



Committee for Public Counsel Services Youth Advocacy Division

Checklist - Consequences of Juvenile Adjudications in Massachusetts

This checklist is for juvenile defenders to use when advising their clients on the effects of a delinquency or youthful offender adjudication.

Listed are some of the common consequences juveniles face when adjudicated.

SCHOOL

Issuance of a delinquency complaint for a felony can trigger school suspension and a felony adjudication can trigger expulsion. G.L. c. 71, § 37H½.

School-related misdemeanor charges such as assaults on school staff, possession of drugs or weapons at school, and Code of Conduct violations such as fights at school can also trigger school suspension and expulsion under G.L. c. 71, §§ 37H and 37H¾.

- Represent your client at the school suspension/expulsion hearing and/or superintendent's appeal. See CPCS Assigned Counsel Manual.*
- Contact the EdLaw Project Help Line for advice and assistance: 617-910-5829, edlawproject@publiccounsel.net.
- Try to get felony charges reduced to misdemeanors to circumvent § 37H½.

IMMIGRATION

A delinquency or youthful offender adjudication can affect your noncitizen client's immigration status.

- You must advise all clients of the possible consequences of exclusion, deportation, inability to naturalize, and inability to return after leaving the United States, regardless of whether your client is a citizen. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010); *Commonwealth v. Sylvain*, 466 Mass. 422 (2013).
- Certain criminal convictions automatically trigger immigration consequences. For this category only, juvenile adjudications are not considered convictions and it is an open question whether YO adjudications are convictions.
- However, there are many other ways a juvenile charge or adjudication can affect a juvenile's immigration status, for example a juvenile charge or adjudication may affect discretionary immigration consequences. It is best to contact an immigration expert before resolving any case for a noncitizen client.
- Contact the CPCS Immigration Impact Unit for advice and assistance at 617-623-0591; iiu@publiccounsel.net

* Assigned counsel "should include educational advocacy in every case where school discipline, setting, program, services, and/or performance are relevant to the defense or disposition of the case." <https://www.publiccounsel.net/wp-content/uploads/Assigned-Counsel-Manual.pdf>

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SEX OFFENSES

If your client is adjudicated on a **sex offense** they could be required to **register as a sex offender**.

- Determine whether the offense requires sex offender registration. *G.L. c. 6, §§ 178C; 178E*.
- Sex offender registration is automatic if your client is adjudicated on a registration-eligible offense and sentenced to immediate confinement.
 - Confinement for this purpose means an immediate House of Corrections or State Prison sentence. *Commonwealth v. Samuel S.*, 476 Mass. 497 (2017).
 - Commitment to DYS until ages 18 or 21, suspended sentences, and combination sentences are not immediate confinement for this purpose. *Id.*
- Negotiate with the ADA to reduce to a non-registerable offense or to agree to jointly request that the juvenile not be ordered to register or to structure a plea disposition that does not trigger automatic registration, creating an opportunity for you to file a Motion for Relief from Registration.
- File a Motion for Funds for Expert early in the case to evaluate your client for risk of re-offense in order to assist in negotiations with the ADA and with filing a Motion for Relief from Registration.
- File a Motion for Relief from Registration if your client is adjudicated on a registration-eligible offense and is not sentenced to immediate confinement.
- Even if your client is not ordered to register, a juvenile record will be considered by SORB if your client is later ordered to register on another offense.

A court may order your client to wear a GPS, particularly if your client is placed on probation for a sex offense.

- Prior to ordering any person, adult or juvenile, to wear a GPS as a condition of probation, including on a sex offense, a court must conduct a balancing test that weighs the Commonwealth's interest in imposing the monitoring and the defendant's constitutional privacy rights. *Commonwealth v. Feliz*, 481 Mass. 689 (2019).
- Specific to juveniles, placement of a GPS as a condition of probation also requires an individualized determination by the court that the need for GPS monitoring to protect the safety of others overrides the damage that wearing the device may have on the child's rehabilitation. *Commonwealth v. Samuel S.* . 476 Mass. 497 (2017).

GPS or any other condition cannot be imposed pursuant to **G.L. c. 276, § 87 pretrial probation** either as a **condition of release** or as a **disposition** unless your client consents.

Delinquency and youthful offender adjudications for qualifying sexual offenses are considered convictions for the **Sexually Dangerous Person (SDP)** statute. *G.L. c. 123A, §§ 1-16*.

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SENTENCING ENHANCEMENTS

“Armed Career Criminal” Sentencing Enhancements G.L. c. 269, § 10G

- G.L. c. 269, § 10G creates sentencing enhancements based on predicate offenses of “violent crimes” or “serious drug offenses.”*
- A juvenile or youthful offender adjudication may qualify as a “violent crime” for 10G purposes if, along with the standard requirements, there is use, possession, or threat of a deadly weapon as part of the “violent crime.” G.L. c. 269, § 10G; *Commonwealth v. Anderson*, 461 Mass. 616 (2012); *Commonwealth v. Baez*, 480 Mass. 328 (2018). The weapon must be “inherently deadly,” not merely deadly as used. *Commonwealth v. Rezendes*, 88 Mass. App. Ct. 309 (2015).

Habitual Offender Sentencing Enhancement, G.L. c. 279, § 25

- G.L. c. 279, § 25 creates two mechanisms for sentencing enhancements based on repeat convictions and incarcerations. Delinquency and youthful offender adjudications are specifically **excluded** from one of the mechanisms. § 25(b). It is an open question whether a YO adjudication with a 3+ year sentence imposed could be used as a predicate “conviction” on the other mechanism. § 25(a).

Possession of a Firearm Without a License, Subsequent Offense, G.L. c. 269, § 10(d)

- A previous adjudication of delinquency for possession of a firearm in violation for G.L. c. 269, § 10 (a) is a “conviction” for the purpose of possession of a firearm without a license, subsequent offense in violation of G.L. c. 269, § 10(d). *Commonwealth v. Connor C.*, 432 Mass. 635 (2000).

Operating Under the Influence, Subsequent Offense, G.L. c. 90, § 24

- A delinquency adjudication for OUI, including a CWOFF pursuant to G.L. c. 90, § 24D, qualifies as a first offense for subsequent OUI charges. *Commonwealth v. Valiton*, 432 Mass. 647 (2000).

A commitment to DYS can be used to provide grounds for future **Youthful Offender** indictments without the requirement of infliction or threat of serious bodily harm. G.L. c. 119, § 54.

Juvenile adjudications resulting in a commitment can affect the **federal sentencing guidelines**.

A juvenile adjudicated as a youthful offender is required to provide a **DNA sample** to the State DNA database. If the juvenile is placed on probation, the sample must be collected “forthwith” as a condition of probation. If the juvenile is committed to DYS or sentenced to incarceration, the sample must be collected within 10 days of intake or return to correctional facility. G.L. c. 22E, § 3.

* It is undecided whether a juvenile or youthful offender adjudication may qualify as a “serious drug offense.”

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LIFE CONSEQUENCES

A delinquency adjudication for charges such as many **motor-vehicle-related offenses** (see G.L. c. 90) for **trafficking of a controlled substance** in violation of G.L. c. 94C, § 32C (see G.L. c. 90, § 22 ½) or **alcohol possession** offenses (see G.L. c. 138) may affect your client's ability to obtain or keep a **driver's license**, junior operator's license, or permit.

Juvenile charges, even without an adjudication, can affect your client's ability to enter the **military**. Check with a recruiter from the relevant branch to find out if the offense will prevent your client from enlisting and whether your client is eligible for a waiver.

If your client lives in **public or subsidized housing**, a delinquency charge or adjudication could lead to eviction or disqualify them from future eligibility for public or subsidized housing. G.L. c. 121B, §32; 42 U.S.C. § 1437d(l)(6).

A delinquency adjudication should not affect most **employment**.

- Exceptions include, but are not limited to, working or volunteering at summer camps or daycares licensed by the Department of Early Education and Care.
- There is broader CORI access to YO adjudications than delinquency adjudications. YO adjudications that include imposition of an adult sentence are treated the same as an adult conviction for CORI purposes.
- Certain professional licensing agencies have access to delinquency or YO adjudications. Check with the relevant licensing agency to find out if the offense will create a barrier.

A delinquency charge or adjudication can affect your client's ability to be a **foster parent** or live in a home where a foster child is placed.

Delinquency or youthful offender adjudications can prevent your client from being able to legally **possess a firearm** or obtain a **firearm identification card**. G.L. c. 140, §§ 122; 129B

If your client is over the age of 18 and is convicted of any drug offense that occurred while receiving **federal financial aid**, they are ineligible to receive aid for specified periods of time. 20 U.S.C.S. § 1091(r).

This guide is not intended as the final authority on this subject. It is important to keep up-to-date on any changes in the law.

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