stephanie Hughes, a professor at the University of Northern Kentucky and security expert who owns RiskAware, which runs background checks on college employees.

Federal law prevents most schools from releasing educational records - including disciplinary information - without a parental OK. Counselors can leave the questions blank, a spokesman for the Common Application said. And schools don't always know about the trouble students get into off campus.

Where Mark McGrath, president of the New Jersey School Counselor Association, works, the few kids who have had an incident tend to admit their wrongdoings.

"We try to put it in the best light we can" on the application, said McGrath, a counselor at Lawrence High School in Lawrenceville, N.J. "We're the advocates for the child."

Access to more accurate information and increased expectations about college involvement in students' lives have spurred the trend toward preadmission screening, Mann said.

Though campus crime has not appreciably increased since 2003, according to the U.S. Department of Education, a few high-profile crimes committed by students with rap sheets have led institutions to reexamine their admissions process. The Common Application added its inquiries at the request of schools concerned about liability, executive director Rob Killion said.

Students are warned not to omit information. If they're caught lying, they're disqualified. Administrators believe most comply.

A single after-school detention or graffiti incident isn't what schools look for, anyway.

"We have 9,000 applications and there are eight counselors," said Matt Middleton, assistant director of admissions at the College of New Jersey in Ewing, where students are asked about suspensions and criminal convictions. (No one has copped to the latter.) "We're lucky if we can get more than five to 10 minutes with an application."

A "history of serious misbehavior" is what Villanova University looks for, said Stephen R. Merritt, dean of enrollment.

Several states have taken stricter measures. A new law criticized by privacy advocates forces Virginia colleges to reveal names and birth dates of incoming students so police can cross-check sex-offender lists. If there's a match, the school and local police are told and the offender has three days to register with authorities after moving to campus.

Virginia State Police Lt. Tom Turner said authorities expect to check 80,000 to 100,000 names annually.

In North Carolina, additional precautions have been implemented since students with rape and larceny convictions committed two unrelated murders at the state university in Wilmington in 2004.

In addition to being asked about their pasts, applicants to the University of North Carolina's 16 campuses are checked against a national database of suspended or expelled college students. Those who trigger suspicion are investigated, Leslie Winner, general counsel for the 200,000-student system, said. As a result, 84 applicants were denied entry last fall.

Schools generally ask for a letter of explanation and consult counselors and others when a problem is reported. Though juvenile records are sealed, colleges can run criminal background checks on those 18 or older.

"There's really no need for a university to take a risk," said Joan McDonald, vice president of enrollment at Drexel University, where no more than 10 applicants a year report misdeeds. Serious offenders aren't invited to join the school's 5,000 or so incoming freshmen.

Each school has its idea of a deal-breaking offense, Hughes, the owner of RiskAware, said. Even with murder, she advises not to jump to conclusions.

"What if they were defending themselves?" Hughes said.

"We look at it on a case-by-case basis," said Mark Lapreziosa, associate vice president of enrollment at Arcadia University, which uses the Common Application and which may revise its own form.

"We look for students showing growth or having learned" from their mistakes, he said.

So far only two students have disclosed arrests, one for drugs and the other theft. They never completed their applications, but options Arcadia considered were requiring them to live off-campus and to keep in close contact with administrators.

"If it was a crime of violence we would have to think seriously," Lapreziosa said.

Pennsylvania State University, which has asked students about their criminal pasts since 1991, received an application in 1999 from a man in his 30s who noted an assault conviction. That confession and information the school received from another source prompted an investigation that revealed more time served for manslaughter and sex crimes.

The man was arrested again - on a gun charge - while the background check was underway.

Even in less dramatic cases, the guidelines are obvious: You can't put the campus at risk, said Joe Puzycki, the school's senior director of judicial affairs. Penn State could not say how many

students a year it rejects for security reasons.

Witold Walczak, legal director of the American Civil Liberties Union of Pennsylvania, worries that risk aversion may lead to overzealous enforcement. If getting arrested once was a consideration 35 years ago, he says, "an awful lot of people would never have gotten into college . . . maybe even presidents."

Last year, Justin Layshock got a 10-day suspension from his Hermitage, N.J., high school for creating an online parody of the principal. When he told Penn State, his application was put on hold, said Walczak, who is representing Layshock in a suit against his old school district.

Layshock let his application lapse after getting into a school where he applied pre-prank. With less luck, he could have lost out entirely, Walczak said.

Connie Clery would rather err on the side of caution. She founded Security on Campus after her 19-year-old daughter, Jeanne, was killed by a fellow student during a robbery at Lehigh University in 1986. The Jeanne Clery Act requires all colleges to disclose crime on and around their campuses.

"You never know who's going to be in the room next to you," said Clery, of Bryn Mawr, who has lobbied for background checks for everyone from faculty to students. "This is a violent culture and it extends onto all college campuses."

Something as benign as theft, the No. 1 campus crime, Clery said, can lead to violence, as it did in her daughter's case.

"If you lose one child, there's nothing in the world that can compensate for that and no way you can get over it if you're a parent," she said. "Why risk it?"

The Common App Rap Sheet

The Common Application, accepted at the following local colleges, requires students to detail all criminal convictions and serious school disciplinary actions.

Arcadia University

Bryn Mawr College

The College of New Jersey

Drexel University

Haverford College

Juniata College

Lafayette College

La Salle University

Lehigh University

University of Pennsylvania

Saint Joseph's University

Swarthmore College

Ursinus College

Villanova University

Source: www.commonapp.org

Contact staff writer Kathy Boccella at kboccella@phillynews.com or 610-313-8123.

Find this article at:
http://www.philly.com/philly/education/20070326_A_different_kind_of_admissions_process.html

☐ Check the box to include the list of links referenced in the article.

THE COMMON APPLICATION
For Undergraduate College Admission

2011-12 FIRST-YEAR APPLICATION

For Spring 2012 or Fall 2012 Enrollment

APPLICANT

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

Preferred name, if not first name (only one) _____

Former last name(s) _____

Birth Date _____ ○ Female ○ Male
mm/dd/yyyy

US Social Security Number, if any _____
Required for US Citizens and Permanent Residents applying for financial aid via FAFSA

Preferred Telephone ○ Home ○ Cell Home (_____) _____ Cell (_____) _____
Area/Country/City Code *Area/Country/City Code*

E-mail Address _____

IM Address _____

Permanent home address _____
Number & Street *Apartment #*

_____
City/Town *County or Parish* *State/Province* *Country* *ZIP/Postal Code*

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

Current mailing address _____
Number & Street *Apartment #*

_____
City/Town *County or Parish* *State/Province* *Country* *ZIP/Postal Code*

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

FUTURE PLANS

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

College _____

Deadline _____
mm/dd/yyyy

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

Decision Plan _____

Academic Interests _____

_____

_____

Career Interest _____

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

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

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

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

Do you intend to live in college housing? _____

What is the highest degree you intend to earn? _____

DEMOGRAPHICS

Citizenship Status _____

Non-US Citizenship _____

_____

_____

Birthplace _____
City/Town *State/Province* *Country*

Years lived in the US? _____ Years lived outside the US? _____

Language Proficiency (Check all that apply.)
S(Speak) R(Read) W(Write) F(First Language) H(Spoken at Home)

	S	R	W	F	H
_____	○	○	○	○	○
_____	○	○	○	○	○
_____	○	○	○	○	○

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

Religious Preference _____

US Armed Services veteran status _____

1. Are you Hispanic/Latino?

○ Yes, Hispanic or Latino (including Spain) ○ No If yes, please describe your background.

_____

2. Regardless of your answer to the prior question, please indicate how you identify yourself. (Check one or more and describe your background.)

○ American Indian or Alaska Native (including all Original Peoples of the Americas)

Are you Enrolled? ○ Yes ○ No If yes, please enter Tribal Enrollment Number _____

_____

○ Asian (including Indian subcontinent and Philippines)

_____

○ Black or African American (including Africa and Caribbean)

_____

○ Native Hawaiian or Other Pacific Islander (Original Peoples)

_____

○ White (including Middle Eastern)

_____

FAMILY

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

Household

Parents' marital status (relative to each other): ○ Never Married ○ Married ○ Civil Union/Domestic Partners ○ Widowed ○ Separated ○ Divorced (date _____) *mm/yyyy*

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

If you have children, how many? _____

Parent 1: ○ Mother ○ Father ○ Unknown

Is Parent 1 living? ○ Yes ○ No (Date Deceased _____) *mm/yyyy*

_____
Last/Family/Sur *First/Given* *Middle* *Title (Mr./Mrs./Ms./Dr.)*

Country of birth _____

Home address **if different** from yours

_____

_____

Preferred Telephone: ○ Home ○ Cell ○ Work (_____) _____
Area/Country/City Code

E-mail _____

Occupation _____

Employer _____

College (if any) _____ CEEB _____

Degree _____ Year _____

Graduate School (if any) _____ CEEB _____

Degree _____ Year _____

Parent 2: ○ Mother ○ Father ○ Unknown

Is Parent 2 living? ○ Yes ○ No (Date Deceased _____) *mm/yyyy*

_____
Last/Family/Sur *First/Given* *Middle* *Title (Mr./Mrs./Ms./Dr.)*

Country of birth _____

Home address **if different** from yours

_____

_____

Preferred Telephone: ○ Home ○ Cell ○ Work (_____) _____
Area/Country/City Code

E-mail _____

Occupation _____

Employer _____

College (if any) _____ CEEB _____

Degree _____ Year _____

Graduate School (if any) _____ CEEB _____

Degree _____ Year _____

Legal Guardian *(if other than a parent)*

Relationship to you _____

_____
Last/Family/Sur *First/Given* *Middle* *Title (Mr./Mrs./Ms./Dr.)*

Country of birth _____

Home address **if different** from yours

_____

_____

Preferred Telephone: ○ Home ○ Cell ○ Work (_____) _____
Area/Country/City Code

E-mail _____

Occupation _____

Employer _____

College (if any) _____ CEEB _____

Degree _____ Year _____

Graduate School (if any) _____ CEEB _____

Degree _____ Year _____

Siblings

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

_____
Name *Age & Grade* *Relationship*

College Attended _____ CEEB _____

Degree earned or expected _____ Dates _____ - _____
mm/yyyy – mm/yyyy

_____
Name *Age & Grade* *Relationship*

College Attended _____ CEEB _____

Degree earned or expected _____ Dates _____ - _____
mm/yyyy – mm/yyyy

_____
Name *Age & Grade* *Relationship*

College Attended _____ CEEB _____

Degree earned or expected _____ Dates _____ - _____
mm/yyyy – mm/yyyy

EDUCATION

Secondary Schools

Most recent secondary school attended _____

Entry Date _____ (mm/yyyy) Graduation Date _____ (mm/dd/yyyy) School Type: ○ Public ○ Charter ○ Independent ○ Religious ○ Home School

Address _____ (Number & Street) CEEB/ACT Code _____

_____ (City/Town) (State/Province) (Country) (ZIP/Postal Code)

Counselor's Name _____ Counselor's Title _____

E-mail _____ Telephone (_____) _____ (Area/Country/City Code) (Number) (Ext.) Fax (_____) _____ (Area/Country/City Code) (Number)

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

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

Community Program/Organization. _____

If your education was or will be interrupted, please indicate so here: _____

Colleges & Universities Report all college attendance (including online) since 9th grade and indicate as College Course (CO) or Enrichment Program (EP) hosted on a college campus.

College/University Name & CEEB/ACT Code	Location (City, State/Province, ZIP/Postal Code, Country)	Degree Candidate? Yes	CO	EP	Dates Attended mm/yyyy – mm/yyyy	Degree Earned
		○	○	○		
		○	○	○		
		○	○	○		

Were you issued a transcript for any work listed above? ○ Yes ○ No If yes, please have an official transcript sent as soon as possible.

ACADEMICS

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

Grades Class Rank _____ (if available) Class Size _____ Weighted? ○ Yes ○ No GPA _____ (if available) Scale _____ Weighted? ○ Yes ○ No

ACT Exam Dates: (past & future) _____ (mm/yyyy) _____ (mm/yyyy) _____ (mm/yyyy) Best Scores: (so far) _____ (COMP) _____ (mm/yyyy) _____ (English) _____ (mm/yyyy) _____ (Math) _____ (mm/yyyy) _____ (Reading) _____ (mm/yyyy) _____ (Science) _____ (mm/yyyy) _____ (Writing) _____ (mm/yyyy)

SAT Exam Dates: (past & future) _____ (mm/yyyy) _____ (mm/yyyy) _____ (mm/yyyy) Best Scores: (so far) _____ (Critical Reading) _____ (mm/yyyy) _____ (Math) _____ (mm/yyyy) _____ (Writing) _____ (mm/yyyy)

TOEFL/IELTS Exam Dates: (past & future) _____ (mm/yyyy) _____ (mm/yyyy) _____ (mm/yyyy) Best Score: (so far) _____ (Test) _____ (Score) _____ (mm/yyyy)

AP/IB/SAT Subjects Best Scores: (per subject, so far)

_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)	_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)
_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)	_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)
_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)	_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)
_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)	_____ (mm/yyyy)	_____ (Type & Subject)	_____ (Score)

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

Full Year/First Semester/First Trimester	Second Semester/Trimester	Third Trimester (or additional first/second term courses if more space is needed)

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

S(School) S/R(State or Regional N(National) I(International)

Grade level or post-graduate (PG)					Honor	Highest Level of Recognition			
9	10	11	12	PG		S	S/R	N	I
○	○	○	○	○		○	○	○	○
○	○	○	○	○		○	○	○	○
○	○	○	○	○		○	○	○	○
○	○	○	○	○		○	○	○	○
○	○	○	○	○		○	○	○	○

EXTRACURRICULAR ACTIVITIES & WORK EXPERIENCE

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

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

WRITING

Please briefly elaborate on one of your extracurricular activities or work experiences in the space below.

Please write an essay of 250 – 500 words on a topic of your choice or on one of the options listed below, and attach it to your application before submission. **Please indicate your topic by checking the appropriate box.** This personal essay helps us become acquainted with you as a person and student, apart from courses, grades, test scores, and other objective data. It will also demonstrate your ability to organize your thoughts and express yourself. *NOTE: Your Common Application essay should be the same for all colleges. Do not customize it in any way for individual colleges. Colleges that want customized essay responses will ask for them on a supplement form.*

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

Additional Information Please attach a separate sheet if you wish to provide details of circumstances or qualifications not reflected in the application.

Disciplinary History

① Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in a disciplinary action? These actions could include, but are not limited to: probation, suspension, removal, dismissal, or expulsion from the institution. ○ Yes ○ No

② Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime? ○ Yes ○ No
[Note that you are not required to answer "yes" to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise ordered by a court to be kept confidential.]

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

Note: Applicants are expected to immediately notify the institutions to which they are applying should there be any changes to the information requested in this application, including disciplinary history.

SIGNATURE

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

○ Online Payment ○ Will Mail Payment ○ Online Fee Waiver Request ○ Will Mail Fee Waiver Request

Required Signature

☐ *I certify that all information submitted in the admission process—including the application, the personal essay, any supplements, and any other supporting materials—is my own work, factually true, and honestly presented, and that these documents will become the property of the institutions to which I am applying and will not be returned to me. I understand that I may be subject to a range of possible disciplinary actions, including admission revocation, expulsion, or revocation of course credit, grades, and degree, should the information I have certified be false.*

☐ *I acknowledge that I have reviewed the application instructions for each college receiving this application. I understand that all offers of admission are conditional, pending receipt of final transcripts showing work comparable in quality to that upon which the offer was based, as well as honorable dismissal from the school.*

☐ *I affirm that I will send an enrollment deposit (or equivalent) to only one institution; sending multiple deposits (or equivalent) may result in the withdrawal of my admission offers from all institutions. [Note: students may send an enrollment deposit (or equivalent) to a second institution where they have been admitted from the waitlist, provided that they inform the first institution that they will no longer be enrolling.]*

Signature _____ Date _____ *mm/dd/yyyy*

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

Common Application - All Members

There are now 456 Common Application members in 46 states and the District of Columbia, as well as in France, Germany, Italy, Scotland, and Switzerland. They represent an enormously diverse variety of institutions: small and large, public and private, coed and single-sex, highly selective and relatively open enrollment. However, they all share a commitment to the mission of promoting access through holistic admission.

1. Adelphi University
2. Agnes Scott College
3. Alaska Pacific University
4. Albany College of Pharmacy and Health Sciences
5. Albion College
6. Albright College
7. Alfred University
8. Allegheny College
9. American University
10. Amherst College
11. Arcadia University
12. Assumption College
13. Augsburg College
14. Augustana College (Illinois)
15. Augustana College (South Dakota)
16. Austin College
17. Babson College
18. Baldwin-Wallace College
19. Bard College
20. Barnard College
21. Bates College
22. Belmont University
23. Beloit College
24. Bennington College
25. Bentley University
26. Berry College
27. Birmingham Southern College
28. Boston College
29. Boston University
30. Bowdoin College
31. Bradley University
32. Brandeis University
33. Brown University
34. Bryant University
35. Bryn Mawr College
36. Bucknell University
37. Burlington College
38. Butler University
39. Caldwell College
40. California Institute of Technology (Caltech)
41. California Lutheran University
42. Canisius College
43. Carleton College
44. Carnegie Mellon University
45. Carroll College (Montana)
46. Carroll University
47. Case Western Reserve University
48. Castleton State College
49. Cazenovia College
50. Cedar Crest College
51. Centenary College (Louisiana)
52. Centenary College (NJ)
53. Centre College
54. Champlain College
55. Chapman University
56. Chatham University
57. Christian Brothers University
58. Christopher Newport University
59. Claremont McKenna College
60. Clarkson University
61. Clark University
62. Coe College
63. Colby College
64. Colby-Sawyer College
65. Colgate University
66. College of Mount Saint Vincent
67. College of Notre Dame of Maryland
68. College of the Atlantic
69. College of the Holy Cross
70. College of William & Mary
71. College of Wooster
72. Colorado College
73. Colorado State University
74. Columbia College Chicago
75. Columbia University
76. Concordia College
77. Concordia University
78. Connecticut College
79. Converse College
80. Cornell College
81. Cornell University
82. Creighton University
83. Curry College
84. Daemen College
85. Dartmouth College
86. Davidson College
87. Denison University
88. DePaul University
89. DePauw University
90. DeSales University
230. Ohio Northern University
231. Ohio Wesleyan University
232. Oklahoma City University
233. Otterbein University
234. Pace University
235. Pacific Lutheran University
236. Pacific University
237. Pepperdine University
238. Philadelphia University
239. Pitzer College
240. Plymouth State University
241. Polytechnic Institute of New York University
242. Pomona College
243. Presbyterian College
244. Prescott College
245. Princeton University
246. Providence College
247. Quinnipiac University
248. Ramapo College of New Jersey
249. Randolph College
250. Randolph-Macon College
251. Reed College
252. Regis College
253. Regis University
254. Rensselaer Polytechnic Institute
255. Rhode Island College
256. Rhodes College
257. Rice University
258. Richard Stockton College of New Jersey
259. Rider University
260. Ringling College of Art and Design
261. Ripon College
262. Rochester Institute of Technology
263. Roger Williams University
264. Rollins College
265. Rosemont College
266. Russell Sage College
267. Sacred Heart University
268. Sage College of Albany
269. Saint Anselm College
270. Saint Francis University
271. Saint John's University (College of Saint Benedict)
272. Saint Joseph's College of Maine
273. Saint Joseph's University
274. Saint Leo University
275. Saint Louis University
276. Saint Martin's University
277. Saint Mary's College of California
278. Saint Mary's College of Indiana
279. Saint Mary's University of Minnesota
280. Saint Michael's College
281. Saint Peter's College
282. Saint Vincent College
283. Salem College
284. Salisbury University
285. Salve Regina University
286. Samford University
287. Santa Clara University
288. Sarah Lawrence College
289. School of the Art Institute of Chicago
290. Scripps College
291. Seattle Pacific University
292. Seattle University
293. Seton Hall University
294. Seton Hill University
295. Sewanee: The University of the South
296. Siena College
297. Sierra Nevada College
298. Simmons College
299. Skidmore College
300. Smith College
301. Southern Methodist University
302. Southern New Hampshire University
303. Southwestern University
304. Spelman College
305. Spring Hill College
306. Stanford University
307. St. Bonaventure University
308. St. Catherine University
309. St. Edward's University
310. Stephens College
311. Stetson University
312. Stevens Institute of Technology
313. Stevenson University
314. St. John Fisher College
315. St. John's College (MD)
316. St. John's College (NM)
317. St. Joseph's College - Brooklyn Campus
318. St. Joseph's College - Long Island Campus

91. Dickinson College
92. Dominican University of California
93. Dowling College
94. Drake University
95. Drew University
96. Drexel University
97. Drury University
98. Duke University
99. Earlham College
100. Eastern Connecticut State University
101. Eckerd College
102. Elizabethtown College
103. Elmira College
104. Emerson College
105. Emmanuel College
106. Emory University
107. Fairfield University
108. Fisk University
109. Flagler College
110. Florida Institute of Technology
111. Florida Southern College
112. Fontbonne University
113. Fordham University
114. Franklin and Marshall College
115. Franklin College Switzerland
116. Franklin Pierce University
117. Franklin W. Olin College of Engineering
118. Furman University
119. Gannon University
120. Gettysburg College
121. Gonzaga University
122. Goshen College
123. Goucher College
124. Green Mountain College
125. Grinnell College
126. Guilford College
127. Gustavus Adolphus College
128. Hamilton College
129. Hamline University (Minnesota)
130. Hampden-Sydney College
131. Hampshire College
132. Hanover College
133. Hartwick College
134. Harvard University
135. Harvey Mudd College
136. Haverford College
137. Hendrix College
138. Hillsdale College
139. Hiram College
140. Hobart and William Smith Colleges
141. Hofstra University
142. Hollins University
143. Hood College
144. Hope College
145. Howard University
146. Husson University
147. Illinois College
148. Illinois Institute of Technology
149. Illinois Wesleyan University
150. Immaculata University
151. Iona College
152. Ithaca College
153. Jacobs University Bremen
154. John Cabot University in Rome
155. John Carroll University
156. Johns Hopkins University
157. Johnson State College
158. Juniata College
159. Kalamazoo College
160. Keene State College
161. Kenyon College
162. Keystone College
163. King's College
164. Knox College
165. Lafayette College
166. Lake Erie College
167. Lake Forest College
168. La Salle University
169. Lasell College
170. Lawrence Technological University
171. Lawrence University
172. Lehigh University
173. Le Moyne College
174. Lesley College
175. Lewis & Clark College
176. Linfield College
177. Lipscomb University
178. List College The Jewish Theological Seminary
179. Long Island University Brooklyn Campus
180. Long Island University - C.W. Post Campus
181. Loyola Marymount University
182. Loyola University Maryland
183. Loyola University New Orleans
184. Luther College
185. Lycoming College
186. Lyndon State College
187. Lynn University
188. Macalester College
189. Manhattan College

319. St. Lawrence University
320. St. Mary's College of Maryland
321. St. Norbert College
322. St. Olaf College
323. Stonehill College
324. St. Thomas Aquinas College
325. Suffolk University
326. SUNY Binghamton University
327. SUNY Buffalo State College
328. SUNY College at Brockport
329. SUNY College at Geneseo
330. SUNY College at Old Westbury
331. SUNY College at Oneonta
332. SUNY College of Environmental Science & Forestry
333. SUNY Cortland
334. SUNY Fredonia
335. SUNY Institute of Technology
336. SUNY Maritime College
337. SUNY Morrisville State College
338. SUNY New Paltz
339. SUNY Oswego
340. SUNY Plattsburgh
341. SUNY Potsdam
342. SUNY Purchase College
343. SUNY Stony Brook University
344. SUNY University at Albany
345. SUNY University at Buffalo
346. Susquehanna University
347. Swarthmore College
348. Sweet Briar College
349. Syracuse University
350. Texas Christian University
351. The American University of Paris
352. The American University of Rome
353. The Catholic University of America
354. The College of Idaho
355. The College of New Jersey
356. The College of New Rochelle
357. The College of Saint Rose
358. The George Washington University
359. The University of Maine
360. The University of Rhode Island
361. The University of Scranton
362. The University of Tulsa
363. Thiel College
364. Thomas College
365. Towson University
366. Transylvania University
367. Trinity College
368. Trinity University
369. Tufts University
370. Union College
371. University of Chicago
372. University of Connecticut
373. University of Dallas
374. University of Dayton
375. University of Delaware
376. University of Denver
377. University of Evansville
378. University of Findlay
379. University of Great Falls
380. University of Hartford
381. University of Kentucky
382. University of LaVerne
383. University of Maine at Farmington
384. University of Maine at Machias
385. University of Maryland, Baltimore County
386. University of Mary Washington
387. University of Massachusetts Amherst
388. University of Massachusetts Boston
389. University of Massachusetts Dartmouth
390. University of Massachusetts Lowell
391. University of Miami
392. University of Michigan
393. University of New England
394. University of New Hampshire
395. University of New Haven
396. University of New Orleans
397. University of North Carolina Asheville
398. University of North Carolina at Chapel Hill
399. University of North Carolina at Wilmington
400. University of Notre Dame
401. University of Pennsylvania
402. University of Portland
403. University of Puget Sound
404. University of Redlands
405. University of Richmond
406. University of Rochester
407. University of San Diego
408. University of San Francisco
409. University of Southern California
410. University of Southern Maine
411. University of St Andrews
412. University of Tampa
413. University of the Pacific
414. University of the Sciences
415. University of Vermont
416. University of Virginia
417. Ursinus College

190. Manhattanville College
191. Marietta College
192. Marist College
193. Marlboro College
194. Marquette University
195. Marymount Manhattan College
196. Maryville University of St. Louis
197. Massachusetts College of Pharmacy and Health Sciences
198. McDaniel College
199. Menlo College
200. Mercyhurst College
201. Meredith College
202. Merrimack College
203. Miami University (Ohio)
204. Middlebury College
205. Millsaps College
206. Mills College
207. Moravian College
208. Morehouse College
209. Mount Holyoke College
210. Mount Saint Mary College
211. Mount St. Mary's College
212. Muhlenberg College
213. Naropa University
214. Nazareth College
215. Newbury College
216. New College of Florida
217. New England College
218. New School - Eugene Lang College
219. New York Institute of Technology (NYIT)
220. New York University
221. Niagara University
222. Nichols College
223. Northeastern University
224. Northland College
225. Northwestern University
226. Notre Dame de Namur University
227. Oberlin College
228. Occidental College
229. Oglethorpe University
418. Utica College
419. Valparaiso University
420. Vanderbilt University
421. Vassar College
422. Villanova University
423. Wabash College
424. Wagner College
425. Wake Forest University
426. Wartburg College
427. Washington and Lee University
428. Washington College
429. Washington & Jefferson College
430. Washington University in St. Louis
431. Webster University
432. Wellesley College
433. Wells College
434. Wentworth Institute of Technology
435. Wesleyan University
436. Western New England University
437. Westminster College (Missouri)
438. Westminster College (Pennsylvania)
439. Westminster College (Utah)
440. Westmont College
441. Wheaton College
442. Wheeling Jesuit University
443. Wheelock College
444. Whitman College
445. Whittier College
446. Whitworth University
447. Willamette University
448. William Jewell College
449. Williams College
450. Wilson College
451. Wittenberg University
452. Wofford College
453. Worcester Polytechnic Institute
454. Xavier University
455. Xavier University of Louisiana
456. Yale University

** public institution*

STATE OF NORTH CAROLINA

APPLICATION FOR CONCEALED HANDGUN PERMIT

Name of Applicant (Last, First, Middle, Maiden) (Attach listing of all previous addresses and all name changes including location and court title number., if applicable.)

☐ **New Permit** ☐ **Emergency Temporary Permit**
☐ **Duplicate**
☐ **Renewal Permit** G.S. 14-415.10 et seq.

Street Address	*Date of Birth* / *Social Security No. (see notification on back of form*
City State Zip	State DL No. (State Id No. If No Drivers License) / State
Mailing Address	Military Status ☐ Active ☐ Reserve ☐ Discharged ☐ N/A / Race / Sex / Hair
Telephone No. County of Residence	Eyes / Height / Weight / Other Physical Description

APPLICATION

I, the undersigned applicant, being duly sworn, hereby make application for a concealed handgun permit and state that the following information is correct to the best of my knowledge.
I am a citizen of the United States and have been a resident of North Carolina 30 days or longer immediately preceding the filing of this Application. I am 21 years of age or older. I do not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(check applicable boxes)

1. Have you successfully completed an approved firearms safety and training course which involved the actual firing of handguns and instruction in the laws of North Carolina governing the carrying of a concealed handgun and the use of deadly force? (If yes, attach certificate of completion.) (1) ☐ Yes ☐ No
2. Are you ineligible to own, possess, or receive a firearm under the provisions of state or federal law? (2) ☐ Yes ☐ No
3. Are you under indictment or has a finding of probable cause been entered for a pending felony charge? (3) ☐ Yes ☐ No
4. Have you been adjudicated guilty in any court of a felony? (4) ☐ Yes ☐ No
5. Are you a fugitive from justice? (5) ☐ Yes ☐ No
6. Are you an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. 802? (6) ☐ Yes ☐ No
7. Are you currently, or have you been previously adjudicated or administratively determined to be lacking mental capacity or mental ill? (7) ☐ Yes ☐ No
8. Have you been discharged from the armed forces under conditions other than honorable? (8) ☐ Yes ☐ No
9. Have you been adjudicated guilty of or received a prayer for judgment continued or suspended sentence (9) ☐ Yes ☐ No
10. Have you had an entry of a prayer for judgment continued for a criminal offense which would disqualify from obtaining a concealed handgun permit? (10) ☐ Yes ☐ No
11. Are you free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify you from obtaining a concealed handgun permit? (11) ☐ Yes ☐ No
12. Have you been convicted of an impaired driving offense under G.S. 20-138.2 or 20-138.3 within three years prior to the date of this application? (12) ☐ Yes ☐ No

☐ I hearby apply for a temporary emergency permit for a nonrenewable period of up to 90 days based upon the information set forth below. I reasonably believe that an emergency situation exists which may constitute a risk of safety to me, my family or my property.
State Grounds For Temporary Emergency Permit (use attachment if necessary)

SWORN AND SUSCRIBED TO BEFORE ME *DATE*

DATE *Signature Of Authorized To Administer Oaths* *Signature of Applicant*

Title

My Commission Expires **SEAL**

CAUTION: Federal Law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessions a handgun or a firearm, You may be prosecuted in federal court. A State permit is not a defense to a federal Prosecution.

SHERIFF USE ONLY

(check list - check applicable boxes)

☐ 1. Nonrefundable permit fee paid ☐ 2. Two full sets of fingerprints administered by the Sheriffs Department
☐ 3. Original certificate of completion of approved firearms safety and training course
☐ 4. Renewal - Waiver of Application Firearm Safety and Training Course ☐ 5. Attachment(s) (specify)_____
☐ 6. temporary documentation ☐ 7. Other_____
☐ 8. Date temporary permit issued_____ 9. Date Temporary permit denied_____
☐ 10.Date permit issued_____ ☐ Permit No._____ ☐ 11.Date Permit denied
☐ 12.Date submitted to SBI_____ ☐ 13.NCIS Transaction Number (NTN)_____
Signature of Sheriff_____

Original -Sheriff Copy –SBI Copy - Applicant

DCI CHPA Rev. 1 / 05 (over)

LIST OF DISQUALIFYING CRIMINAL OFFENSES

1. Harassment of and communication with jurors {G.S. 14-225.2}
2. Violating orders of court {14-226.1}
3. Furnishing poison, controlled substances, dangerous weapons, cartridges, ammunition of alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities {14-258.1}
4. Weapons on campus or other educational property {14-269.2}
5. Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed {4269.3}
6. Weapons on state property and courthouses {14-269.4}
7. Possession and sale of spring-loaded projectile knives {14-269.6}
8. Impersonation of fireman or emergency medical services personnel {14-276.1}
9. Impersonation of a law enforcement or other public officer {14.2771}
10. Communicating threats {14-277.1}
11. Weapons at parades, and other public gatherings {14-277.2}
12. Stalking {14-277.3}
13. Throwing or dropping of objects at sporting events {14-281.1}
14. Exploding dynamic cartridges and bombs {14-283}
15. Riot and inciting to riot {14-288.2}
16. Fighting or conduct creating a threat of imminent fighting or other violence {14.288,4(a)(1)}
17. Making or using any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby create a breach of peace {14-28.4(a)(2)}
18. Looting and trespassing during an emergency {14-288.6}
19. Assault on emergency personnel {14-288.9}
20. Violations of city State of Emergency Ordinances {14.288.12}
21. Violation of county State of Emergency Ordinances {14-288.13}
22. Violation of State of Emergency Ordinances {14-288.14}
23. Child abuse {14-318.2}
24. Violations of the standards for carrying a concealed weapon {14-415.2(b)}
25. Any crime of violence found in Article 14 in the North Carolina General Statutes.

Social Security Number:

The disclosure of your social security number as a part of the pistol purchase or concealed handgun permit application is voluntary. The purpose of requesting the social security number is to assist in your identification and to help distinguish you from other persons with similar names. No pistol purchase or concealed handgun permit will be denied for failing to disclose a social security number.

DO NOT MAIL THIS WORKSHEET.

You must complete and submit a *Free Application for Federal Student Aid* (FAFSA) to apply for federal student aid and to apply for most state and college aid. Applying online with *FAFSA on the Web* at **www.fafsa.gov** is faster and easier than using a paper FAFSA.

This worksheet has been designed to provide a preview of the questions that you may be asked on *FAFSA on the Web*. Write down notes to help you easily complete your FAFSA anytime after January 1, 2010.

See the table to the right for state deadlines. Check with your high school counselor or your college's financial aid administrator about other deadlines.

- **This Worksheet is optional and should only be completed if you plan to use *FAFSA on the Web*.**
- **Sections in grey are for parent information.**
- **This Worksheet does not include all the questions from the FAFSA. The questions that are included are ordered as they appear on *FAFSA on the Web*. When you are online you may be able to skip some questions based on your answers to earlier questions.**

Apply Faster—Sign your FAFSA with a Federal Student Aid PIN.

If you do not have a PIN, you can apply for one at **www.pin.ed.gov**. Your PIN allows you to electronically sign when you submit your FAFSA. If you are providing parent information, one parent must also sign your FAFSA. To sign electronically, your parent should also apply for a PIN.

You do not have to pay to get help or submit your FAFSA. Submit your FAFSA for **free** online at **www.fafsa.gov**. Federal Student Aid provides **free** help online at **www.fafsa.gov** or you can call 1-800-4-FED-AID. TTY users (hearing impaired) may call 1-800-730-8913.

NOTES:

STATE AID DEADLINES

Check with your financial aid administrator for these states and territories:

AL, AS *, AZ, CO, FM *, GA, GU *, HI *, MH *, MP *, NC, NE, NM, NV *, PR, PW *, SD *, TX *, UT, VA *, VI *, VT *, WA, WI and WY *.

Pay attention to the symbols that may be listed after your state deadline.

AK	April 15, 2010 *(date received)*
AR	Academic Challenge - June 1, 2010 *(date received)* Workforce Grant - Contact the financial aid office. Higher Education Opportunity Grant - June 1, 2010 (fall term) *(date received)* - November 1, 2010 (spring term) *(date received)*
CA	Initial awards - March 2, 2010 + * Additional community college awards - September 2, 2010 *(date postmarked)* + *
CT	February 15, 2010 *(date received)* # *
DC	June 30, 2010 *(date received by state)* # *
DE	April 15, 2010 *(date received)*
FL	May 15, 2010 *(date processed)*
IA	July 1, 2010 *(date received)*
ID	Opportunity Grant - March 1, 2010 *(date received)* # *
IL	As soon as possible after 1/1/2010. Awards made until funds are depleted.
IN	March 10, 2010 *(date received)*
KS	April 1, 2010 *(date received)* # *
KY	March 15, 2010 *(date received)* #
LA	July 1, 2010 *(date received)*
MA	May 1, 2010 *(date received)* #
MD	March 1, 2010 *(date received)*
ME	May 1, 2010 *(date received)*
MI	March 1, 2010 *(date received)*
MN	30 days after term starts *(date received)*
MO	April 1, 2010 *(date received)* #
MS	MTAG and MESG Grants - September 15, 2010 *(date received)* # HELP Scholarship - March 31, 2010 *(date received)* #
MT	March 1, 2010 *(date received)* #
ND	March 15, 2010 *(date received)*
NH	May 1, 2010 *(date received)*
NJ	2009-2010 Tuition Aid Grant recipients - June 1, 2010 *(date received)* All other applicants - October 1, 2010, fall & spring terms *(date received)* - March 1, 2011, spring term only *(date received)*
NY	May 1, 2011 *(date received)* + *
OH	October 1, 2010 *(date received)*
OK	April 15, 2010 *(date received)* #
OR	OSAC Scholarship - March 1, 2010 Oregon Opportunity Grant - Contact the financial aid office.
PA	All 2009-2010 State Grant recipients & all non-2009-2010 State Grant recipients in degree program - May 1, 2010 *(date received)* * All other applicants - August 1, 2010 *(date received)* *
RI	March 1, 2010 *(date received)* #
SC	Tuition Grants - June 30, 2010 *(date received)* SC Commission on Higher Education - no deadline
TN	State Grant - February 15, 2010 *(date received)* # State Lottery - September 1, 2010 *(date received)* #
WV	April 15, 2010 *(date received)* # *

For priority consideration, submit application by date specified.
+ Applicants encouraged to obtain proof of mailing.
* Additional form may be required.

STATE AID DEADLINES

SECTION 1 - STUDENT INFORMATION

After you are online, you can add up to ten colleges on your FAFSA. The colleges will receive the information from your processed FAFSA.

Student's Last Name **First Name** **Social Security Number**

Student Citizenship Status (check one of the following)

❑ **U.S. citizen (U.S. national)** ❑ **Neither citizen nor eligible noncitizen**

❑ **Eligible noncitizen (Enter your Alien Registration Number in the box to the right.)**

Your Alien Registration Number

A

Generally, you are an eligible noncitizen if you are:

- A permanent U.S. resident with a Permanent Resident Card (I-551);
- A conditional permanent resident (I-551C); or
- The holder of an Arrival-Departure Record (I-94) from the Department of Homeland Security showing any of the following designations: "Refugee," "Asylum Granted," "Parolee" (I-94 confirms paroled for a minimum of one year and status has not expired), "Victim of human trafficking," T-Visa holder (T-1, T-2, T-3, etc.) or "Cuban-Haitian Entrant."

Student Marital Status (check one of the following)

❑ Single ❑ Married or remarried ❑ Separated ❑ Divorced or widowed

You will be asked to provide information about your spouse if you are married or remarried.

Selective Service Registration

If you are male and 25 or younger, you can use the FAFSA to register with Selective Service.

Student Aid Eligibility Drug Convictions

❑ I have never attended college ❑ I have never received federal student aid ❑ I have never had a drug conviction

If you did not check any of these boxes, you will be asked more questions online.

Highest school your father completed

❑ Middle school/Jr. high ❑ High school ❑ College or beyond ❑ Other/unknown

Highest school your mother completed

❑ Middle school/Jr. high ❑ High school ❑ College or beyond ❑ Other/unknown

SECTION 2 - STUDENT DEPENDENCY STATUS

If you can check ANY of the following boxes, you will not have to provide parental information. Skip to page 4.
If you check NONE of the following boxes, you will be asked to provide parental information. Go to the next page.

❑ I was born before January 1, 1987	❑ I am married	❑ I will be working on a master's or doctorate program (e.g., MA, MBA, MD, JD, PhD, EdD, graduate certificate)	
❑ I am serving on active duty in the U.S. Armed Forces	❑ I am a veteran of the U.S. Armed Forces	❑ I have children and I provide more than half of their support	
❑ Since I turned age 13, both of my parents were deceased	❑ I was in foster care since turning age 13	❑ I have dependents (other than children or my spouse) who live with me and I provide more than half of their support	
❑ I was a dependent or ward of the court since turning age 13	❑ I am currently or I was an emancipated minor	❑ I am currently or I was in legal guardianship	❑ I am homeless or I am at risk of being homeless

NOTES:

SECTION 3 - PARENT INFORMATION

Who is considered a parent? "Parent" refers to a biological or adoptive parent. Grandparents, foster parents, legal guardians, older siblings, and uncles or aunts are **not** considered parents on this form unless they have legally adopted you. In case of divorce or separation, give information about the parent you lived with most in the last 12 months. If you did not live with one parent more than the other, give information about the parent who provided you the most financial support during the last 12 months or during the most recent year you received support. If your divorced or widowed parent has remarried, also provide information about your stepparent.

Providing your father's information? You will need:

Father's/Stepfather's Social Security Number

Father's/Stepfather's name

Father's/Stepfather's date of birth

❑ Check here if your father/stepfather is a dislocated worker

Providing your mother's information? You will need:

Mother's/Stepmother's Social Security Number

Mother's/Stepmother's name

Mother's/Stepmother's date of birth

❑ Check here if your mother/stepmother is a dislocated worker

Did your parents file or will they file a 2009 income tax return?

❑ My parents have already completed a tax return

❑ My parents will file, but have not yet completed a tax return

❑ My parents are not going to file an income tax return

Your parents will need their tax returns and/or W-2 forms to complete the FAFSA.

What was your parents' adjusted gross income for 2009?

Skip this question if your parents did not file taxes. Adjusted gross income is on IRS Form 1040—Line 37; 1040A—line 21; or 1040EZ—line 4. $

The following questions ask about earnings (wages, salaries, tips, etc.) in 2009. Answer the questions whether or not a tax return was filed. This information may be on the W-2 forms, or on the IRS Form 1040—Line 7 + 12 + 18 + Box 14 of IRS Schedule K-1 (Form 1065); 1040A—line 7; or 1040EZ—line 1

How much did your father/stepfather earn from working in 2009? $

How much did your mother/stepmother earn from working in 2009? $

In 2008 or 2009, did anyone in your parents' household receive:

❑ Supplemental Security Income

❑ Food Stamps

❑ Free or Reduced Price School Lunch

❑ Temporary Assistance for Needy Families (TANF)

❑ Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Note: Food Stamps and TANF may have a different name in your state. Call 1-800-4-FED-AID to find out the name of the state's program.

Did your parents have any of the following items in 2009?

Check all that apply. Once online, you may be asked to report amounts paid or received by your parents.

Additional Financial Information

❑ Hope and Lifetime Learning tax credits
❑ Child support paid
❑ Taxable earnings from work-study, assistantships or fellowships
❑ Grant and scholarship aid reported to the IRS
❑ Combat pay or special combat pay
❑ Cooperative education program earnings

Untaxed Income

❑ Payments to tax-deferred pension and savings plans
❑ Child support received
❑ IRA deductions and payments to self-employed SEP, SIMPLE and Keogh
❑ Tax exempt interest income
❑ Untaxed portions of IRA distributions
❑ Untaxed portions of pensions
❑ Housing, food and other living allowances paid to members of the military, clergy and others
❑ Veterans noneducation benefits
❑ Other untaxed income not reported, such as workers' compensation or disability

Your parents may be asked to provide more information about their assets.
Your parents may need to report the net worth of their current businesses and/or investment farms.

NOTES:

SECTION 4 - STUDENT INFORMATION

Did you file or will you file a 2009 income tax return?

- ❑ I have already completed my tax return
- ❑ I will file, but I have not completed my tax return
- ❑ I'm not going to file an income tax return

You will need your tax returns and/or W-2 forms to complete the FAFSA.

What was your (and spouse's) adjusted gross income for 2009?

Skip this question if you or your spouse did not file taxes. Adjusted gross income is on IRS Form 1040—Line 37; 1040A—line 21; or 1040EZ—line 4. $

The following questions ask about earnings (wages, salaries, tips, etc.) in 2009. Answer the questions whether or not a tax return was filed. This information may be on the W-2 forms, or on the IRS Form 1040—Line 7 + 12 +18 + Box 14 of IRS Schedule K-1 (Form 1065); 1040A—line 7; or 1040EZ—line 1.

How much did you earn from working in 2009?

- ❑ Check here if you are a dislocated worker

$

How much did your spouse earn from working in 2009?

- ❑ Check here if your spouse is a dislocated worker

$

In 2008 or 2009, did anyone in your household receive:

- ❑ Supplemental Security Income
- ❑ Food Stamps
- ❑ Free or Reduced Price School Lunch
- ❑ Temporary Assistance for Needy Families (TANF)
- ❑ Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Note: Food Stamps and TANF may have a different name in your state. Call 1-800-4-FED-AID to find out the name of the state's program.

Did you or your spouse have any of the following items in 2009?

Check all that apply. Once online you may be asked to report amounts paid or received.

Additional Financial Information

- ❑ Hope and Lifetime Learning tax credits
- ❑ Child support paid
- ❑ Taxable earnings from work-study, assistantships or fellowships
- ❑ Grant and scholarship aid reported to the IRS
- ❑ Combat pay or special combat pay
- ❑ Cooperative education program earnings

Untaxed Income

- ❑ Payments to tax-deferred pension and savings plans
- ❑ Child support received
- ❑ IRA deductions and payments to self-employed SEP, SIMPLE and Keogh
- ❑ Tax exempt interest income
- ❑ Untaxed portions of IRA distributions
- ❑ Untaxed portions of pensions
- ❑ Housing, food and other living allowances paid to members of the military, clergy and others
- ❑ Veterans noneducation benefits
- ❑ Other untaxed income not reported, such as workers' compensation or disability
- ❑ Money received or paid on your behalf

You may be asked to provide more information about your (and spouse's) assets.
You may need to report the net worth of current businesses and/or investment farms.

NOTES:

Do not mail this Worksheet. Go to www.fafsa.gov to complete and submit your application.

For more information on federal student aid, visit **www.FederalStudentAid.ed.gov**.
You can also talk with your college's financial aid office about other types of student aid that may be available.

2010-2011

***Student Aid Report* (SAR)**

Student Aid Eligibility Worksheet for Question 23

You are receiving this worksheet with your ***Student Aid Report*** (SAR) because you reported on your ***Free Application for Federal Student Aid*** (FAFSA) that you had a conviction for possessing or selling illegal drugs or because you left question 23 blank.

Complete this worksheet to determine if you are eligible for federal student aid. These are the possible eligibility results:

"1" means your eligibility for federal student aid is not affected by question 23.

"2" means your drug conviction(s) affect eligibility for federal student aid for part of this school year. To receive federal student aid, you need to tell the financial aid office at your college your "eligibility date" from question 11 on this worksheet. You can become eligible earlier in the school year if you complete an acceptable drug rehabilitation program or pass two unannounced drug tests administered by an acceptable drug rehabilitation program. Even if you are not eligible for federal student aid, you may still be eligible for aid from your state or college.

"3" means you are not eligible for federal student aid for this school year unless you complete an acceptable drug rehabilitation program or pass two unannounced drug tests administered by an acceptable drug rehabilitation program. Even if you are not eligible for federal student aid, you may still be eligible for aid from your state or college.

If you need help with this worksheet, or have questions, call us at 1-800-4-FED-AID (1-800-433-3243).

Answer the questions below and follow the instructions after each answer.

1 Have you ever received federal student aid?

Answer "No" if you have never received federal student grants, federal student loans or federal work-study. You should also answer "No" if you have never attended college.

NO ☐ *If No, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

YES ☐ *If Yes, go to question 2 on this worksheet.*

2 Have you been convicted for <u>possessing</u> or <u>selling</u> illegal drugs?

Only include federal and state convictions. Do not count any convictions that have been removed from your record or that occurred before you turned age 18, unless you were tried as an adult.

NO ☐ *If No, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

YES ☐ *If Yes, go to question 3 on this worksheet.*

3 Did the offense for <u>possessing</u> or <u>selling</u> illegal drugs occur during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study)?

NO ☐ *If No, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

YES ☐ *If Yes, go to question 4 on this worksheet.*

4 Have you completed an acceptable drug rehabilitation program since your conviction?

An acceptable drug rehabilitation program must include at least two unannounced drug tests, and:
Be qualified to receive funds from a federal, state or local government or from a federally or state-licensed insurance company; or
Be administered or recognized by a federal, state or local government agency or court, or a federally or state-licensed hospital, health clinic or medical doctor.

YES ☐ *If Yes, change your answer to question 23 on your SAR to "1," and sign and send us your SAR.*

NO ☐ *If No, go to question 5 on this worksheet.*

5 Do you have more than two convictions for possessing illegal drugs?

Only count convictions for offenses that occurred during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study).

YES ☐ *If Yes, change your answer to question 23 on your SAR to "3," and sign and send us your SAR.*

NO ☐ *If No, go to question 6 on this worksheet.*

6 Do you have more than one conviction for selling illegal drugs?

Only count convictions for offenses that occurred during a period of enrollment for which you were receiving federal student aid (grants, loans and/or work-study).

YES ☐ *If Yes, change your answer to question 23 on your SAR to "3," and sign and send us your SAR.*

NO ☐ *If No, go to question 7 on this worksheet.*

7 Write the date of your last conviction for possessing illegal drugs here:

If you have no convictions for possessing drugs, skip to question 9 on this worksheet.

7 / /

8 If you have only one conviction for possessing drugs, add **one year** to the date in question 7, and write that date here:

If you have two convictions for possessing drugs, add **two years** to the date in question 7, and write that date here:

8 / /

9 Write the date of your last conviction for selling illegal drugs here:

If you have no convictions for selling drugs, skip to question 11 on this worksheet.

9 / /

10 If you have only one conviction for selling drugs, add **two years** to the date in question 9, and write that date here:

10 / /

11 Look at the dates you wrote in questions 8 and 10.

If there is only one date, copy that date here:

If there are two dates, write the later one here:

11 / /

YOUR ELIGIBILITY DATE

What to do with your eligibility date:

- *If your eligibility date in question 11 is before July 1, 2010, change your answer to question 23 to **"1," and sign and send us your SAR.***
- *If your eligibility date falls between July 1, 2010 and June 30, 2011, change your answer to question 23 to **"2," and sign and send us your SAR.** Save this worksheet for your records. Contact your financial aid office at your college, and tell them your eligibility date.*
- *If your eligibility date is after June 30, 2011, change your answer to question 23 to **"3," and sign and send us your SAR.***

STATE OF DELAWARE, Respondent Below, Appellant, v. RAY M. FLETCHER, * Petitioner Below, Appellee. STATE OF DELAWARE, Respondent Below, Appellant, v. BETHANY L. ELLIS, Petitioner Below, Appellee.

* The Court, sua sponte, has assigned pseudonyms to the parties under Supr. Ct. R. 7(d).

Nos. 85/147, 2008 (Consolidated)

SUPREME COURT OF DELAWARE

974 A.2d 188*; *2009 Del. LEXIS 250

April 30, 2009, Submitted
May 27, 2009, Decided

PRIOR HISTORY: [**1]

Court Below: Family Court of the State of Delaware, in and for Sussex County. No. 0404010640, Petition No. 07-31677. No. 0107013712, Petition No. 07-34845.

DISPOSITION: AFFIRMED.

COUNSEL: Paul R. Wallace (argued) and Abby Adams, Esquires, Department of Justice, Wilmington, Delaware; for Appellant.

Bethany L. Ellis, Ellendale, Delaware; Pro se, Appellee.

Richard H. Morse (argued) and Megan C. Haney, Esquires, of Young Conaway Stargatt & Taylor, Wilmington, Delaware, Amicus Curiae for Appellees. **

** The amicus curiae were court appointed. We commend counsel for the quality of their presentation on this appeal.

JUDGES: Before STEELE, Chief Justice, HOLLAND, BERGER, JACOBS and RIDGELY, Justices, constituting the Court en Banc.

OPINION BY: JACOBS

OPINION

[*190] **JACOBS**, Justice:

These consolidated appeals explore the interplay between *10 Del. C. § 1001* (the "Expungement Statute"), which authorizes the Family Court to order the expungement of all evidence of an adjudication of a juvenile's delinquency and the destruction of all indicia of arrest; and *11 Del. C. §§ 4120* and *4121* (the "Sex Offender Registration Statutes"), which mandate the designation and registration of adjudicated sex offenders.

Two issues, both of first impression, are presented. [1] Subject [**2] to exceptions not applicable here, the Expungement Statute permits expungement if: (i) three years have elapsed with no subsequent adjudication being entered against the child, (ii) there is no "material objection," and (iii) no reason appears to the contrary. The first question is whether a juvenile's statutorily-mandated designation and registration as a sex offender constitutes, as a matter of law, a "material objection" that precludes the Family Court from issuing an order of expungement. The second issue is whether, if expungement is not precluded, the juvenile whose record is expunged must continue to maintain his or her registration as a sex offender under the Sex Offender Registration Statutes.

1 Rulings by the Family Court on the first issue have been inconsistent. *Compare State v. Brown*, Del. Fam., No. JK99-0084 (Sept. 25, 2006), and *State v. Fisher, Del. Fam., No. JK 97-1478, aff'd, 901 A.2d 120 (Del. 2006)* (Table) (in both cases, expunging record over State's objection that Expungement Statute was superseded by state and federal Sex Offender Registration Statutes, and that sex offender designation was a "material objection" to expungement) *with In re A.W.M., 2005 Del. Fam. Ct. LEXIS 134, 2005 WL 3662341 (Del. Fam. Ct. Apr. 29, 2005)* [**3] (exercising discretion to deny expungement because the juvenile was a registered sex offender), and *State v. Turkett*, Del. Fam., JK99-0069 (Apr. 20, 2005) (refusing to expunge juvenile adjudication record because Registration Statutes superseded Expungement Statute, thereby precluding expungement).

We conclude that the answer to both questions is no. The fact that a juvenile is a registered sex offender, alone and without more, does not as a matter of law constitute a "material objection" under the Expungement Statute.

Nor is a juvenile whose record as a sex offender is expunged required to maintain in effect his or her statutory sex offender registration. We therefore affirm the Family Court judgments expunging the delinquency adjudication records of the two appellees in these cases.

FACTUAL AND PROCEDURAL BACKGROUND

On March 28, 2002, appellee "Bethany Ellis" was adjudicated delinquent of one [*191] count of Second Degree Rape, and four counts of Second Degree Unlawful Sexual Conduct, for conduct that occurred when she was less than fourteen years old. As a result, she was required to register as a Tier III sex offender. Bethany successfully completed the treatment to which she was assigned, [**4] and was released from aftercare services. She has not been adjudicated delinquent of any charges since her 2002 adjudication.

On October 30, 2007, Bethany petitioned for expungement of her juvenile record. In support of her petition, she testified that she had been terminated as a junior member of the local fire department when the department discovered that she was a registered sex offender. She also testified that she was told that a store where she had applied for work would not hire her because of her sex offender registration. Because Bethany wishes to go into nursing, she sought expungement because she believes her record will prevent her from obtaining employment at a hospital. By orders dated January 14 and March 5, 2008, [2] the Family Court granted her petition.

2 Order in Family Court Case No. 0107013712, Petition No. 07-34845.

On July 21, 2004, appellee "Ray M. Fletcher" pled guilty to two counts of Second Degree Unlawful Sexual Conduct for conduct that occurred when he was 13 and 14 years old. He was adjudicated delinquent and required to register as a Tier II sex offender. Fletcher completed the terms of his probation, was granted an early termination from probation, and has [**5] not been adjudicated delinquent of any charges since his 2004 adjudication.

On October 1, 2007, Fletcher filed a petition for expungement of his juvenile record. In support of his petition, he testified that while he was attending a public high school in Ohio under an "open enrollment" program, the school discovered his juvenile record and refused to allow him to return for the following school year. Fletcher testified that he wanted to expunge his record so that he could be rid of the stigma associated with his sex offender status. By order dated January 15, 2008, the Family Court granted his petition. [3]

3 Order in Family Court Case No. 0404010640, Petition No. 07-31677.

The State of Delaware, represented by the Department of Justice, opposed both applications at the trial court level, and has appealed from the orders granting the appellees' petitions for expungement of their respective juvenile records. The appeals were consolidated by order of this Court. Neither appellee is represented by counsel. After the State filed its opening brief, appellee "Bethany Ellis" filed an answering brief *pro se*. The other appellee, "Ray M. Fletcher," did not file an answering brief.

On December 3, 2008, [**6] this Court appointed Richard H. Morse and Megan C. Haney, Esquires, as *amicus curiae* to file an answering brief in response to the State's opening brief. The *amicus curiae* filed their answering brief on December 24, 2008, after which the case was orally argued.

We turn to the two issues presented on this appeal.

ANALYSIS

I. Sex Offender Registration, Without More, Is Not A "Material Objection" That Automatically Precludes Relief Under The Expungement Statute.

The Expungement Statute relevantly provides:

> [*192] (a) In any case wherein an adjudication has been entered upon the status of a child under 18 years of age and 3 years have elapsed since the date thereof and no subsequent adjudication has been entered against such child, the child or the parent or guardian may present a duly verified petition to the Court setting forth all the facts in the matter and praying for the relief provided for in this section;
>
> ***
>
> (c) *...if no material objection is made* and no reason appears to the contrary, an order may be granted directing the Clerk of the Court to expunge from the records all evidence of such adjudication, excepting adjudications involving the following crimes: Second degree murder, first degree [**7] arson, and first degree burglary, and further directing that all indicia of arrest, including fingerprints and photographs, be destroyed. [4]

4 *10 Del. C. §§ 1001(a), (c)* (italics added).

The State's sole objection to the petitions for expungement, in both the Family Court and this Court, is that the petitioners were registered sex offenders. The State claims that each petitioner's designation as a sex offender constitutes a "material objection" that, as a matter of law, precludes expungement of their juvenile adjudication records under *Section 1001(c)*. Because this claim, which the Family Court rejected, involves questions of law and of statutory construction, we review the trial court's adjudication of that claim *de novo*. [5]

5 *Outten v. State, 720 A.2d 547, 551 (Del. 1998)*; *Poteat v. State, 840 A.2d 599, 603 (Del. 2003)*.

We begin our analysis with the observation that the term "material objection" is not defined in the Expungement Statute, and that the State cites no authority that directly supports its interpretation of that term. [6] Nor does any language or provision in *Section 1001* forbid expungement relief to a juvenile who is a registered sex offender but otherwise satisfies the statute's [**8] requirements. Indeed, the only provision of *Section 1001* that limits the Family Court's discretion to grant expungement relief is *subsection (c)*, which excepts from the statute's reach, adjudications of Second Degree Murder, First Degree Arson, and First Degree Burglary. None of those exceptions is applicable here. The statute contains no exception for sex offender adjudications.

6 The State concedes that "there is no case law directly settling the issue." Appellant's Op. Br., at 19.

The State asks us to interpret the term "material objection" in the Expungement Statute as precluding relief to juveniles who otherwise qualify therefor, solely because they are registered sex offenders. Were we to adopt that interpretation, we would be adding to the list of offenses that the General Assembly has expressly declared cannot be expunged, all sex offenses for which registration and designation are required. The General Assembly is empowered to expand that list. We are not.

To avoid having to confront head on that obstacle, the State attempts to reach its goal by a more circuitous route. In substance, the State claims that, by enacting the Sex Offender Registration Statutes, the General Assembly [**9] has essentially already modified the Expungement Statute, albeit by implication. The State's argument runs as follows: the expungement statute is inconsistent with the Sex Offender Registration Statutes. The rules of statutory construction require that any such inconsistencies be resolved in favor of the Sex Offender Registration Statutes because, [*193] to the extent of any conflict, the expression of legislative intent in a more specific and later-enacted statute controls the former, more general statute. [7]

7 Appellant's Op. Br., at 21.

The principle of statutory construction upon which the State stakes its case is well established:

> It is assumed that when the General Assembly enacts a later statute in an area covered by a prior statute, it has in mind the prior statute and therefore statutes on the same subject must be construed together so that effect is given to every provision unless there is an irreconcilable conflict between the statutes, in which case the later supersedes the earlier. [8]

8 *State, Dep't of Labor v. Minner, 448 A.2d 227, 229 (Del. 1982)*; see also *State v. Cook, 600 A.2d 352, 355* ("Generally accepted principles of statutory construction provide that, to the extent of any [**10] conflict, the expression of legislative intent in a more specific and later-enacted statute controls the former, more general statute.")

What is disputed is not this principle but its application. For the State to prevail it must establish, first, that the Expungement Statute "irreconcilably conflict[s]" with the later-enacted Sex Offender Registration Statutes; and second, that the latter statutes are more specific than the former with respect to their common subject matter. The State has failed to satisfy either condition for the application of its argued-for statutory construction rule.

A. *The Statutes Are Not Irreconcilably In Conflict.*

Although the State asserts that the Expungement and the Sex Offender Designation and Registration Statutes are irreconcilably in conflict, nowhere does the State actually identify any irreconcilably conflicting provisions. As noted, the Expungement statute contains no exception or "carve out" for crimes that require sex offender designation and registration. Nor does any provision in the Sex Offender Registration Statutes purport to limit the discretion of the Family Court to grant expungement relief in a proper case.

That perhaps is why the arguments [**11] the State offers to satisfy the irreconcilable conflict requirement are diffuse and difficult to parse. The State's position, as best as we can fathom it, is as follows: the initial version of Delaware's sex offender registration law contained a requirement that certain registration records be destroyed

for juveniles adjudicated delinquent of sex offenses, who reach age twenty-five without committing any other offenses. [9] That provision was eliminated in 1998 when *Section 4120* was re-written and *Sections 4121* and *4122* were added. [10] From this history, the State asserts that:

> The inclusion, and later elimination, of this section further clarifies the intent of the General Assembly to prohibit a juvenile sex offender from having his or her sex offenses expunged or any concomitant relief from sex offender designation and registration in any way other than as specifically provided in the sex offender registration statutes [*i.e.*, by the Superior Court as provided in *Section 4121*]. [11]

9 *11 Del. C. § 4120(d)* (1994) (repealed by 71 Del. Laws. ch. 429).
10 See 71 Del. Laws ch. 429.
11 Appellant's Op. Br., at 15-16.

The difficulty with this assertion is that although it may arguably suggest, at first [**12] blush, a statutory conflict, the conflict is only apparent and in any event is not [*194] irreconcilable. Indeed, the statutes are easily harmonized. A juvenile who is adjudicated delinquent in connection with a sex offense will be designated a sex offender and be required to register. [12] Then, three years later, the Family Court may order, in an appropriate case, expungement of the juvenile record, including "*all evidence of such adjudication.*" [13] Because sex offender registration is "evidence" of an adjudication that a juvenile committed a sex offense requiring registration, that evidence may be expunged as well.

12 *Del. C. §§ 4120* and *4121*.
13 *10 Del. C. § 1001(c)* (italics added).

Thus, the Expungement Statute and the Sex Offender Registration Statutes are neither inconsistent nor irreconcilable. To be sure, *Section 4121* establishes a process, independent of *Section 1001* expungement, under which the Superior Court may relieve an individual of his or her sex offender designation. Even if that were somehow viewed as inconsistent with the Expungement Statute, this Court should be:

> reluctant to find repeal by implication even when the later statute is not entirely harmonious with the earlier one. [**13] If two statutes conflict somewhat, the court must, if possible, read them so as to give effect to both, unless the text or legislative history of the later statute shows that [the legislature] intended to repeal the earlier one and simply failed to do so expressly. [14]

14 Sutherland, Statutory Construction § 23.09 at 338 (5th ed.) (quoted in *Hubbard v. Dunkleberger, 659 A.2d 227 (Table), 1995 WL 131789, at *6-7 (Del. Supr. Mar. 16, 1995)*.

Here, there is no showing that the General Assembly intended to repeal in part the Expungement Statute when it adopted and later amended the Sex Offender Registration Statutes. Had the General Assembly intended to prohibit expungement of a juvenile's sex offender registration, it could have so provided directly and explicitly. "The underlying purpose of allowing expungement is to afford a juvenile the opportunity of starting [] life 'anew' once having reached the age of majority and otherwise having come within the compliance requirements of the [expungement] statute." [15] This policy has been Delaware law for over fifty years, [16] and should not be changed in the absence of a clear statutory mandate. There is no such clear mandate. This Court will not [**14] do by judicial implication what the General Assembly itself has declined to do by express legislation.

15 *Martin v. State, 1986 Del. Fam. Ct., LEXIS 199, at *3 (Del. Fam. Ct.)*.
16 See *Turkett v. State*, JK99-00687 (Del. Fam. Ct., Apr. 20, 2005) (Order) (recognizing that a juvenile expungement statute has been part of Delaware law since 1953).

B. The Sex Offender Registration Statutes Do Not Evidence A More Specific Legislative Intent As To Expungement of A Sex Offender's Registration.

For its amendment-by-implication argument to prevail, the State must also show that the Sex Offender Registration Statutes evidence, more specifically than the Expungement Statute, a legislative intent to prohibit the expungement of sex offender registration. But those later-enacted statutes cannot fairly be read to evidence any such specific legislative intent.

The State claims that the Registration Statutes are more specific, because *11 Del. C. § 4121(e)(2)* expressly provides a particular mechanism to alter or lift a sex offender's registration requirement, namely, petitioning the Superior Court for a reduction [*195] in the offender's Risk Assessment Tier. *Section 4121(e)(2)*, like *10 Del. C. § 1001*, prescribes a [**15] minimum time period

that must lapse before such a petition can be filed, and requires that the offender must not have been convicted of any additional crimes during that time period. Lastly, the State points to *Section 4121(q)*, which provides that "This *section [4121]* shall be effective notwithstanding any law, rule or regulation to the contrary."

Although re-packaged to address the "greater specificity" prong of its statutory construction claim, the State's argument is basically a re-formulation of its initial claim that the Expungement and the Sex Offender Registration statutes are in irreconcilable conflict. About specificity the argument proves nothing, because the latter statutes nowhere specifically mention or even refer, directly or indirectly, to the Expungement Statute. At best, any arguable conflict between *Section 4121(q)* and *Section 1001* is inferential, but even the inference cannot support the State's amendment-by-implication position, because *Section 4121(q)* is easily reconciled with *Section 1001*. The Sex Offender Registration Statutes are intended to cover all persons--including juveniles--who commit sex offenses that merit designating the offender as a "sex offender" [**16] and requiring him or her to register as such. *Section 4121(q)* may be viewed as intended to preclude any judicial interpretation that would exempt juveniles from the category of persons subject to those statutes. From this it does not follow, however, that a juvenile, once designated and registered as a sex offender, is forever precluded from seeking relief under the Expungement Statute, and must resort exclusively to the pathway for relief afforded by *Section 4121*. To so conclude would turn the applicable rule of construction--which would permit a finding that a later-enacted statute has amended an earlier one by implication only where (*inter alia*) the two statutes are in *irreconcilable* conflict--on its head.

***

We conclude, for these reasons, that the fact that a juvenile is a registered sex offender, of itself and without more, does not constitute a "material objection" to expungement within the meaning of *10 Del. C. § 1001*.

II. *Juveniles Whose Adjudication Records Are Expunged Are Not Required To Maintain Their Registration As Sex Offenders Under 11 Del. C. §§ 4120 and 4121.*

The State next argues, in the alternative, that even if this Court rules (as it now has) that the Sex Offender [**17] Registration Statutes do not trump the Expungement Statute, those statutes should be read to operate independently of each other, so that the Family Court's expungement of a juvenile adjudication will not eliminate that sex offender's designation and the attendant statutory registration and notification requirements. The State's alternative argument involves questions of law and of statutory construction, that are reviewed *de novo*. [17]

17 See authorities cited at note 5, supra. Although this question was not preserved below and the Family Court did not decide it, the interests of justice require that this Court decide the issue, because otherwise the full significance of the Family Court's order, *i.e.*, the petitioners' removal from the sex offender registry will remain uncertain. See, *e.g., In re Ikard, 2007 Del. Fam. Ct. LEXIS 43, 2007 WL 1574527, at 3, n.7 (Del. Fam. Ct. Mar. 23, 2007)*.

This argument labors under two insuperable burdens. The first is that it is in substance identical to the State's "material objection" argument, only packaged in different words. The second is that it [*196] amounts to little more than *ipse dixit*. In that portion of its brief devoted to this argument, the State re-asserts that "[d]esignation [**18] as a 'sex offender' is a 'material objection' that precludes a sex offender from having his or her juvenile record expunged pursuant to [*10 Del. C. § 1001*]." The State then insists that "if the Court does not agree that *Sections 4120* and *4121* prevail, [then] it *must* find that an expungement of an adjudication of delinquency for a sex offense is separate and distinct from the application of *Delaware's Megan's Law [Sections 4120* and *4121*] to a sex offender, and cannot nullify the statutorily-mandated designation of that person as a 'sex offender' or the related registration requirement." [18] But, the State nowhere shows why this Court, having rejected the predicate for its argument, *must* nonetheless validate that argument clothed in different words.

18 Appellant's Op. Br., at 29-30 (italics added).

Although the analysis could end at this point, we pause to mention that the State's apparent inability to offer reasoned argument in place of *ipse dixit* comes as little surprise. The State's alternative contention ignores the intent and the effect of expungement. A "sex offender" is defined to include "[a]ny juvenile who is adjudicated delinquent of [enumerated sexual] offenses...." [19] Once expungement [**19] of a juvenile's record is granted, it is as if the adjudication never occurred:

> As used in the criminal law, "expungement" means the "eradication of a record of conviction or adjudication upon the fulfillment of prescribed conditions.... It is *not simply the lifting of disabilities* attendant upon conviction and a restoration of civil rights.... It is rather a redefinition of status, a process of *erasing the legal event of conviction* or adjudication and thereby

restoring to the regenerative offender his *status quo ante*." [20]

19 *See 11 Del. C. § 4121(a)(4).*

20 *People v. Frawley, 82 Cal. App. 4th 784, 98 Cal. Rptr. 2d 555, 559 (Cal. App. 2000)* (citations omitted, ellipses and emphasis in original); *see also, Stephens v. Van Arsdale, 227 Kan. 676, 608 P.2d 972, 983-84 (Kan. 1980)* ("[A]nnulment of conviction statutes, often called expungement statutes, do not merely lift disabilities resulting from conviction and restore civil rights; they have the legal effect of restoring the reformed offender to his status quo existing prior to the conviction") (internal quotation marks omitted.)

An expunged adjudication cannot coexist with a requirement of continued maintenance of sex offender registration, because the adjudication itself becomes [**20] a nullity. That is manifestly the intent of *Section 1001*, which requires not only the expungement from the records of "all evidence of [the] adjudication," but also "the destruction of all indicia of arrest including fingerprints and photographs," [21] to prevent an expunged adjudication from being used for any purpose. To interpret the Sex Offender Registration Statutes as trumping that provision of *Section 1001* would not only contravene the legislative intent, but also would create an exception to *Section 1001* not found in the language of either that statute or of *Section 4121*. Had the General Assembly intended for the expungement of a juvenile's record no longer to result in the destruction of "*all* indicia of arrest," it could have expressed that intent by amending *Section 1001* or by addressing expungement in *Sections 4120* and *4121*. The role of this Court when construing a statute is to give effect to the [*197] policy intended by the General Assembly. [22] It is not to effectuate the inconsistent policy preferences of other branches of government.

21 *10 Del. C. § 1001(a).*

22 *Giuricich v. Emtrol Corp., 449 A.2d 232, 238 (Del. 1982).*

CONCLUSION

For the foregoing reasons, the judgments of the Family [**21] Court expunging the juvenile offense adjudication records of the appellees are affirmed.

2009 PA Super 252, *; 987 A.2d 769, **;
2009 Pa. Super. LEXIS 4985, ***

IN THE INTEREST OF: A.B.; APPEAL OF: A.B.

No. 2149 EDA 2006

SUPERIOR COURT OF PENNSYLVANIA

2009 PA Super 252; 987 A.2d 769; 2009 Pa. Super. LEXIS 4985

October 23, 2008, Argued
December 24, 2009, Filed

PRIOR HISTORY: [***1]

Appeal from the Order of the Court of Common Pleas of Monroe County, Criminal Division, No. CP-45-JV-0030033-1999. Before WORTHINGTON, J.
In re A.B., 2007 Pa. Super. LEXIS 2113 (Pa. Super. Ct., July 18, 2007)

DISPOSITION: Order reversed; case remanded. Jurisdiction is relinquished.

COUNSEL: Michael A. Ventrella, Tannersville, for appellant.

Michael T. Rakaczewski, Assistant District Attorney, Stroudsburg, for Commonwealth, appellee.

JUDGES: BEFORE: STEVENS, MUSMANNO, KLEIN, BENDER, BOWES, GANTMAN, SHOGAN, FREEDBERG, AND CLELAND, JJ. OPINION BY GANTMAN, J. DISSENTING OPINION BY KLEIN, J.

OPINION BY: GANTMAN

OPINION

[**771] OPINION BY GANTMAN, J.:

[*P1] Appellant, A.B., appeals from the order entered in the Monroe County Court of Common Pleas, which denied his petition to expunge his juvenile record. Specifically, Appellant asks us to determine whether the court committed an error of law or an abuse of discretion when it denied Appellant's petition, after he had fulfilled all of the requirements for expungement under *18 Pa.C.S.A. § 9123(a)(3)*. After careful review of the certified record as well as the relevant law pertaining to expungement of juvenile records, we hold the trial court misapplied the law in denying Appellant's expungement petition, where Appellant fulfilled the requirements under *Section 9123(a)(3)*; and the Commonwealth failed to show cause to deny expungement and retain Appellant's juvenile record. Accordingly, we reverse and remand with directions to expunge [***2] Appellant's juvenile record.

[*P2] The trial court opinion set forth the relevant facts and some of the procedural history of this case as follows:

> On or about January 29, 1999, a Juvenile Petition was filed against [Appellant], alleging that on or about January 26, 1999 at Pocono Mountain Senior High School, [Appellant] knowingly or intentionally possessed 185 white pills, knowing that he was not licensed or privileged to do so; [Appellant] knowingly or intentionally possessed 185 white pills with the intent to manufacture or deliver the same, knowing that he was not licensed or privileged to do so; and that [Appellant] used or possessed with intent to use drug paraphernalia. [Appellant] subsequently made an admission to one count of Possession with Intent to Deliver a Controlled Substance ["PWID"], an ungraded felony if he had been an adult. On March 8, 1999, [the court] entered an Order placing [Appellant] with Youth Services of Pennsylvania. On June 24, 1999, Appellant was released from Youth Services of Pennsylvania and placed on probation for a period of six months.
>
> On April 20, 2006, [Appellant] filed a Petition to Expunge. A hearing on [Appellant's] Petition to Expunge was held on [***3] June 28, 2006. On June 29, 2006, [Appellant] and the Commonwealth submitted memoranda of law in support of their respective positions. On July 7, 2006, [the court] entered an order denying [Appellant's] Petition to Expunge.
>
> [**772] [Appellant] filed a notice of appeal...on August 1, 2006. On August 7, 2006, [Appellant] filed a Statement pursuant to *Pa.R.A.P. 1925(b)*.

(Trial Court Opinion, filed October 2, 2006, at 1-2).

[*P3] On June 1, 2007, a unanimous panel of this Court initially reversed and remanded the matter to the trial court to expunge Appellant's juvenile record. On June 13, 2007, the Commonwealth filed an application for reargument. In response, the original panel first allowed panel reconsideration but subsequently recommended *en banc* reargument, which this Court granted.

[*P4] Appellant presents the following issue for review:

> DID THE [TRIAL] COURT ABUSE ITS DISCRETION WHEN, AFTER [APPELLANT] HAD FULFILLED ALL THE REQUIREMENTS OF *18 PA.C.S.A. § 9123*, IT DENIED THE PETITION TO EXPUNGE?

(Appellant's Brief on Reargument at 4).

[*P5] Appellant argues he is entitled to expungement of his juvenile record as a matter of law, because he met the requirements under *18 Pa.C.S.A. § 9123(a)(3)*. Specifically, Appellant [***4] alleges five (5) years elapsed since his final discharge from probation, he has not been convicted of a subsequent felony, misdemeanor or adjudication of delinquency, and no proceeding is pending seeking a conviction or adjudication. Appellant maintains he finished high school, works a steady job, takes courses at a community college, and has had no further encounters with the legal system since the one in 1999. Appellant contends the court overlooked the statutory mandate to expunge his record under *Section 9123(a)(3)* and, instead, relied solely on the statutory language that provides for denial of expungement "upon cause shown" to support its decision that the disposition of a juvenile expungement petition is wholly discretionary. Appellant insists the court's application of the statute is flawed. Appellant reasons the meaning of the phrase "except upon cause shown" does not render the entire statute a matter of judicial discretion, as the Commonwealth suggests. Appellant maintains the application of the juvenile expungement statute in his case raises a question of statutory construction and interpretation, which is a pure question of law.

[*P6] Alternatively, Appellant asserts that even [***5] if this Court agrees the process of juvenile record expungement is wholly a matter of judicial discretion, the court nonetheless abused its discretion in this case. Appellant submits the court erroneously referred to the criminal code at *35 P.S. § 780-119(a)* in making its decision to deny his petition for expungement, where that statute applies only to criminal offenses. Appellant posits the court's reliance on *Section 780-119(a)* is counter to the clear intent of Pennsylvania juvenile law, which is primarily to provide juveniles with an opportunity to correct their behavior, continue with their lives without the stigma of an adjudication, obtain treatment, and achieve rehabilitation. Appellant claims the Commonwealth's focus on the "nature" of his juvenile offense is inappropriate as the nature of the juvenile offense alone is insufficient to overcome the statutory mandate for expungement. Appellant reiterates he met the requirements of *Section 9123(a)(3)*, and the court should have granted his expungement petition on that basis. Appellant concludes the court erred as a matter of law or abused its discretion in denying his petition, and this Court should reverse and remand with a directive [***6] to expunge his juvenile record.

[*P7] In response, the Commonwealth argues the denial of Appellant's expungement [**773] petition was a proper exercise of the court's discretionary powers, based on society's interest in retaining Appellant's records for the protection of the public. The Commonwealth concedes Appellant satisfied the statutory requirements specified in *Section 9123(a)(3)*. Nevertheless, the Commonwealth contends it "showed cause" to deny Appellant's expungement petition because: Appellant was seventeen (17) years old at the time of the offense; he admitted to the offense of PWID; and the offense involved selling drugs in school and possessing one-hundred eighty-five (185) Ecstasy pills. The Commonwealth further submits Appellant failed to present evidence of adverse consequences arising from his juvenile record; instead, Appellant is now employed and attends college. The Commonwealth directs this Court's attention to the factors set forth in *Section 9123(a)(4)* to determine the meaning of "cause shown," such as the nature of the Appellant's offense, his age, history of employment, criminal activity and drug or alcohol problems, adverse consequences he might suffer if the records are [***7] not expunged, and the protection of public safety. The Commonwealth suggests consideration of factors related to substantive due process, including the factors set forth in ***Commonwealth v. Wexler,*** *494 Pa. 325, 431 A.2d 877 (1981)*, provides additional guidance for the meaning of the term "cause shown." The Commonwealth concludes the court properly denied Appellant's expungement petition. For the following reasons, we hold the relief Appellant requests is warranted.

[*P8] A challenge to the court's interpretation and application of a statute raises a question of law. ***Commonwealth v. Williams,*** *2005 PA Super 105, 871 A.2d 254, 262 (Pa.Super. 2005)*. "As with all questions of law, the appellate standard of review is *de novo* and the appellate scope of review is plenary." ***In re Wilson,*** *2005 PA*

Super 211, 879 A.2d 199, 214 (Pa.Super. 2005) (en banc).

[*P9] This case involves the interpretation and application of *Section 9123* of the Criminal History Record Information Act ("CHRIA"), which governs expungement of juvenile records and provides, in relevant part, as follows:

> ***§ 9123.* Juvenile Record**
>
> **(a) Expungement of juvenile records.--** Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and **except upon** [***8] **cause shown,** expungement of records of juvenile delinquency cases wherever kept or retained **shall occur** after 30 days' notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:
>
> (1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;
>
> (2) six months have elapsed since the final discharge of the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending;
>
> (3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or
>
> (4) the individual is 18 years of age or older, the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:
>
> (i) the type of offense;
>
> [**774] (ii) the individual's age, history of employment, criminal activity and drug or alcohol [***9] problems;
>
> (iii) adverse consequences that the individual may suffer if the records are not expunged; and
>
> (iv) whether retention of the record is required for purposes of protection of the public safety.

18 Pa.C.S.A. § 9123(a)(1-4) (emphasis added).

[*P10] We begin our analysis with a review of various doctrines of statutory construction, the polestar of which is to determine the intent of the Legislature. *1 Pa.C.S.A. § 1921(a). Section 1921* in full provides:

> ***§ 1921.* Legislative intent controls**
>
> (a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.
>
> (b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
>
> (c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:
>
> (1) The occasion and necessity for the statute.
>
> (2) The circumstances under which it was enacted.
>
> (3) The mischief to be remedied.
>
> (4) The object to be attained.
>
> (5) The former law, if any, including [***10] other statutes upon the same or similar subjects.
>
> (6) The consequences of a particular interpretation.
>
> (7) The contemporaneous legislative history.

(8) Legislative and administrative interpretations of such statute.

(7) Provisions decreasing the jurisdiction of a court of record.

[**775] (8) Provisions enacted finally prior to September 1, 1937 which are in derogation of the common law.

1 Pa.C.S.A. § 1921. ***See also Commonwealth v. Menezes,*** *2005 PA Super 90, 871 A.2d 204, 209 (Pa.Super. 2005), appeal denied, 586 Pa. 724, 890 A.2d 1057 (2005);* ***Commonwealth v. Reaser,*** *2004 PA Super 148, 851 A.2d 144, 148 (Pa.Super. 2004), appeal denied, 581 Pa. 674, 863 A.2d 1145 (2004).*

When interpreting a statute, the court must give plain meaning to the words of the statute. It is not a court's place to imbue the statute with a meaning other than that dictated by the plain and unambiguous language of the statute. Moreover, we presume the legislature did not intend an absurd or unreasonable result.

In re R.D.R., *2005 PA Super 204, 876 A.2d 1009, 1016 (Pa.Super. 2005). Section 1928* further describes the rule of strict and liberal construction as follows:

§ 1928. **Rule of strict and liberal construction**

(a) The rule that statutes in derogation of the common law are to be strictly construed, shall have no application to the statutes of this Commonwealth enacted finally after September 1, 1937.

(b) All provisions of a statute of the classes [***11] hereafter enumerated shall be strictly construed:

(1) Penal provisions.

(2) Retroactive provisions.

(3) Provisions imposing taxes.

(4) Provisions conferring the power of eminent domain.

(5) Provisions exempting persons and property from taxation.

(6) Provisions exempting property from the power of eminent domain.

(c) All other provisions of a statute shall be liberally construed to effect their objects and to promote justice.

1 Pa.C.S.A. § 1928.

[*P11] Pursuant to *18 Pa.C.S.A. § 9102*, the term "expunge" means: "(1) To remove information so that there is no trace or indication that such information existed; (2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes; or (3) maintenance of certain information required or authorized under the provisions of *section 9122(c)* (relating to [adult criminal record] expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program." *18 Pa.C.S.A. § 9102;* [***12] ***Schmidt v. Deutsch Larrimore Farnish & Anderson, LLP,*** *2005 PA Super 212, 876 A.2d 1044, 1047 n.2 (Pa.Super. 2005). Section 9123* pertaining to juveniles provides the remedy of record expungement upon satisfaction of the statutory criteria, "except upon cause shown." *18 Pa.C.S.A. 9123(a).* Remedial legislation enjoys liberal construction, while any exceptions to its remedial provisions must be narrowly construed. ***See generally Borough of Youngwood v. Pennsylvania Prevailing Wage Appeals Board,*** *596 Pa. 603, 615, 947 A.2d 724, 731 (2008);* ***Commonwealth v. Wilgus,*** *2009 PA Super 116, 975 A.2d 1183, 1187 (Pa.Super. 2009).*

[*P12] Moreover, when a statute contains the word "shall," it is "by definition mandatory, and is generally applied as such." ***Chanceford Aviation Properties L.L.P. v. Chanceford Tp. Bd. of Supervisors,*** *592 Pa. 100, 108, 923 A.2d 1099, 1104 (2007).* The Pennsylvania Supreme Court "has recognized that the term 'shall' is mandatory for purposes of statutory construction when a statute is unambiguous." ***Id.*** Under the "shall" rule, *Section 9123(a)* favors expungement whenever a juvenile offender has met the requirements of any subsection under the statute. *18 Pa.C.S.A. § 9123(a).* The Commonwealth bears the burden to meet the [***13] "show cause" exception for denial of expungement. ***Id.***

[*P13] In Pennsylvania, "juvenile proceedings are not criminal proceedings." ***In re S.A.S.,*** *2003 PA Super 494, 839 A.2d 1106, 1108 (Pa.Super. 2003)* (citing ***In re R.A.,*** *2000 PA Super 323, 761 A.2d 1220, 1223 (Pa.Super. 2000))*.

> Under the Juvenile Act, juveniles are not charged with crimes; they are charged with committing delinquent acts. They do not have a trial; they have an adjudicatory hearing. If the charges are substantiated, they are not convicted; they are adjudicated delinquent. Indeed, the Juvenile Act expressly provides an adjudication under its provisions is not a conviction of a crime. *42 Pa.C.S.A. 6354(a)*. . . . These are not insignificant differences or the transposing of synonyms. The entire juvenile system is different, with different purposes and different rules.

In re S.A.S., supra *at 1108-09* (some internal citations omitted).

[*P14] The stated purpose of the Juvenile Act is as follows:

> Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the [***14] development of competencies to enable children to become responsible and productive members of the community.

42 Pa.C.S.A. § 6301(b)(2). [**776] "This section evidences the Legislature's clear intent to protect the community while rehabilitating and reforming juvenile delinquents. The rehabilitative purpose of the Juvenile Act is attained through accountability and the development of personal qualities that will enable the juvenile offender to become a responsible and productive member of the community." ***In re R.D.R., supra*** *at 1013* (internal citations and quotation marks omitted). ***See also Commonwealth v. Hooks,*** *2007 PA Super 85, 921 A.2d 1199, 1206 (Pa.Super. 2007), appeal denied, 594 Pa. 695, 934 A.2d 1276 (2007)* (stating specific goal of Juvenile Act is to provide care, protection and wholesome mental and physical development of children within provisions of Act; Act protects juvenile offenders until their eighteenth birthday, not just until day before). The express purpose of the Juvenile Act is to allow for treatment, reformation and rehabilitation of juvenile offenders, not to punish them. ***In re K.J.V.,*** *2007 PA Super 390, 939 A.2d 426, 428 (Pa.Super. 2007)*. "To this end, the juvenile court system was designed to provide [***15] [a] distinctive procedure and setting to deal with the problems of youth." ***Id.***

[*P15] This Court has already ascertained the clear intent of CHRIA with respect to juveniles as follows:

> The purpose of [CHRIA] is to provide an opportunity for children who crash upon the reef of criminal behavior to leave behind the damaging effect of such collision upon a showing that they had exercised sufficient restraint as to reasonably assure the authorities that total redemption was justified. [CHRIA] gave the delinquent and dependent child something they never before had. Although the intent and promise of the juvenile justice movement in this State and Country since the Act of April 23, 1903, P.L. 274 was declared constitutional in ***Commonwealth v. Fisher,*** *213 Pa. 48, 62 A. 198 (1905)*, was to insulate the child from the harshness of the criminal law and to provide treatment and rehabilitation instead of punishment, there was always an elusive stigma attached to an adjudication of delinquency and/or dependency, which the expungement act sought to eliminate. The balance clearly proposed by the legislature was to give the child this additional benefit, but only if deserving, for there is an equal consideration [***16] of protection of public safety by having the record of the child available **if his chronic behavior and course of conduct presage adult criminal behavior.**

In Interest of Jacobs, *334 Pa. Super. 613, 483 A.2d 907, 909 (Pa.Super. 1984)* (emphasis added).

[*P16] Prior to the enactment of CHRIA in 1980, the court was left to decide whether to expunge a juvenile record by balancing the Commonwealth's interest in preserving the record against the juvenile's interest in avoiding the numerous disadvantages of retention of the juvenile record. ***In Interest of John W.,*** *300 Pa. Super. 293, 446 A.2d 621 (Pa.Super. 1982)*. CHRIA, however, states the court "shall" expunge a juvenile record where the petitioner meets the requirements of any subsection

under *Section 9123(a)(3)*, unless the Commonwealth successfully justifies retention of the juvenile record, otherwise stated as "except upon cause shown." [1] *18 Pa.C.S.A. § 9123(a)*; ***In Interest of Jacobs, supra.***

> 1 CHRIA contains no precise definition for the words "except upon cause shown" in *Section 9123*, although *Section 9123(a)(4)* sets forth several factors for the court to consider upon review of a juvenile expungement petition filed under that subsection, **where the Commonwealth consents** to expungement [***17] and the petitioner is at least eighteen (18) years old: (1) the type of offense; (2) the individual's age, history of employment, criminal activity and drug or alcohol problems; (3) adverse consequences that the individual may suffer if the records are not expunged; and (4) whether retention of the record is required for purposes of protection of the public safety. ***See*** *18 Pa.C.S.A. 9123(a)(4)(i-iv)*. The Commonwealth suggests we rely on these factors to review the court's decision under *Section 9123(a)(3)*. We observe, however, that *Section 9123(a)* is set forth in the disjunctive. Therefore, we decline the Commonwealth's invitation to overlook the explicit terms of the statute.

[**777] [*P17] In denying Appellant's petition, the court relied heavily on *Section 780-119(a)* of the Controlled Substance, Drug, Device and Cosmetic Act, referring to the expungement of criminal records for offenses under certain circumstances, which in part provides:

> ***§ 780-119.*** **Expunging criminal records**
>
> (a) Any records of arrest or prosecution or both for a criminal offense under this act, **except for persons indicted for [PWID]** or under the provisions previously governing controlled substances in the Commonwealth of Pennsylvania [***18] or any political subdivision thereof **shall be promptly expunged** from the official and unofficial arrest and other criminal records pertaining to that individual when the charges are withdrawn or dismissed or the person is acquitted of the charges: Provided, That such expungement shall be available as a matter of right to any person only once. . .
>
> * * *

35 P.S. § 780-119(a) (emphasis added).

[*P18] Instantly, the court entered a disposition order on March 8, 1999, based upon Appellant's admission. Appellant was released from Youth Services of Pennsylvania on June 24, 1999, and placed on probation for six months. Appellant successfully completed the probation without incident. Over six years later, Appellant filed his expungement petition on April 20, 2006. At that time, more than five (5) years had elapsed since Appellant's discharge from probation, and Appellant did not have any subsequent criminal convictions or delinquency adjudications pending. Therefore, Appellant met the criteria under *Section 9123(a)(3)*. ***See*** *18 Pa.C.S.A. § 9123(a)(3)*. Thus, expungement was mandatory under *Section 9123*, unless the Commonwealth successfully justified retention of Appellant's juvenile record, otherwise [***19] stated as "except upon cause shown." ***See*** *18 Pa.C.S.A. § 9123(a)*; ***In Interest of Jacobs, supra.***

[*P19] In deciding the Commonwealth had carried that burden, the trial court stated:

> At the time [Appellant] petitioned this court to expunge his record, he was twenty-four years old. Since his final discharge from probation, [Appellant] has not been convicted of a felony or misdemeanor or adjudicated delinquent and no proceeding was pending seeking such conviction or adjudication. For the past five years, [Appellant] has been attending Northampton Community College. According to [Appellant], he has been self-employed as a roofer. . .since he was eighteen years old. At the hearing on his Petition to Expunge, [Appellant] argued that this [c]ourt should expunge his record so that he can go on with his life and seek better employment; however, [Appellant] failed to present any substantive evidence of adverse consequences that he has suffered as a result of his juvenile record.
>
> The Commonwealth was opposed to the expungement. In support of its position, the Commonwealth **focused on the age** of [Appellant] at the time he committed the offense, as well as **the serious nature of the offense.** At the [**778] hearing [***20] the Commonwealth argued ". . .[Appellant] was basically selling drugs in school, [and] not just a minor amount. We're talking over a hundred pills of Ecstasy. I think that's very significant."

> Additionally, the Commonwealth drew the [c]ourt's attention to [*35 P.S. § 780-119(a)*]. . . .
>
> * * *
>
> Although [*35 P.S. § 780-119(a)*] does not specifically address the expungement of juvenile records, the Commonwealth argued since the Controlled Substance, Drug, Device and Cosmetic Act specifically prohibits the expungement of records where a person was charged with [PWID], we should not grant [Appellant's] Petition for Expungement.
>
> After carefully considering the ***[Wexler*** factors], we found that the Commonwealth had shown cause why [Appellant's] record should not be expunged. Although we commend [Appellant] on his efforts to turn his life around, we find that the particular facts of this case do not warrant an expungement. [Appellant] was seventeen years old when he committed the felony offense. This was not a situation where [Appellant] entered into a [c]onsent [d]ecree, rather [Appellant] admitted that he had committed the offense. Furthermore, **we find it significant that the drafters of the Controlled** [***21] **Substance, Drug, Device and Cosmetic Act chose to prohibit the expungement of records where a person was charged with [PWID].** As such, we find that [Appellant's] criminal record in this matter should not be expunged because there is a societal interest in retaining his record, namely, the protection of the public safety.

(Trial Court Opinion at 4-6) (emphasis added). We respectfully disagree with the court's analysis.

[*P20] Essentially, the court focused its review of Appellant's expungement petition on: (1) the nature of Appellant's juvenile offense in relation to *Section 780-119(a)* of the Controlled Substance, Drug, Device and Cosmetic Act; (2) the ***Wexler*** factors; (3) Appellant's age at the time of the offense; (4) Appellant's failure to articulate specific adverse consequences he has suffered as a result of his juvenile record; and (5) the fact that Appellant "admitted" to his juvenile offense.

[*P21] Initially, we observe the court's reliance on *Section 780-119(a)* is misplaced. *Section 780-119(a)* expressly relates to expungement of **criminal** offenses under the Controlled Substance, Drug, Device and Cosmetic Act, whereas *Section 9123(a)* specifically deals with expungement of juvenile adjudications. [***22] As both statutes address the subject of expungement, we must limit our application of the *Section 780-119(a)* to criminal offenses, not delinquent acts and juvenile proceedings. ***See In re J.H.,*** *1999 PA Super 200, 737 A.2d 275, 278 (Pa.Super. 1999)*, ***appeal denied,*** *562 Pa. 671, 753 A.2d 819 (2000)* (stating generally statute that expressly applies to crimes and criminal offenses must be limited to crimes and criminal offenses, whereas comparable juvenile statute on same subject will apply to juvenile acts and proceedings). To tolerate the court's reliance on *Section 780-119(a)*, we would have to ignore the express terms of that provision. ***See id.*** Under the Juvenile Act, however, Appellant was not charged with, indicted for, or convicted of committing PWID or any other criminal offense. Rather, the juvenile court adjudicated Appellant delinquent on a juvenile offense. ***See*** *42 Pa.C.S.A. § 6354(a)*; ***In re R.D.R., supra.*** In relying on *Section 780-119(a)*, the Commonwealth [**779] essentially treated Appellant's juvenile adjudication as synonymous with a criminal record, which blurred the fundamental and material differences between the Juvenile Code and the Crimes Code. ***See id.*** We expressly reject that parallel between [***23] Appellant's juvenile offense and *Section 780-119*. ***See In re K.J.V., supra; In re R.D.R., supra; In re S.A.S., supra.***

[*P22] Similarly, we observe the ***Wexler*** [2] factors contributed to the court's decision to deny Appellant's petition for expungement. We emphasize, however, that even the ***Wexler*** Court applied its factors test only to the adult expungement petitions before that Court, and declined to extend that analysis to the juvenile expungement petition at issue in the case. ***See Wexler, supra*** (holding hearing court abused its discretion by denying juvenile expungement petition where Commonwealth failed to assert sufficient overriding interest in retaining juvenile's arrest record; juvenile was seventeen at time of offense and had no prior criminal record, juvenile had not been involved in further criminal activity since her juvenile offense four years earlier, and juvenile gained employment as cashier). Thus, the court's consideration of the ***Wexler*** factors to deny Appellant's petition was also misplaced.

> 2 The ***Wexler*** Court set forth a non-exhaustive list of factors for the court's consideration on review of an adult expungement petition as follows: (1) the strength of the Commonwealth's case [***24] against the petitioner; (2) the reasons the Commonwealth gives for wishing to retain the records; (3) the petitioner's age, criminal record, and employment history; (4) the length of time that has elapsed between the arrest and the peti-

tion to expunge; and (5) the adverse consequences the petitioner may endure should expungement be denied. ***Wexler, supra*** *at 330, 431 A.2d at 879.*

[*P23] Both the Commonwealth and the court also focused on Appellant's age at the time of the juvenile offense and the facts of the offense. *Section 9123(a)(3)* places no limitations or restrictions on the type of juvenile offenses, which can be expunged under the statute. The Juvenile Act has already designated certain offenses, which are to be treated as adult crimes even if committed by a minor and fall outside the aegis of *Section 9123(a)*; and Appellant's offense was not one of them. ***See*** *42 Pa.C.S.A. § 6302.*

[*P24] The Commonwealth failed to present any specific legal theory to justify retention of Appellant's juvenile record. The focus on Appellant's age at the time of the offense is unavailing because the Juvenile Act and its derivative benefits specifically protect Appellant until his eighteenth birthday. ***See Hooks, supra.*** [***25] Thus, we cannot agree that Appellant's age at the time of his offense and the facts of his offense alone supplied sufficient "cause" to justify denial of his expungement petition. [3] To the contrary, the record makes clear Appellant did not evidence any unlawful behavior since his 1999 offense, and his conduct since his disposition appeared unlikely to presage adult criminal conduct. ***Compare In Interest of Jacobs, supra*** (holding Commonwealth showed cause to deny expungement petition of juvenile record where authorities had apprehended juvenile in women's dormitory in possession of butcher knife, length of clothes line, cloth, and wire gag; following completion of probation, juvenile displayed chronic delinquent behavior and course of conduct, including second arrest within less than two years on charges of burglary and related offenses). Moreover, Appellant had [**780] no record before his adjudications, he was a juvenile at the time of the offense, and subsequently he is living a law-abiding life. When Appellant filed his expungement petition, he worked a steady job, resided with his mother, and attended community college. Thus, Appellant demonstrated the conditions necessary to reasonably [***26] assure his redemption, consistent with the criteria in *Section 9123(a)(3)*. ***See id.***

3 The fact that Appellant "admitted" his offense should not be used against him at this juncture, where Appellant's admission streamlined the juvenile adjudication and spared the Commonwealth the time and expense associated with substantiating the charge.

[*P25] Further, we recognize there are numerous adverse consequences inherent in the existence of a juvenile record, including the elusive stigma attached to an adjudication of delinquency, which the expungement statute sought to eliminate. ***Id.*** Appellant met the statutory requirements for expungement; he had no additional burden to show specific adverse consequences suffered before relief could be granted. [4]

4 Questions regarding his juvenile record could arise in applications for military service, for higher education, as well as other contexts.

[*P26] Given the remedial nature of *Section 9123(a)*, Appellant was entitled to a liberal construction and application of the statute, while the "show cause" exception to the remedial provisions should have been narrowly construed against the Commonwealth as its proponent. ***See Wilgus, supra.*** Likewise, under the "shall" rule, *Section 9123(a)* [***27] favored expungement of Appellant's juvenile record because he met the criteria of *Section 9123(a)(3)*. Thus, we now hold if a juvenile petitioner satisfies the statutory requirements of *Section 9123(a)(3)*, the record must be expunged, unless the Commonwealth can show specific reasons to justify retention of that particular record. Mere assertion of generic policies such as accurate record keeping or public safety will not satisfy the "cause shown" exception. ***See In Interest of Jacobs, supra.***

[*P27] Based on the foregoing, we hold the trial court misapplied the law in denying Appellant's expungement petition, where Appellant met the criteria for expungement under *Section 9123(a)(3)*; and the Commonwealth failed to show cause to deny expungement and retain Appellant's juvenile record. Accordingly, we reverse and remand the matter with directions to expunge Appellant's juvenile record.

[*P28] Order reversed; case remanded. Jurisdiction is relinquished.

[*P29] JUDGE KLEIN FILES A DISSENTING OPINION IN WHICH JUDGE STEVENS JOINS.

DISSENT BY: KLEIN

DISSENT

DISSENTING OPINION BY KLEIN, J.:

[*P1] I agree with the majority that there is no automatic expungement of juvenile records if five years have elapsed from the juvenile disposition and [***28] the person has no further convictions or adjudications and no criminal actions are pending. *18 Pa.C.S.A. § 9123(a)(3)*. "Cause shown" is an exception which, if established by the Commonwealth, preempts *subsections (1)-(4)*.

[*P2] The standard of review then becomes whether the trial judge in this case abused her discretion

in finding that the Commonwealth has shown cause why this adjudication should not be expunged. However, I disagree with the majority's conclusion that there was an abuse of discretion in this case. I believe that the distinguished trial judge, the Honorable Margherita Patti Worthington, was well within her discretion in finding that because of the nature of the crime and the fact that the defendant was less than a year shy of his 18th birthday when the offenses occurred, the Commonwealth did show due cause.

[**781] [*P3] If the crime were committed a few months later, then it is clear that there could be no expungement. As Judge Worthington noted in her *1925(a)* opinion, under *Section 780-119* of the Controlled Substance, Drug, Device and Cosmetic Act, *35 P.S. § 780-119(a)*, even arrests without convictions for the crime committed in the instance case would prohibit an adult from obtaining [***29] expungement. This was not just an arrest with a dismissal of charges or a consent decree. There was an adjudication of delinquency based on the possession with intent to deliver drugs. The crime was serious. It involved the possession with intent to deliver a large number of illegal drugs at a school by a 17- year-old.

[*P4] Therefore, Judge Worthington, after considering the statutory factors, in particular the seriousness of the crime, as well as the fact that an adult charged with this offense is precluded from expungement even if acquitted and that A.B. was less than one year shy of adulthood, properly denied expungement. Whether or not I or any other judge would have made the same determination, such a conclusion was well within Judge Worthington's discretion in determining that the Commonwealth established cause to deny expungement. Accordingly, I believe the trial judge's order should be affirmed, and I must respectfully dissent.

130 S. Ct. 1473, *; 176 L. Ed. 2d 284, **;
2010 U.S. LEXIS 2928, ***; 22 Fla. L. Weekly Fed. S 211

JOSE PADILLA, Petitioner v. KENTUCKY

No. 08-651

SUPREME COURT OF THE UNITED STATES

130 S. Ct. 1473*; *176 L. Ed. 2d 284*; *2010 U.S. LEXIS 2928*; *22 Fla. L. Weekly Fed. S 211

October 13, 2009, Argued
March 31, 2010, Decided

NOTICE:

The LEXIS pagination of this document is subject to change pending release of the final published version.

PRIOR HISTORY: [***1]

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY.

Commonwealth v. Padilla, 253 S.W.3d 482, 2008 Ky. LEXIS 3 (Ky., 2008)

DISPOSITION: Reversed and remanded.

DECISION:

[**284] Counsel's alleged failure to correctly advise alien legal permanent resident of United States, before he pleaded guilty to trafficking in marijuana, that this was deportable offense under Immigration and Naturalization Act provision (*8 U.S.C.S. § 1227(a)(2)(B)(i)*) held to be deficient assistance under *Sixth Amendment*.

SUMMARY:

Procedural posture: Defendant, who pleaded guilty to drug charges, sought postconviction relief based on ineffective assistance of counsel. The Supreme Court of Kentucky denied relief. The United States Supreme Court granted certiorari.

Overview: Defendant was a lawful permanent resident who pleaded guilty to transporting marijuana. His crime was a removable offense under *8 U.S.C.S. § 1227(a)(2)(B)(i)*. He claimed that his counsel incorrectly told him prior to entry of his plea that he did not have to worry about immigration status because he had been in the United States for so long. The state court held that the *Sixth Amendment* did not protect defendant from erroneous advice about deportation because it was merely a collateral consequence of his conviction. The Supreme Court held that the distinction between collateral and direct consequences was ill-suited to the deportation context, so advice regarding deportation was not categorically removed from the ambit of the *Sixth Amendment*. Counsel's alleged failure to correctly advise defendant of the deportation consequences of his guilty plea amounted to constitutionally deficient assistance under prevailing professional norms, as the consequences could easily have been determined from reading the removal statute. Whether defendant was entitled to relief depended on whether he could demonstrate prejudice, a matter for the state courts to consider in the first instance.

[**285] **Outcome:** The state court's judgment was reversed, and the matter was remanded for further proceedings. 7-2 decision; one concurrence in the judgment, one dissent.

LAWYERS' EDITION HEADNOTES:

[**LEdHN1]

ALIENS §25.5

REMOVABLE OFFENSE -- RELIEF -- CONTROLLED SUBSTANCE

Headnote:[1]

If a noncitizen has committed a removable offense after the 1996 effective date of amendments to the Immigration and Nationality Act, his removal is practically inevitable but for the possible exercise of limited remnants of equitable discretion vested in the Attorney General to cancel removal for noncitizens convicted of particular classes of offenses. *8 U.S.C.S. § 1229b*. Subject to limited exceptions, this discretionary relief is not available for an offense related to trafficking in a controlled substance. *8 U.S.C.S. §§1101(a)(43)(B), 1228*. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN2]

ALIENS §25.5

DEPORTATION -- SPECIFIED CRIMES

Headnote:[2]

As a matter of federal law, deportation is an integral part--indeed, sometimes the most important part--of the

penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN3]

CRIMINAL LAW §46.4

GUILTY PLEA -- COUNSEL

Headnote:[3]

Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN4]

ALIENS §33

DEPORTATION -- CRIMINAL SANCTION -- CIVIL PROCEEDING

Headnote:[4]

Deportation is a particularly severe "penalty," but it is not, in a strict sense, a criminal sanction. Although removal proceedings are civil in nature, deportation is nevertheless intimately related to the criminal process. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN5]

CRIMINAL LAW §46.4 CRIMINAL LAW §46.7

DEPORTATION -- ASSISTANCE OF COUNSEL -- EFFECTIVENESS

Headnote:[5]

Deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence. The collateral versus direct distinction is thus ill-suited to evaluating a Strickland claim concerning the specific risk of deportation. Advice regarding deportation is not categorically removed from the ambit of the *Sixth Amendment* right to counsel. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN6]

CRIMINAL LAW §46.7

COUNSEL -- INEFFECTIVE ASSISTANCE -- STANDARDS

Headnote:[6]

Under Strickland, a court first determines whether counsel's representation fell below an objective standard of reasonableness. Then the court asks whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have [**286] been different. The first prong--constitutional deficiency--is necessarily linked to the practice and expectations of the legal community: The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. Prevailing norms of practice as reflected in American Bar Association standards and the like are guides to determining what is reasonable. Although they are only guides and not "inexorable commands," these standards may be valuable measures of the prevailing professional norms of effective representation, especially as these standards have been adapted to deal with the intersection of modern criminal prosecutions and immigration law. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN7]

CRIMINAL LAW §46.7

DEPORTATION -- ADVICE FROM COUNSEL

Headnote:[7]

Counsel must advise a criminal client regarding the risk of deportation. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN8]

ALIENS §25.5

DEPORTABILITY -- CONTROLLED SUBSTANCE

Headnote:[8]

See *8 U.S.C.S. § 1227(a)(2)(B)(i)*, which provides in part: "Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States or a foreign country relating to a controlled substance . . . , other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable." (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN9]

CRIMINAL LAW §46.7

ADVICE FROM COUNSEL -- DEPORTATION

Headnote:[9]

When the law is not succinct and straightforward, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, the duty to give correct advice is equally clear. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN10]

CRIMINAL LAW §46.7

INEFFECTIVE ASSISTANCE OF COUNSEL -- DEPORTATION

Headnote:[10]

It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation and the failure to do so clearly satisfies the first prong of the Strickland analysis. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN11]

CRIMINAL LAW §46.7

COUNSEL'S PERFORMANCE -- SCRUTINY

Headnote:[11]

Judicial scrutiny of counsel's performance must be highly deferential. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN12]

CRIMINAL LAW §46.7

INEFFECTIVE ASSISTANCE OF COUNSEL -- GUILTY PLEA

Headnote:[12]

To obtain relief on an ineffective assistance claim involving a guilty plea, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.) [**287]

[**LEdHN13]

CRIMINAL LAW §46.7

COUNSEL -- EFFECTIVE ASSISTANCE -- PLEA BARGAIN -- DEPORTATION

Headnote:[13]

The negotiation of a plea bargain is a critical phase of litigation for purposes of the *Sixth Amendment* right to effective assistance of counsel. The severity of deportation--the equivalent of banishment or exile--only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[**LEdHN14]

CRIMINAL LAW §46.7

INCOMPETENT COUNSEL -- CLIENT'S RISK OF DEPORTATION

Headnote:[14]

It is the United States Supreme Court's responsibility under the U.S. Constitution to ensure that no criminal defendant--whether a citizen or not--is left to the mercies of incompetent counsel. Counsel must inform her client whether his plea carries a risk of deportation. (Stevens, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

SYLLABUS

[*1475] [**288] Petitioner Padilla, a lawful permanent resident of the United States for over 40 years, faces deportation after pleading guilty to drug-distribution charges in Kentucky. In postconviction proceedings, he claims that his counsel not only failed to advise him of this consequence before he entered the plea, but also told him not to worry about deportation since he had lived [*1476] in this country so long. He alleges that he would have gone to trial had he not received this incorrect advice. The Kentucky Supreme Court denied Padilla postconviction relief on the ground that the *Sixth Amendment's* effective-assistance-of-counsel guarantee does not protect defendants from erroneous deportation advice because deportation is merely a "collateral" consequence of a conviction.

Held: Because counsel must inform a client whether his plea carries a risk of deportation, Padilla has sufficiently alleged that his counsel was constitutionally deficient. Whether he is entitled to relief depends on whether he has been prejudiced, a matter not addressed here. Pp. ___-___, *176 L. Ed. 2d, at 290-299.*

(a) Changes to immigration law have dramatically raised [***2] the stakes of a noncitizen's criminal conviction. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms have expanded the class of deportable offenses and limited judges' authority to alleviate deportation's harsh consequences. Because the drastic measure of deportation or removal is now virtually inevitable for a vast number of noncitizens convicted of crimes, the importance of accurate legal advice for noncitizens accused of crimes has

never been more important. Thus, as a matter of federal law, deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes. Pp. ___-___, *176 L. Ed. 2d, at 290-293.*

(b) *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674*, applies to Padilla's claim. Before deciding whether to plead guilty, a defendant is entitled to "the effective assistance of competent counsel." *McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763.* The Supreme Court of Kentucky rejected Padilla's ineffectiveness claim on the ground that the advice he sought about deportation concerned only collateral matters. However, this Court has never distinguished between direct and [***3] collateral consequences in defining the scope of constitutionally "reasonable professional assistance" required under *Strickland, 466 U.S., at 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674.* The question whether that distinction is appropriate need not be considered in this case because of the unique nature of deportation. Although removal proceedings are civil, deportation is intimately related to the criminal process, which makes it uniquely difficult to classify as either a direct or a collateral consequence. Because that distinction is thus ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation, advice regarding deportation is not categorically removed from the ambit of the *Sixth Amendment* right to counsel. Pp. ___-___, *176 L. Ed. 2d, at 293-294.*

(c) To satisfy *Strickland*'s two-prong inquiry, counsel's representation [**289] must fall "below an objective standard of reasonableness," *466 U.S., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674*, and there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id., at 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674.* The first, constitutional deficiency, is necessarily linked to the legal community's practice and expectations. *Id., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674.* The weight of prevailing professional norms supports [***4] the view that counsel must advise her client regarding the deportation risk. And this Court has recognized the importance to the client of " '[p]reserving the . . . right to remain in the United States' " and "preserving the possibility of" discretionary relief from deportation. *INS v. St. Cyr, 533 U.S. 289, 323, 121 S. Ct. 2271, 150 L. Ed. 2d 347.* Thus, this is not a hard case in which to find deficiency: The consequences of Padilla's plea could easily be determined [*1477] from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect. There will, however, undoubtedly be numerous situations in which the deportation consequences of a plea are unclear. In those cases, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry adverse immigration consequences. But when the deportation consequence is truly clear, as it was here, the duty to give correct advice is equally clear. Accepting Padilla's allegations as true, he has sufficiently alleged constitutional deficiency to satisfy *Strickland*'s first prong. Whether he can satisfy the second prong, prejudice, is left for the Kentucky courts to consider in the first instance. [***5] Pp. ___-___, *176 L. Ed. 2d, at 294-296.*

(d) The Solicitor General's proposed rule--that *Strickland* should be applied to Padilla's claim only to the extent that he has alleged affirmative misadvice--is unpersuasive. And though this Court must be careful about recognizing new grounds for attacking the validity of guilty pleas, the 25 years since *Strickland* was first applied to ineffective-assistance claims at the plea stage have shown that pleas are less frequently the subject of collateral challenges than convictions after a trial. Also, informed consideration of possible deportation can benefit both the State and noncitizen defendants, who may be able to reach agreements that better satisfy the interests of both parties. This decision will not open the floodgates to challenges of convictions obtained through plea bargains. Cf. *Hill v. Lockhart, 474 U.S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d 203.* Pp. ___-___, *176 L. Ed. 2d, at 296-299.*

253 S. W. 3d 482, reversed and remanded.

COUNSEL: Stephen B. Kinnaird argued the cause for petitioner.

Michael R. Dreeben argued the cause for the United States, as amicus curiae, by special leave of court.

Wm. Robert Long, Jr., argued the cause for respondent.

JUDGES: Stevens, J., delivered the opinion of the Court, in which Kennedy, Ginsburg, Breyer, and Sotomayor, JJ., joined. Alito, J., filed an opinion concurring in the judgment, in which Roberts, C. J., joined. Scalia, J., filed a dissenting opinion, in which Thomas, J., joined.

OPINION BY: STEVENS

OPINION

Justice **Stevens** delivered [***6] the opinion of the Court.

Petitioner Jose Padilla, a native of Honduras, has been a lawful permanent resident of the United States for more than 40 years. Padilla served [**290] this Nation with honor as a member of the U. S. Armed Forces dur-

ing the Vietnam War. He now faces deportation after pleading guilty to the transportation of a large amount of marijuana in his tractor-trailer in the Commonwealth of Kentucky.[1]

1 Padilla's crime, like virtually every drug offense except for only the most insignificant marijuana offenses, is a deportable offense under *8 U.S.C. § 1227(a)(2)(B)(i)*.

[*1478] In this postconviction proceeding, Padilla claims that his counsel not only failed to advise him of this consequence prior to his entering the plea, but also told him that he " 'did not have to worry about immigration status since he had been in the country so long.' " *253 S. W. 3d 482, 483 (Ky. 2008)*. Padilla relied on his counsel's erroneous advice when he pleaded guilty to the drug charges that made his deportation virtually mandatory. He alleges that he would have insisted on going to trial if he had not received incorrect advice from his attorney.

Assuming the truth of his allegations, the Supreme Court of Kentucky [***7] denied Padilla postconviction relief without the benefit of an evidentiary hearing. The court held that the *Sixth Amendment's* guarantee of effective assistance of counsel does not protect a criminal defendant from erroneous advice about deportation because it is merely a "collateral" consequence of his conviction. *Id., at 485*. In its view, neither counsel's failure to advise petitioner about the possibility of removal, nor counsel's incorrect advice, could provide a basis for relief.

We granted certiorari, *555 U.S. ___, 129 S. Ct. 1317, 173 L. Ed. 2d 582 (2009)*, to decide whether, as a matter of federal law, Padilla's counsel had an obligation to advise him that the offense to which he was pleading guilty would result in his removal from this country. We agree with Padilla that constitutionally competent counsel would have advised him that his conviction for drug distribution made him subject to automatic deportation. Whether he is entitled to relief depends on whether he has been prejudiced, a matter that we do not address.

I

The landscape of federal immigration law has changed dramatically over the last 90 years. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority [***8] to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The "drastic measure" of deportation or removal, *Fong Haw Tan v. Phelan, 333 U.S. 6, 10, 68 S. Ct. 374, 92 L. Ed. 433 (1948)*, is now virtually inevitable for a vast number of noncitizens convicted of crimes.

The Nation's first 100 years was "a period of unimpeded immigration." C. Gordon & H. Rosenfield, Immigration Law and Procedure § 1.(2)(a), p. 5 (1959). An early effort to empower the President to order the deportation of those immigrants he "judge[d] dangerous to the peace and safety of the United States," Act of June 25, 1798, ch. 58, 1 Stat. 571, was short lived and unpopular. Gordon § 1.2, at 5. It was not until 1875 that Congress first passed a statute barring convicts and prostitutes from entering the country, Act of Mar. 3, 1875, ch. 141, 18 Stat. 477. Gordon § 1.2b, at 6. In 1891, Congress added to the list of excludable persons those "who have been [**291] convicted of a felony or other infamous crime or misdemeanor involving moral turpitude." Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084.[2]

2 In 1907, Congress expanded the class [***9] of excluded persons to include individuals who "admit" to having committed a crime of moral turpitude. Act of Feb. 20, 1907, ch. 1134, 34 Stat. 899.

The Immigration and Nationality Act of 1917 (1917 Act) brought "radical changes" [*1479] to our law. S. Rep. No. 1515, 81st Cong., 2d Sess., pp. 54-55 (1950). For the first time in our history, Congress made classes of noncitizens deportable based on conduct committed on American soil. *Id.*, at 55. Section 19 of the 1917 Act authorized the deportation of "any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States . . . ." 39 Stat. 889. And § 19 also rendered deportable noncitizen recidivists who commit two or more crimes of moral turpitude at any time after entry. *Ibid.* Congress did not, however, define the term "moral turpitude."

While the 1917 Act was "radical" because it authorized deportation as a consequence of certain convictions, the Act also included a critically important procedural protection to minimize the risk of unjust deportation: At the time of sentencing [***10] or within 30 days thereafter, the sentencing judge in both state and federal prosecutions had the power to make a recommendation "that such alien shall not be deported." *Id.*, at 890.[3] This procedure, known as a judicial recommendation against deportation, or JRAD, had the effect of binding the Executive to prevent deportation; the statute was "consistently . . . interpreted as giving the sentencing judge conclusive authority to decide whether a particular conviction should be disregarded as a basis for deportation," *Janvier v. United States, 793 F.2d 449, 452 (CA2 1986)*. Thus, from 1917 forward, there was no such creature as an automatically deportable offense. Even as the class of

deportable offenses expanded, judges retained discretion to ameliorate unjust results on a case-by-case basis.

3 As enacted, the statute provided:

"That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days [***11] thereafter, . . . make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act." 1917 Act, 39 Stat. 889-890.

This provision was codified in *8 U.S.C. § 1251(b) (1994 ed.)* (transferred to *§ 1227* (2006 ed.)). The judge's nondeportation recommendation was binding on the Secretary of Labor and, later, the Attorney General after control of immigration removal matters was transferred from the former to the latter. See *Janvier v. United States, 793 F.2d 449, 452 (CA2 1986)*.

Although narcotics offenses--such as the offense at issue in this case--provided a distinct basis for deportation as early as 1922,[4] the JRAD procedure was generally available [**292] to avoid deportation in narcotics convictions. See *United States v. O'Rourke, 213 F.2d 759, 762 (CA8 1954)*. Except for "technical, inadvertent and insignificant violations of the laws relating to narcotics," *ibid.*, it appears that courts treated narcotics offenses as crimes involving [*1480] moral turpitude for purposes of the 1917 Act's broad JRAD provision. See *ibid.* (recognizing that until 1952 a JRAD in a narcotics case "was effective to prevent deportation" (citing *Dang Nam v. Bryan, 74 F.2d 379, 380-381 (CA9 1934)*)).

4 Congress [***12] first identified narcotics offenses as a special category of crimes triggering deportation in the 1922 Narcotic Drug Act. Act of May 26, 1922, ch. 202, 42 Stat. 596. After the 1922 Act took effect, there was some initial confusion over whether a narcotics offense also had to be a crime of moral turpitude for an individual to be deportable. See *Weedin v. Moy Fat, 8 F.2d 488, 489 (CA9 1925)* (holding that an individual who committed narcotics offense was not deportable because offense did not involve moral turpitude). However, lower courts eventually agreed that the narcotics offense provision was "special," *Chung Que Fong v. Nagle, 15 F.2d 789, 790 (CA9 1926)*; thus, a narcotics offense did not need also to be a crime of moral turpitude (or to satisfy other requirements of the 1917 Act) to trigger deportation. See *United States ex rel. Grimaldi v. Ebey, 12 F.2d 922, 923 (CA7 1926)*; *Todaro v. Munster, 62 F.2d 963, 964 (CA10 1933)*.

In light of both the steady expansion of deportable offenses and the significant ameliorative effect of a JRAD, it is unsurprising that, in the wake of *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*, the Second Circuit held that the *Sixth Amendment* right to effective [***13] assistance of counsel applies to a JRAD request or lack thereof, see *Janvier, 793 F.2d 449*. See also *United States v. Castro, 26 F.3d 557 (CA5 1994)*. In its view, seeking a JRAD was "part of the sentencing" process, *Janvier, 793 F.2d, at 452*, even if deportation itself is a civil action. Under the Second Circuit's reasoning, the impact of a conviction on a noncitizen's ability to remain in the country was a central issue to be resolved during the sentencing process--not merely a collateral matter outside the scope of counsel's duty to provide effective representation.

However, the JRAD procedure is no longer part of our law. Congress first circumscribed the JRAD provision in the 1952 Immigration and Nationality Act (INA),[5] and in 1990 Congress entirely eliminated it, 104 Stat. 5050. In 1996, Congress also eliminated the Attorney General's authority to grant discretionary relief from deportation, 110 Stat. 3009-596, an authority that had been exercised to prevent the deportation of over 10,000 noncitizens during the 5-year period prior to 1996, *INS v. St. Cyr, 533 U.S. 289, 296, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)*. Under contemporary law, [**LEdHR1] [1] if a noncitizen has committed a removable offense after the 1996 effective [***14] date of these amendments, his removal is practically inevitable but for the possible exercise of limited remnants of equitable discretion vested in the Attorney General to cancel removal for noncitizens convicted of particular classes of offenses.[6] See *8 U.S.C. § 1229b*. Subject to limited exceptions, this discretionary relief is not available for an offense related to trafficking in a controlled substance. See *§ 1101(a)(43)(B)*; *§ 1228*.

5 The Act separately codified the moral turpitude offense provision and the narcotics offense provision within *8 U.S.C. § 1251(a) (1994 ed.)* under subsections (a)(4) and (a)(11), respectively. See 66 Stat. 201, 204, 206. The JRAD procedure, codified in *8 U.S.C. § 1251(b) (1994 ed.)*, applied only to the "provisions of subsection (a)(4)," the crimes-of-moral-turpitude provision. 66 Stat. 208; see *United States v. O'Rourke, 213 F.2d 759, 762 (CA8 1954)* (recognizing that, under the 1952 Act, narcotics offenses were no longer eligible for JRADs).

6 The changes to our immigration law have also involved a change in nomenclature; the statutory text now uses the term "removal" rather than "deportation." See *Calcano-Martinez v. INS, 533 U.S. 348, 350, n. 1, 121 S. Ct. 2268, 150 L. Ed. 2d 392 (2001)*.

These [***15] changes to our immigration law have dramatically raised the stakes of a noncitizen's criminal conviction. The importance of accurate legal advice for noncitizens accused of [**293] crimes has never been more important. These changes confirm our view that, [**LEdHR2] [2] as a matter of federal law, deportation is an integral part--indeed, sometimes the most important part[7] --of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.

7 See Brief for Asian American Justice Center et al. as *Amici Curiae* 12-27 (providing real-world examples).

II

[**LEdHR3] [3] Before deciding whether to plead guilty, a defendant is entitled to "the effective [*1481] assistance of competent counsel." *McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)*; *Strickland, 466 U.S., at 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. The Supreme Court of Kentucky rejected Padilla's ineffectiveness claim on the ground that the advice he sought about the risk of deportation concerned only collateral matters, *i.e.*, those matters not within the sentencing authority of the state trial court.[8] *253 S. W. 3d, at 483-484* (citing *Commonwealth v. Fuartado, 170 S. W. 3d 384 (2005)*). In its view, "collateral consequences are outside the scope of representation required by the *Sixth Amendment*," [***16] and, therefore, the "failure of defense counsel to advise the defendant of possible deportation consequences is not cognizable as a claim for ineffective assistance of counsel." *253 S. W. 3d, at 483*. The Kentucky high court is far from alone in this view.[9]

8 There is some disagreement among the courts over how to distinguish between direct and collateral consequences. See Roberts, Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process, *95 Iowa L. Rev. 119, 124, n. 15 (2009)*. The disagreement over how to apply the direct/collateral distinction has no bearing on the disposition of this case because, as even Justice Alito agrees, counsel must, at the very least, advise a noncitizen "defendant that a criminal conviction may have adverse immigration consequences," *post, at ___, 176 L. Ed. 2d, at 299* (opinion concurring in judgment). See also *post, at ___, 176 L. Ed. 2d, at 307* ("I do not mean to suggest that the *Sixth Amendment* does no more than require defense counsel to avoid misinformation"). In his concurring opinion, Justice Alito has thus departed from the strict rule applied by the Supreme Court of Kentucky and in the two federal cases that he cites, *post, at ___, 176 L. Ed. 2d, at 300*.

9 See, *e.g.*, [***17] *United States v. Gonzalez, 202 F.3d 20 (CA1 2000)*; *United States v. Del Rosario, 902 F.2d 55, 284 U.S. App. D.C. 90 (CADC 1990)*; *United States v. Yearwood, 863 F.2d 6 (CA4 1988)*; *Santos-Sanchez v. United States, 548 F.3d 327 (CA5 2008)*; *Broomes v. Ashcroft, 358 F.3d 1251 (CA10 2004)*; *United States v. Campbell, 778 F.2d 764 (CA11 1985)*; *Oyekoya v. State, 558 So. 2d 990 (Ala. Ct. Crim. App. 1989)*; *State v. Rosas, 183 Ariz. 421, 904 P.2d 1245 (App. 1995)*; *State v. Montalban, 2000-2739 (La. 2/26/02), 810 So. 2d 1106*; *Commonwealth v. Frometa, 520 Pa. 552, 555 A.2d 92 (1989)*.

We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally "reasonable professional assistance" required under *Strickland, 466 U.S., at 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. Whether that distinction is appropriate is a question we need not consider in this case because of the unique nature of deportation.

We have long recognized that [**LEdHR4] [4] deportation is a particularly severe "penalty," *Fong Yue Ting v. United States, 149 U.S. 698, 740, 13 S. Ct. 1016, 37 L. Ed. 905 (1893)*; but it is not, in a strict sense, a criminal sanction. Although removal proceedings are civil in nature, see *INS v. Lopez-Mendoza, 468 U.S. 1032, 1038, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984)*, deportation [***18] is nevertheless intimately related to the criminal process. Our law has enmeshed criminal convictions and the penalty of deportation [**294] for nearly a century, see Part I, *supra, at ___-___, 176 L. Ed. 2d, at 290-293*. And, importantly, recent changes in our immigration law have made removal nearly an automatic result for a broad class of noncitizen offenders. Thus, we find it "most difficult" to divorce the penalty from the conviction in the deportation context. *United States v. Russell, 686 F.2d 35, 38, 222 U.S. App. D.C. 313 (CADC 1982)*. Moreover, we are quite confident that noncitizen defendants facing a risk of deportation for a particular offense find it even more difficult. See *St. Cyr, 533 U.S., at 322, 121 S. Ct. 2271, 150 L. Ed. 2d 347* ("There can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the [*1482] immigration consequences of their convictions").

[**LEdHR5] [5] Deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence. The collateral versus direct distinction is thus ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation. We conclude that [***19] advice regarding deportation is not categorically removed from the ambit of the *Sixth Amendment* right to counsel. *Strickland*applies to Padilla's claim.

III

[**LEdHR6] [6] Under *Strickland*, we first determine whether counsel's representation "fell below an objective standard of reasonableness." *466 U.S., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. Then we ask whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id., at 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. The first prong--constitutional deficiency--is necessarily linked to the practice and expectations of the legal community: "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. We long have recognized that "[p]revailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable . . . ." *Ibid.;Bobby v. Van Hook, 558 U.S. ___, ___, 130 S. Ct. 13, 175 L. Ed. 2d 255 (2009) (per curiam)*; *Florida v. Nixon, 543 U.S. 175, 191, and n. 6, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004)*; *Wiggins v. Smith, 539 U.S. 510, 524, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003)*; *Williams v. Taylor, 529 U.S. 362, 396, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)*. Although they are "only guides," *Strickland, 466 U.S., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674*, and [***20] not "inexorable commands," *Bobby, 558 U.S., at ___, 130 S. Ct. 13, 175 L. Ed. 2d 255*, these standards may be valuable measures of the prevailing professional norms of effective representation, especially as these standards have been adapted to deal with the intersection of modern criminal prosecutions and immigration law.

The weight of prevailing professional norms supports the view that [**LEdHR7] [7] counsel must advise her client regarding the risk of deportation. National Legal Aid and Defender Assn., Performance Guidelines for Criminal Representation § 6.2 (1995); G. Herman, Plea Bargaining § 3.03, pp. 20-21 (1997); Chin & Holmes, Effective Assistance of Counsel and the Consequences of Guilty Pleas, *87 Cornell L. Rev. 697, 713-718 (2002)*; A. Campbell, Law of Sentencing [**295] § 13:23, pp. 555, 560 (3d ed. 2004); Dept. of Justice, Office of Justice Programs, 2 Compendium of Standards for Indigent Defense Systems, Standards for Attorney Performance, pp. D10, H8-H9, J8 (2000) (providing survey of guidelines across multiple jurisdictions); ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-5.1(a), p. 197 (3d ed. 1993); ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(f), p. 116 (3d [***21] ed. 1999). "[A]uthorities of every stripe--including the American Bar Association, criminal defense and public defender organizations, authoritative treatises, and state and city bar publications--universally require defense attorneys to advise as to the risk of deportation consequences for non-citizen clients . . . ." Brief for Legal Ethics, Criminal Procedure, and Criminal Law Professors as *Amici Curiae* 12-14 (footnotes omitted) (citing, *inter alia*, National Legal Aid and Defender Assn., Guidelines, *supra,* §§ 6.2-6.4 (1997); S. Bratton & E. Kelley, Practice Points: Representing a Noncitizen in a Criminal Case, 31 The Champion 61 (Jan./Feb. 2007); N. Tooby, Criminal Defense of Immigrants [*1483] § 1.3 (3d ed. 2003); 2 Criminal Practice Manual §§ 45:3, 45:15 (2009)).

We too have previously recognized that " '[p]reserving the client's right to remain in the United States may be more important to the client than any potential jail sentence.' " *St. Cyr, 533 U.S., at 323, 121 S. Ct. 2271, 150 L. Ed. 2d 347* (quoting *3 Criminal Defense Techniques §§ 60A.01, 60A.02[2]* (1999)). Likewise, we have recognized that "preserving the possibility of" discretionary relief from deportation under § 212(c) of the 1952 INA, 66 Stat. 187, repealed [***22] by Congress in 1996, "would have been one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial." *St. Cyr, 533 U.S., at 323, 121 S. Ct. 2271, 150 L. Ed. 2d 347*. We expected that counsel who were unaware of the discretionary relief measures would "follo[w] the advice of numerous practice guides" to advise themselves of the importance of this particular form of discretionary relief. *Ibid.,* n. 50.

In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction. See *8 U.S.C. § 1227(a)(2)(B)(i)* ([**LEdHR8] [8] "Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States or a foreign country relating to a controlled substance . . . , other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable"). Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, which addresses not some broad classification of crimes but specifically commands [***23] removal for all controlled substances convictions except for the most trivial of marijuana possession offenses. Instead, Padilla's counsel provided him false assurance that his conviction would not result in his

removal from this country. This is not a hard case in which to find deficiency: The consequences of Padilla's plea could easily be determined from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect.

Immigration law can be complex, [**296] and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. [**LEdHR9] [9] When the law is not succinct and straightforward (as it is in many of the scenarios posited by Justice Alito), a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences.[10] But when the deportation consequence [***24] is truly clear, as it was in this case, the duty to give correct advice is equally clear.

> 10 As Justice Alito explains at length, deportation consequences are often unclear. Lack of clarity in the law, however, does not obviate the need for counsel to say something about the possibility of deportation, even though it will affect the scope and nature of counsel's advice.

Accepting his allegations as true, Padilla has sufficiently alleged constitutional deficiency to satisfy the first prong of *Strickland.* Whether Padilla is entitled to relief on his claim will depend on whether he can satisfy *Strickland*'s second prong, prejudice, [*1484] a matter we leave to the Kentucky courts to consider in the first instance.

IV

The Solicitor General has urged us to conclude that *Strickland* applies to Padilla's claim only to the extent that he has alleged affirmative misadvice. In the United States' view, "counsel is not constitutionally required to provide advice on matters that will not be decided in the criminal case . . . ," though counsel is required to provide accurate advice if she chooses to discusses these matters. Brief for United States as *Amicus Curiae* 10.

Respondent and Padilla both find the Solicitor [***25] General's proposed rule unpersuasive, although it has support among the lower courts. See, *e.g.*, *United States v. Couto, 311 F.3d 179, 188 (CA2 2002)*; *United States v. Kwan, 407 F.3d 1005 (CA9 2005)*; *Sparks v. Sowders, 852 F.2d 882 (CA6 1988)*; *United States v. Russell, 686 F.2d 35, 222 U.S. App. D.C. 313 (CADC 1982)*; *State v. Rojas-Martinez, 2005 UT 86, 125 P. 3d 930, 935*; *In re Resendiz, 25 Cal. 4th 230, 105 Cal. Rptr. 2d 431, 19 P. 3d 1171 (2001)*. Kentucky describes these decisions isolating an affirmative misadvice claim as "result-driven, incestuous . . . [,and] completely lacking in legal or rational bases." Brief for Respondent 31. We do not share that view, but we agree that there is no relevant difference "between an act of commission and an act of omission" in this context. *Id.*, at 30; *Strickland, 466 U.S., at 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674* ("The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance"); see also *State v. Paredez, 2004-NMSC-036, 2004 NMSC 36, 136 N. M. 533, 538-539, 101 P.3d 799.*

A holding limited to affirmative misadvice would invite two absurd results. First, it would give counsel an incentive to remain silent on matters of great importance, even [***26] when answers are readily available. Silence under these circumstances would be fundamentally at odds with the critical obligation of counsel to advise the client of "the advantages and disadvantages of a plea agreement." *Libretti* [**297] *v. United States, 516 U.S. 29, 50-51, 116 S. Ct. 356, 133 L. Ed. 2d 271 (1995).* When attorneys know that their clients face possible exile from this country and separation from their families, they should not be encouraged to say nothing at all.[11] Second, it would deny a class of clients least able to represent themselves the most rudimentary advice on deportation even when it is readily available. [**LEdHR10] [10] It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation and the failure to do so "clearly satisfies the first prong of the *Strickland* analysis." *Hill v. Lockhart, 474 U.S. 52, 62, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)* (White, J., concurring in judgment).

> 11 As the Commonwealth conceded at oral argument, were a defendant's lawyer to know that a particular offense would result in the client's deportation and that, upon deportation, the client and his family might well be killed due to circumstances in the client's home country, any decent attorney would inform the client [***27] of the consequences of his plea. Tr. of Oral Arg. 37-38. We think the same result should follow when the stakes are not life and death but merely "banishment or exile," *Delgadillo v. Carmichael, 332 U.S. 388, 390-391, 68 S. Ct. 10, 92 L. Ed. 17 (1947).*

We have given serious consideration to the concerns that the Solicitor General, respondent, and *amici* have stressed regarding the importance of protecting the finality of convictions obtained through guilty pleas. We confronted a similar "floodgates" concern in *Hill*, see *id., at 58, 106 S. Ct. 366, 88 L. Ed. 2d 203*, but nevertheless

applied [*1485] *Strickland* to a claim that counsel had failed to advise the client regarding his parole eligibility before he pleaded guilty.[12]

> 12 However, we concluded that, even though *Strickland* applied to petitioner's claim, he had not sufficiently alleged prejudice to satisfy *Strickland*'s second prong. *Hill, 474 U.S., at 59-60, 106 S. Ct. 366, 88 L. Ed. 2d 203*. This disposition further underscores the fact that it is often quite difficult for petitioners who have acknowledged their guilt to satisfy *Strickland*'s prejudice prong.
>
> Justice Alito believes that the Court misreads Hill, *post, at ___-___, 176 L. Ed. 2d, at 305*. In Hill, the Court recognized--for the first time--that Strickland applies to advice respecting a guilty plea. [***28] *474 U.S., at 58, 106 S. Ct. 366, 88 L. Ed. 2d 203* ("We hold, therefore, that the two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel"). It is true that Hill does not control the question before us. But its import is nevertheless clear. Whether Strickland applies to Padilla's claim follows from Hill, regardless of the fact that the Hill Court did not resolve the particular question respecting misadvice that was before it.

A flood did not follow in that decision's wake. Surmounting *Strickland*'s high bar is never an easy task. See, *e.g., 466 U.S., at 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674* ([**LEdHR11] [11] "Judicial scrutiny of counsel's performance must be highly deferential"); *id., at 693, 104 S. Ct. 2052, 80 L. Ed. 2d 674* (observing that "[a]ttorney errors . . . are as likely to be utterly harmless in a particular case as they are to be prejudicial"). Moreover, [**LEdHR12] [12] to obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. See *Roe v. Flores-Ortega, 528 U.S. 470, 480, 486, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)*. There is no reason to doubt that lower courts--now quite experienced with applying *Strickland*--can effectively and efficiently use its framework to separate [***29] specious claims from those with substantial merit.

It seems unlikely that our decision today will have a significant effect on those convictions already obtained as the result of plea bargains. For at [**298] least the past 15 years, professional norms have generally imposed an obligation on counsel to provide advice on the deportation consequences of a client's plea. See, *supra, at ___-___, 176 L. Ed. 2d, at 295-296*. We should, therefore, presume that counsel satisfied their obligation to render competent advice at the time their clients considered pleading guilty. *Strickland, 466 U.S., at 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674*.

Likewise, although we must be especially careful about recognizing new grounds for attacking the validity of guilty pleas, in the 25 years since we first applied *Strickland* to claims of ineffective assistance at the plea stage, practice has shown that pleas are less frequently the subject of collateral challenges than convictions obtained after a trial. Pleas account for nearly 95% of all criminal convictions.[13] But they account for only approximately 30% of the habeas petitions filed.[14] The nature of relief secured by a successful collateral challenge to a guilty plea--an opportunity to withdraw the plea and proceed to trial [***30] --imposes its own significant limiting principle: Those who collaterally attack their guilty pleas lose the benefit of the bargain obtained as a result of the plea. Thus, a different calculus informs [*1486] whether it is wise to challenge a guilty plea in a habeas proceeding because, ultimately, the challenge may result in a *less favorable* outcome for the defendant, whereas a collateral challenge to a conviction obtained after a jury trial has no similar downside potential.

> 13 See Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 2003, p. 418 (31st ed. 2005) (Table 5.17) (only approximately 5%, or 8,612 out of 68,533, of federal criminal prosecutions go to trial); *id.*, at 450 (Table 5.46) (only approximately 5% of all state felony criminal prosecutions go to trial).
>
> 14 See V. Flango, National Center for State Courts, Habeas Corpus in State and Federal Courts 36-38 (1994) (demonstrating that 5% of defendants whose conviction was the result of a trial account for approximately 70% of the habeas petitions filed).

Finally, informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. [***31] By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties. As in this case, a criminal episode may provide the basis for multiple charges, of which only a subset mandate deportation following conviction. Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence. At the same time, the threat of deportation may provide the defendant with a powerful incentive to plead

guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does.

In sum, we have long recognized that [**LEdHR13] [13] the negotiation of a plea bargain is a critical phase of litigation for purposes of the *Sixth Amendment* right to effective assistance of counsel. *Hill, 474 U.S., at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203*; see also *Richardson, 397 U.S., at 770-771, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763*. The severity of deportation--"the equivalent of [**299] banishment [***32] or exile," *Delgadillo v. Carmichael, 332 U.S. 388, 390-391, 68 S. Ct. 10, 92 L. Ed. 17 (1947)* --only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.[15]

15 To this end, we find it significant that the plea form currently used in Kentucky courts provides notice of possible immigration consequences. Ky. Admin. Office of Courts, Motion to Enter Guilty Plea, Form AOC-491 (Rev. 2/2003), http://courts.ky.gov/NR/rdonlyres/55E1F54E-ED5C-4A30-B1D5-4C43C7ADD63C/0/491.pdf (as visited Mar. 29, 2010, and available in Clerk of Court's case file). Further, many States require trial courts to advise defendants of possible immigration consequences. See, *e.g.*, Alaska Rule Crim. Proc. 11(c)(3)(C) (2009-2010); *Cal. Penal Code Ann. § 1016.5* (West 2008); *Conn. Gen. Stat. § 54-1j* (2009); *D. C. Code § 16-713* (2001); *Fla. Rule Crim. Proc. 3.172(c)(8)* (Supp. 2010); *Ga. Code Ann. § 17-7-93(c)* (1997); *Haw. Rev. Stat. Ann. § 802E-2* (2007); *Iowa Rule Crim. Proc. 2.8(2)(b)(3)* (Supp. 2009); *Md. Rule 4-242* (Lexis 2009); *Mass. Gen. Laws, ch. 278, § 29D* (2009); *Minn. Rule Crim. Proc. 15.01* (2009); *Mont. Code Ann. § 46-12-210* (2009); N. M. Rule Crim. Form 9-406 (2009); *N. Y. Crim. Proc. Law Ann. § 220.50(7)* [***33] (West Supp. 2009); *N. C. Gen. Stat. Ann. § 15A-1022* (Lexis 2007); *Ohio Rev. Code Ann. § 2943.031* (West 2006); *Ore. Rev. Stat. § 135.385* (2007); *R. I. Gen. Laws § 12-12-22* (Lexis Supp. 2008); *Tex. Code. Ann. Crim. Proc., Art. 26.13(a)(4)* (Vernon Supp. 2009); *Vt. Stat. Ann., Tit. 13, § 6565(c)(1)* (Supp. 2009); *Wash. Rev. Code § 10.40.200* (2008); *Wis. Stat. § 971.08* (2005-2006).

V

[**LEdHR14] [14] It is our responsibility under the Constitution to ensure that no criminal defendant--whether a citizen or not--is left to the "mercies of incompetent counsel." *Richardson, 397 U.S., at 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763*. To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding *Sixth Amendment* precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.

Taking as true the basis for his motion for postconviction relief, we have little difficulty [*1487] concluding that Padilla has sufficiently alleged that his counsel was constitutionally deficient. Whether Padilla is entitled to relief will depend on whether he can demonstrate prejudice as [***34] a result thereof, a question we do not reach because it was not passed on below. See *Verizon Communs., Inc. v. FCC, 535 U.S. 467, 530, 122 S. Ct. 1646, 152 L. Ed. 2d 701 (2002)*.

The judgment of the Supreme Court of Kentucky is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCUR BY: ALITO

CONCUR

Justice **Alito**, with whom The **Chief Justice** joins, concurring in the judgment.

I concur in the judgment because a criminal defense attorney fails to provide effective assistance within the meaning of *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*, if the attorney misleads a noncitizen client regarding the removal consequences of a conviction. In my view, such an attorney must (1) refrain from unreasonably providing incorrect advice and (2) advise the defendant that a criminal conviction may have adverse immigration consequences and that, if the alien wants advice on this issue, the alien should consult an immigration attorney. I do not agree with the Court that the attorney must attempt [**300] to explain what those consequences may be. As the Court concedes, "[i]mmigration law can be complex"; "it is a legal specialty of its own"; and "[s]ome members of the bar who represent clients facing [***35] criminal charges, in either state or federal court or both, may not be well versed in it." *Ante, at ___, 176 L. Ed. 2d, at 295*. The Court nevertheless holds that a criminal defense attorney must provide advice in this specialized area in those cases in which the law is "succinct and straightforward"--but not, perhaps, in other situations. *Ante, at ___-___, 176 L. Ed. 2d, at 296*. This vague, halfway test will lead to much confusion and needless litigation.

I

Under *Strickland*, an attorney provides ineffective assistance if the attorney's representation does not meet reasonable professional standards. *466 U.S., at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674*. Until today, the longstand-

ing and unanimous position of the federal courts was that reasonable defense counsel generally need only advise a client about the *direct* consequences of a criminal conviction. See, *e.g.*, *United States v. Gonzalez, 202 F.3d 20, 28 (CA1 2000)* (ineffective-assistance-of-counsel claim fails if "based on an attorney's failure to advise a client of his plea's immigration consequences"); *United States v. Banda, 1 F.3d 354, 355 (CA5 1993)* (holding that "an [***36] attorney's failure to advise a client that deportation is a possible consequence of a guilty plea does not constitute ineffective assistance of counsel"); see generally Chin & Holmes, Effective Assistance of Counsel and the Consequences of Guilty Pleas, *87 Cornell L. Rev. 697, 699 (2002)* (hereinafter Chin & Holmes) (noting that "virtually all jurisdictions"--including "eleven federal circuits, more than thirty states, and the District of Columbia"--"hold that defense counsel need not discuss with their clients the collateral consequences of a conviction," including deportation). While the line between "direct" and "collateral" consequences is not always clear, see *ante, at ___, n. 8, 176 L. Ed. 2d, at 293*, the collateral-consequences rule expresses an important truth: Criminal defense attorneys have expertise regarding the conduct of criminal proceedings. They are not expected to possess--and very often do not possess--expertise in other areas of the law, and it is unrealistic to expect them to provide expert advice on [*1488] matters that lie outside their area of training and experience.

This case happens to involve removal, but criminal convictions can carry a wide variety of consequences other than conviction [***37] and sentencing, including civil commitment, civil forfeiture, the loss of the right to vote, disqualification from public benefits, ineligibility to possess firearms, dishonorable discharge from the Armed Forces, and loss of business or professional licenses. *Chin & Holmes 705-706*. A criminal conviction may also severely damage a defendant's reputation and thus impair the defendant's ability to obtain future employment or business opportunities. All of those consequences are "seriou[s]," see *ante, at ___, 176 L. Ed. 2d, at 299*, but this Court has never held that a criminal defense attorney's *Sixth Amendment* duties extend to providing advice about such matters.

The Court tries to justify its dramatic departure from precedent by pointing to the views of various professional organizations. See *ante, at ___, 176 L. Ed. 2d, at 289* ("The weight of prevailing professional [**301] norms supports the view that counsel must advise her client regarding the risk of deportation"). However, ascertaining the level of professional competence required by the *Sixth Amendment* is ultimately a task for the courts. *E.g.*, *Roe v. Flores-Ortega, 528 U.S. 470, 477, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)*. Although we may appropriately consult standards promulgated by private bar groups, we cannot [***38] delegate to these groups our task of determining what the Constitution commands. See *Strickland, supra, at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674* (explaining that "[p]revailing norms of practice as reflected in American Bar Association standards . . . are guides to determining what is reasonable, but they are only guides"). And we must recognize that such standards may represent only the aspirations of a bar group rather than an empirical assessment of actual practice.

Even if the only relevant consideration were "prevailing professional norms," it is hard to see how those norms can support the duty the Court today imposes on defense counsel. Because many criminal defense attorneys have little understanding of immigration law, see *ante, at ___, 176 L. Ed. 2d, at 295*, it should follow that a criminal defense attorney who refrains from providing immigration advice does not violate prevailing professional norms. But the Court's opinion would not just require defense counsel to warn the client of a general *risk* of removal; it would also require counsel in at least some cases, to specify what the removal *consequences* of a conviction would be. See *ante, at ___-___, 176 L. Ed. 2d, at 296*.

The Court's new approach is particularly problematic because providing advice on whether [***39] a conviction for a particular offense will make an alien removable is often quite complex. "Most crimes affecting immigration status are not specifically mentioned by the [Immigration and Nationality Act (INA)], but instead fall under a broad category of crimes, such as *crimes involving moral turpitude* or *aggravated felonies*." M. Garcia & L. Eig, CRS Report for Congress, Immigration Consequences of Criminal Activity (Sept. 20, 2006) (summary) (emphasis in original). As has been widely acknowledged, determining whether a particular crime is an "aggravated felony" or a "crime involving moral turpitude [(CIMT)]" is not an easy task. See R. McWhirter, ABA, The Criminal Lawyer's Guide to Immigration Law: Questions and Answers 128 (2d ed. 2006) (hereinafter ABA Guidebook) ("Because of the increased complexity of aggravated felony law, this edition devotes a new [30-page] chapter to the subject"); *id.*, § 5.2, at 146 (stating that the aggravated felony list at *8 U.S.C. § 1101(a)(43)* is not clear [*1489] with respect to several of the listed categories, that "the term 'aggravated felonies' can include misdemeanors," and that the determination of whether a crime is an "aggravated felony" is made "even [***40] more difficult" because "several agencies and courts interpret the statute," including Immigration and Customs Enforcement, the Board of Immigration Appeals (BIA), and Federal Circuit and district courts considering immigration-law and criminal-law issues);

ABA Guidebook § 4.65, at 130 ("Because nothing is ever simple with immigration law, the terms 'conviction,' 'moral turpitude,' and 'single scheme of criminal misconduct' are terms of art"); *id.*, § 4.67, at 130 ("[T]he term 'moral turpitude' evades precise definition").

[**302] Defense counsel who consults a guidebook on whether a particular crime is an "aggravated felony" will often find that the answer is not "easily ascertained." For example, the ABA Guidebook answers the question "Does simple possession count as an aggravated felony?" as follows: "Yes, *at least in the Ninth Circuit.*" § 5.35, at 160 (emphasis added). After a dizzying paragraph that attempts to explain the evolution of the Ninth Circuit's view, the ABA Guidebook continues: "Adding to the confusion, however, is that the Ninth Circuit has conflicting opinions depending on the context on whether simple drug possession constitutes an aggravated felony under *8 U.S.C. § 1101(a)(43).*" [***41] *Id.*, § 5.35, at 161 (citing cases distinguishing between whether a simple possession offense is an aggravated felony "for immigration purposes" or for "sentencing purposes"). The ABA Guidebook then proceeds to explain that "*attempted* possession," *id.*, § 5.36, at 161 (emphasis added), of a controlled substance *is* an aggravated felony, while "[c]onviction under the federal *accessory* after the fact statute is *probably not* an aggravated felony, but a conviction for accessory after the fact to the manufacture of methamphetamine *is* an aggravated felony," *id.*, § 537, at 161 (emphasis added). Conspiracy or attempt to commit drug trafficking are aggravated felonies, but "[s]olicitation is not a drug-trafficking offense because a generic solicitation offense is not an offense related to a controlled substance and therefore not an aggravated felony." *Id.*, § 5.41, at 162.

Determining whether a particular crime is one involving moral turpitude is no easier. See *id.*, at 134 ("Writing bad checks *may or may not* be a CIMT" (emphasis added)); *ibid.* ("[R]eckless assault coupled with an element of injury, but not serious injury, is *probably* not a CIMT" (emphasis added)); *id.*, at 135 (misdemeanor driving [***42] under the influence is generally not a CIMT, but may be a CIMT if the DUI results in injury or if the driver knew that his license had been suspended or revoked); *id.*, at 136 ("If there is no element of actual injury, the endangerment offense *may* not be a CIMT" (emphasis added)); *ibid.* ("Whether [a child abuse] conviction involves moral turpitude *may* depend on the subsection under which the individual is convicted. Child abuse done with criminal negligence *probably* is not a CIMT" (emphasis added)).

Many other terms of the INA are similarly ambiguous or may be confusing to practitioners not versed in the intricacies of immigration law. To take just a few examples, it may be hard, in some cases, for defense counsel even to determine whether a client is an alien,[1] or whether a [*1490] particular state disposition will result in a "conviction" for purposes of federal immigration law.[2] The task of offering advice about the immigration [**303] consequences of a criminal conviction is further complicated by other problems, including significant variations among Circuit interpretations of federal immigration statutes; the frequency with which immigration law changes; different rules governing the immigration [***43] consequences of juvenile, first-offender, and foreign convictions; and the relationship between the "length and type of sentence" and the determination "whether [an alien] is subject to removal, eligible for relief from removal, or qualified to become a naturalized citizen," Immigration Law and Crimes § 2:1, at 2-2 to 2-3.

1 Citizens are not deportable, but "[q]uestions of citizenship are not always simple." ABA Guidebook § 4.20, at 113 (explaining that U.S. citizenship conferred by blood is " 'derivative,' " and that "[d]erivative citizenship depends on a number of confusing factors, including whether the citizen parent was the mother or father, the immigration laws in effect at the time of the parents' and/or defendant's birth, and the parents' marital status").

2 "A disposition that is not a 'conviction,' under state law may still be a 'conviction' for immigration purposes." *Id.*, § 4.32, at 117 (citing *Matter of Salazar, 23 I. & N. Dec. 223, 231 (BIA 2002)* (en banc)). For example, state law may define the term "conviction" not to include a deferred adjudication, but such an adjudication would be deemed a conviction for purposes of federal immigration law. See ABA Guidebook § 4.37; accord, [***44] D. Kesselbrenner & L. Rosenberg, Immigration Law and Crimes § 2:1, p. 2-2 (2008) (hereinafter Immigration Law and Crimes) ("A practitioner or respondent will not even know whether the Department of Homeland Security (DHS) or the Executive Office for Immigration Review (EOIR) will treat a particular state disposition as a conviction for immigration purposes. In fact, the [BIA] treats certain state criminal dispositions as convictions even though the state treats the same disposition as a dismissal").

In short, the professional organizations and guidebooks on which the Court so heavily relies are right to say that "nothing is ever simple with immigration law"--including the determination whether immigration law clearly makes a particular offense removable. ABA Guidebook § 4.65, at 130; Immigration Law and Crimes § 2:1. I therefore cannot agree with the Court's apparent

view that the *Sixth Amendment* requires criminal defense attorneys to provide immigration advice.

The Court tries to downplay the severity of the burden it imposes on defense counsel by suggesting that the scope of counsel's duty to offer advice concerning deportation consequences may turn on how hard it is to determine [***45] those consequences. Where "the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence[s]" of a conviction, the Court says, counsel has an affirmative duty to advise the client that he will be subject to deportation as a result of the plea. *Ante, at ___, 176 L. Ed. 2d, at 295*. But "[w]hen the law is not succinct and straightforward . . . , a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." *Ante, at ___-___, 176 L. Ed. 2d, at 296*. This approach is problematic for at least four reasons.

First, it will not always be easy to tell whether a particular statutory provision is "succinct, clear, and explicit." How can an attorney who lacks general immigration law expertise be sure that a seemingly clear statutory provision actually means what it seems to say when read in isolation? What if the application of the provision to a particular case is not clear but a cursory examination of case law or administrative decisions would provide a definitive answer? See Immigration Law and Crimes § 2:1, at 2-2 ("Unfortunately, a practitioner or respondent cannot tell easily whether a conviction [***46] is for a removable offense. . . . [T]he cautious practitioner or apprehensive respondent will not know [*1491] conclusively the future immigration consequences of a guilty plea").

Second, if defense counsel must provide advice regarding only one of the many collateral consequences of a criminal conviction, many defendants are likely to be misled. To take just one example, a conviction for a particular offense may render an alien excludable but not removable. If an alien charged [**304] with such an offense is advised only that pleading guilty to such an offense will not result in removal, the alien may be induced to enter a guilty plea without realizing that a consequence of the plea is that the alien will be unable to reenter the United States if the alien returns to his or her home country for any reason, such as to visit an elderly parent or to attend a funeral. See ABA Guidebook § 4.14, at 111 ("Often the alien is both *excludable* and *removable*. At times, however, the lists are different. Thus, the oddity of an alien that is inadmissible but not deportable. This alien should not leave the United States because the government will not let him back in" (emphasis in original)). Incomplete legal advice [***47] may be worse than no advice at all because it may mislead and may dissuade the client from seeking advice from a more knowledgeable source.

Third, the Court's rigid constitutional rule could inadvertently head off more promising ways of addressing the underlying problem--such as statutory or administrative reforms requiring trial judges to inform a defendant on the record that a guilty plea may carry adverse immigration consequences. As *amici* point out, "28 states and the District of Columbia have *already* adopted rules, plea forms, or statutes requiring courts to advise criminal defendants of the possible immigration consequences of their pleas." Brief for State of Louisiana et al. 25; accord, *Chin & Holmes 708* ("A growing number of states require advice about deportation by statute or court rule"). A nonconstitutional rule requiring trial judges to inform defendants on the record of the risk of adverse immigration consequences can ensure that a defendant receives needed information without putting a large number of criminal convictions at risk; and because such a warning would be given on the record, courts would not later have to determine whether the defendant was misrepresenting [***48] the advice of counsel. Likewise, flexible statutory procedures for withdrawing guilty pleas might give courts appropriate discretion to determine whether the interests of justice would be served by allowing a particular defendant to withdraw a plea entered into on the basis of incomplete information. Cf. *United States v. Russell, 686 F.2d 35, 39-40, 222 U.S. App. D.C. 313 (CADC 1982)* (explaining that a district court's discretion to set aside a guilty plea under the Federal Rules of Criminal Procedure should be guided by, among other considerations, "the possible existence of prejudice to the government's case as a result of the defendant's untimely request to stand trial" and "the strength of the defendant's reason for withdrawing the plea, including whether the defendant asserts his innocence of the charge").

Fourth, the Court's decision marks a major upheaval in *Sixth Amendment* law. This Court decided *Strickland* in 1984, but the majority does not cite a single case, from this or any other federal court, holding that criminal defense counsel's failure to provide advice concerning the removal consequences of a criminal conviction violates a defendant's *Sixth Amendment* right to counsel. As noted above, the [***49] Court's view has been rejected by every Federal Court of Appeals to have considered the issue thus far. See, *e.g., Gonzalez, 202 F.3d, at 28*; *Banda, 1 F.3d, at 355*; *Chin & Holmes 697, 699*. The majority appropriately acknowledges that the lower courts [*1492] are "now quite experienced with applying *Strickland*," *ante, at* [**305] ___, *176 L. Ed. 2d, at 297*, but it casually dismisses the longstanding and unanimous position of the lower federal courts with respect to the scope of criminal defense counsel's duty to advise on collateral consequences.

The majority seeks to downplay its dramatic expansion of the scope of criminal defense counsel's duties under the *Sixth Amendment* by claiming that this Court in *Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)*, similarly "applied *Strickland* to a claim that counsel had failed to advise the client regarding his parole eligibility before he pleaded guilty." *Ante, at ___, 176 L. Ed. 2d, at 297.* That characterization of *Hill* obscures much more than it reveals. The issue in *Hill* was whether a criminal defendant's *Sixth Amendment* right to counsel was violated where counsel misinformed the client about his eligibility for parole. The Court found it "unnecessary to determine whether there may be circumstances under which erroneous [***50] advice by counsel as to parole eligibility may be deemed constitutionally ineffective assistance of counsel, because in the present case we conclude that petitioner's allegations are insufficient to satisfy the *Strickland* v. *Washington* requirement of 'prejudice.' *474 U.S., at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.* Given that *Hill* expressly and unambiguously refused to decide whether criminal defense counsel must *avoid misinforming* his or her client as to *one* consequence of a criminal conviction (parole eligibility), that case plainly provides no support whatsoever for the proposition that counsel must *affirmatively advise* his or her client as to *another* collateral consequence (removal). By the Court's strange logic, *Hill* would support its decision here even if the Court had held that misadvice concerning parole eligibility does *not* make counsel's performance objectively unreasonable. After all, the Court still would have "applied *Strickland*" to the facts of the case at hand.

II

While mastery of immigration law is not required by *Strickland*, several considerations support the conclusion that affirmative misadvice regarding the removal consequences of a conviction may constitute ineffective assistance.

First, a rule prohibiting [***51] affirmative misadvice regarding a matter as crucial to the defendant's plea decision as deportation appears faithful to the scope and nature of the *Sixth Amendment* duty this Court has recognized in its past cases. In particular, we have explained that "a guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys *in criminal cases*.' " *Strickland, 466 U.S., at 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674* (quoting *McMann v. Richardson, 397 U.S. 759, 770, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)*; emphasis added). As the Court appears to acknowledge, thorough understanding of the intricacies of immigration law is not "within the range of competence demanded of attorneys *in criminal cases*." See *ante, at ___, 176 L. Ed. 2d, at 295* ("Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it"). By contrast, reasonably competent attorneys [**306] should know that it is not appropriate or responsible to hold themselves out as authorities on a difficult and complicated subject matter with which they are [***52] not familiar. Candor concerning the limits of one's professional expertise, in other words, is within the range of duties reasonably expected of defense attorneys in criminal cases. As the dissenting judge on [*1493] the Kentucky Supreme Court put it, "I do not believe it is too much of a burden to place on our defense bar the duty to say, 'I do not know.' " *253 S. W. 3d 482, 485 (2008).*

Second, incompetent advice distorts the defendant's decisionmaking process and seems to call the fairness and integrity of the criminal proceeding itself into question. See *Strickland, 466 U.S., at 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674* ("In giving meaning to the requirement [of effective assistance of counsel], we must take its purpose--to ensure a fair trial--as the guide"). When a defendant opts to plead guilty without definitive information concerning the likely effects of the plea, the defendant can fairly be said to assume the risk that the conviction may carry indirect consequences of which he or she is not aware. That is not the case when a defendant bases the decision to plead guilty on counsel's express misrepresentation that the defendant will not be removable. In the latter case, it seems hard to say that the plea was entered [***53] with the advice of constitutionally competent counsel--or that it embodies a voluntary and intelligent decision to forsake constitutional rights. See *ibid.* ("The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result").

Third, a rule prohibiting unreasonable misadvice regarding exceptionally important collateral matters would not deter or interfere with ongoing political and administrative efforts to devise fair and reasonable solutions to the difficult problem posed by defendants who plead guilty without knowing of certain important collateral consequences.

Finally, the conclusion that affirmative misadvice regarding the removal consequences of a conviction can give rise to ineffective assistance would, unlike the Court's approach, not require any upheaval in the law. As the Solicitor General points out, "[t]he vast majority of the lower courts considering claims of ineffective assistance in the plea context have [distinguished] between defense counsel who remain silent and defense counsel who give affirmative misadvice." [***54] Brief for

United States as *Amicus Curiae* 8 (citing cases). At least three Courts of Appeals have held that affirmative misadvice on immigration matters can give rise to ineffective assistance of counsel, at least in some circumstances.[3] And several other Circuits have held that affirmative [**307] misadvice concerning nonimmigration consequences of a conviction can violate the *Sixth Amendment* even if those consequences might be deemed "collateral."[4] By contrast, it appears that [*1494] no court of appeals holds that affirmative misadvice concerning collateral consequences in general and removal in particular can *never* give rise to ineffective assistance. In short, the considered and thus far unanimous view of the lower federal courts charged with administering *Strickland* clearly supports the conclusion that that Kentucky Supreme Court's position goes too far.

3 See *United States v. Kwan, 407 F.3d 1005, 1015-1017 (CA9 2005)*; *United States v. Couto, 311 F.3d 179, 188 (CA2 2002)*; *Downs-Morgan v. United States, 765 F.2d 1534, 1540-1541 (CA11 1985)* (limiting holding to the facts of the case); see also *Santos-Sanchez v. United States, 548 F.3d 327, 333-334 (CA5 2008)* (concluding that counsel's advice was [***55] not objectively unreasonable where counsel did not purport to answer questions about immigration law, did not claim any expertise in immigration law, and simply warned of "possible" deportation consequence; use of the word "possible" was not an affirmative misrepresentation, even though it could indicate that deportation was not a certain consequence).

4 See *Hill v. Lockhart, 894 F.2d 1009, 1010 (CA8 1990)* (en banc) ("[T]he erroneous parole-eligibility advice given to Mr. Hill was ineffective assistance of counsel under *Strickland v. Washington*"); *Sparks v. Sowders, 852 F.2d 882, 885 (CA6 1988)* ("[G]ross misadvice concerning parole eligibility can amount to ineffective assistance of counsel"); *id., at 886* (Kennedy, J., concurring) ("When the maximum possible exposure is overstated, the defendant might well be influenced to accept a plea agreement he would otherwise reject"); *Strader v. Garrison, 611 F.2d 61, 65 (CA4 1979)* (?[T]hough parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, and relies upon that misinformation, he is deprived [***56] of his constitutional right to counsel").

In concluding that affirmative misadvice regarding the removal consequences of a criminal conviction may constitute ineffective assistance, I do not mean to suggest that the *Sixth Amendment* does no more than require defense counsel to avoid misinformation. When a criminal defense attorney is aware that a client is an alien, the attorney should advise the client that a criminal conviction may have adverse consequences under the immigration laws and that the client should consult an immigration specialist if the client wants advice on that subject. By putting the client on notice of the danger of removal, such advice would significantly reduce the chance that the client would plead guilty under a mistaken premise.

III

In sum, a criminal defense attorney should not be required to provide advice on immigration law, a complex specialty that generally lies outside the scope of a criminal defense attorney's expertise. On the other hand, any competent criminal defense attorney should appreciate the extraordinary importance that the risk of removal might have in the client's determination whether to enter a guilty plea. Accordingly, unreasonable and incorrect [***57] information concerning the risk of removal can give rise to an ineffectiveness claim. In addition, silence alone is not enough to satisfy counsel's duty to assist the client. Instead, an alien defendant's *Sixth Amendment* right to counsel is satisfied if defense counsel advises the client that a conviction may have immigration consequences, that immigration law is a specialized field, that the attorney is not an immigration lawyer, and that the client should consult an immigration specialist if the client wants advice on that subject.

DISSENT BY: SCALIA

DISSENT

Justice **Scalia**, with whom Justice **Thomas** joins, dissenting.

In the best of all possible worlds, criminal defendants contemplating a guilty plea ought to be advised of all serious collateral consequences of conviction, and surely ought not to be misadvised. The Constitution, however, is not an all-purpose tool for judicial construction of a perfect world; and when we ignore its text in [**308] order to make it that, we often find ourselves swinging a sledge where a tack hammer is needed.

The *Sixth Amendment* guarantees the accused a lawyer "for his defense" against a "criminal prosecutio[n]"--not for sound advice about the collateral consequences of conviction. [***58] For that reason, and for the practical reasons set forth in Part I of Justice Alito's concurrence, I dissent from the Court's conclusion that the *Sixth Amendment* requires counsel to provide accurate advice concerning the potential removal consequences of a guilty plea. For the same reasons, but unlike the concurrence, I do not believe that affirmative misadvice about

those consequences renders [*1495] an attorney's assistance in defending against the prosecution constitutionally inadequate; or that the *Sixth Amendment* requires counsel to warn immigrant defendants that a conviction may render them removable. Statutory provisions can remedy these concerns in a more targeted fashion, and without producing permanent, and legislatively irreparable, overkill.

* * *

The *Sixth Amendment* as originally understood and ratified meant only that a defendant had a right to employ counsel, or to use volunteered services of counsel. See, *United States v. Van Duzee, 140 U.S. 169, 173, 11 S. Ct. 758, 11 S. Ct. 941, 35 L. Ed. 399 (1891)*; W. Beaney, Right to Counsel in American Courts 21, 28-29 (1955). We have held, however, that the *Sixth Amendment* requires the provision of counsel to indigent defendants at government expense, *Gideon v. Wainwright, 372 U.S. 335, 344-345, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)*, [***59] and that the right to "the assistance of counsel" includes the right to *effective* assistance, *Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*. Even assuming the validity of these holdings, I reject the significant further extension that the Court, and to a lesser extent the concurrence, would create. We have until today at least retained the *Sixth Amendment's* textual limitation to criminal prosecutions. "[W]e have held that 'defence' means defense at trial, not defense in relation to other objectives that may be important to the accused." *Rothgery v. Gillespie County, 554 U.S. 191, ___, 128 S. Ct. 2578, 171 L. Ed. 2d 366 (2008)* (Alito, J., concurring) (summarizing cases). We have limited the *Sixth Amendment* to legal advice directly related to defense against prosecution of the charged offense--advice at trial, of course, but also advice at post-indictment interrogations and lineups, *Massiah v. United States, 377 U.S. 201, 205-206, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964)*; *United States v. Wade, 388 U.S. 218, 236-238, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)*, and in general advice at all phases of the prosecution where the defendant would be at a disadvantage when pitted alone against the legally trained agents of the state, see *Moran v. Burbine, 475 U.S. 412, 430, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986)*. [***60] Not only have we not required advice of counsel regarding consequences collateral to prosecution, we have not even required counsel appointed to defend against one prosecution to be present when the defendant is interrogated in connection with another possible prosecution arising from the same event. *Texas v. Cobb, 532 U.S. 162, 164, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001)*.

There is no basis in text or in principle [**309] to extend the constitutionally required advice regarding guilty pleas beyond those matters germane to the criminal prosecution at hand--to wit, the sentence that the plea will produce, the higher sentence that conviction after trial might entail, and the chances of such a conviction. Such matters fall within "the range of competence demanded of attorneys in criminal cases," *McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)*. See *id., at 769-770, 90 S. Ct. 1441, 25 L. Ed. 2d 763* (describing the matters counsel and client must consider in connection with a contemplated guilty plea). We have never held, as the logic of the Court's opinion assumes, that once counsel is appointed all professional responsibilities of counsel--even those extending beyond defense against the prosecution--become constitutional commands. Cf. *Cobb, supra, at 171, n. 2, 121 S. Ct. 1335, 149 L. Ed. 2d 321*; [***61] *Moran, supra, at 430, 106 S. Ct. 1135, 89 L. Ed. 2d 410*. Because the subject of the misadvice here was not the prosecution for which Jose Padilla was entitled to effective assistance of counsel, the *Sixth Amendment* has no application.

[*1496] Adding to counsel's duties an obligation to advise about a conviction's collateral consequences has no logical stopping-point. As the concurrence observes,

> "[A] criminal convictio[n] can carry a wide variety of consequences other than conviction and sentencing, including civil commitment, civil forfeiture, the loss of the right to vote, disqualification from public benefits, ineligibility to possess firearms, dishonorable discharge from the Armed Forces, and loss of business or professional licenses. . . . All of those consequences are 'serious,' . . . ." *Ante, at ___-___, 176 L. Ed. 2d, at 300* (Alito, J., concurring in judgment).

But it seems to me that the concurrence suffers from the same defect. The same indeterminacy, the same inability to know what areas of advice are relevant, attaches to misadvice. And the concurrence's suggestion that counsel must warn defendants of potential removal consequences, see *ante, at ___-___, 176 L. Ed. 2d, at 307*--what would come to be known as the "*Padilla* warning"--cannot be limited to those consequences [***62] except by judicial caprice. It is difficult to believe that the warning requirement would not be extended, for example, to the risk of heightened sentences in later federal prosecutions pursuant to the Armed Career Criminal Act, *18 U.S.C. § 924(e)*. We could expect years of elaboration upon these new issues in the lower courts, prompted by the defense bar's devising of ever-

expanding categories of plea-invalidating misadvice and failures to warn--not to mention innumerable evidentiary hearings to determine whether misadvice really occurred or whether the warning was really given.

The concurrence's treatment of misadvice seems driven by concern about the voluntariness of Padilla's guilty plea. See *ante, at ___, 176 L. Ed. 2d, at 306*. But that concern properly relates to the *Due Process Clauses of the Fifth* and *Fourteenth Amendments*, not to the *Sixth Amendment*. See *McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)*; *Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)*. Padilla has not argued before us that his guilty plea was not knowing and voluntary. If that is, however, the true substance of [**310] his claim (and if he has properly preserved it) the state court can address it on remand.[1] But we should not smuggle [***63] the claim into the *Sixth Amendment*.

1 I do not mean to suggest that the *Due Process Clause* would surely provide relief. We have indicated that awareness of "direct consequences" suffices for the validity of a guilty plea. See *Brady, 397 U.S., at 755, 90 S. Ct. 1463, 25 L. Ed. 2d 747* (internal quotation marks omitted). And the required colloquy between a federal district court and a defendant required by *Federal Rule of Criminal Procedure 11(b)* (formerly *Rule 11(c)*), which we have said approximates the due process requirements for a valid plea, see *Libretti v. United States, 516 U.S. 29, 49-50, 116 S. Ct. 356, 133 L. Ed. 2d 271 (1995)*, does not mention collateral consequences. Whatever the outcome, however, the effect of misadvice regarding such consequences upon the validity of a guilty plea should be analyzed under the *Due Process Clause*.

The Court's holding prevents legislation that could solve the problems addressed by today's opinions in a more precise and targeted fashion. If the subject had not been constitutionalized, legislation could specify which categories of misadvice about matters ancillary to the prosecution invalidate plea agreements, what collateral consequences counsel must bring to a defendant's attention, and what warnings must be given. [***64] [2] Moreover, legislation could provide consequences for the misadvice, [*1497] nonadvice, or failure to warn, other than nullification of a criminal conviction after the witnesses and evidence needed for retrial have disappeared. Federal immigration law might provide, for example, that the near-automatic removal which follows from certain criminal convictions will not apply where the conviction rested upon a guilty plea induced by counsel's misadvice regarding removal consequences. Or legislation might put the government to a choice in such circumstances: Either retry the defendant or forgo the removal. But all that has been precluded in favor of today's sledge hammer.

2 As the Court's opinion notes, *ante, at___-___, n. 15, 176 L. Ed. 2d, at 299*, many States--including Kentucky--already require that criminal defendants be warned of potential removal consequences.

In sum, the *Sixth Amendment* guarantees adequate assistance of counsel in defending against a pending criminal prosecution. We should limit both the constitutional obligation to provide advice and the consequences of bad advice to that well defined area.

REFERENCES

U.S.C.S., *Constitution, Amendment 6*; *8 U.S.C.S. § 1227(a)(2)(B)(i)*

27 Moore's Federal Practice § 644.61 (Matthew Bender 3d ed.)

L Ed Digest, Criminal Law §§46.4, 46.7

L Ed Index, Deportation or Exclusion of Aliens; Plea Bargaining

When is attorney's representation of criminal defendant so deficient as to constitute denial of federal constitutional right to effective assistance of counsel--Supreme Court cases. *83 L. Ed. 2d 1112*.

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