

JUVENILE DELINQUENCY RECORDS

HANDBOOK

AND

EXPUNGEMENT GUIDE



Juvenile Court Judges' Commission 2008

Table of Contents

| | |
|---|----|
| Introduction | 1 |
| Juvenile Court Records | 2 |
| Definitions | 2 |
| Inspection of Juvenile Court Files / Juvenile Probation Records or Reports | 2 |
| Factors to be Considered in Authorizing the Inspection of Juvenile Court Files and Juvenile Probation Records and Reports | 4 |
| Policies Regarding the Dissemination of Juvenile Court Records and Reports..... | 5 |
| Release of Information to Schools | 5 |
| Public Availability | 6 |
| Public Disclosure of Information based upon an Adjudication of Delinquency | 7 |
| Public Disclosure of Information based upon a Petition Alleging Delinquency | 8 |
| Employment and Military Service | 9 |
| The Consequences of Having a Juvenile Court Record | 9 |
| Effect in Subsequent Judicial Matters | 10 |
| Higher Education..... | 10 |
| Suspension of Motor Vehicle Operating Privileges | 11 |
| Felony Adjudications / Vehicle Involved..... | 11 |
| Vehicle Code Violations (non-DUI)..... | 11 |
| Alcohol-related Offenses (non-vehicle code) | 12 |
| DUI-related Offenses | 13 |
| Drug-related Offenses | 14 |
| School-related Offenses..... | 15 |
| Truancy-related Dispositions..... | 15 |
| Suspension of Operating Privileges at the Court’s Discretion..... | 15 |
| Possession or Purchase of a Firearm | 15 |
| The Use of Delinquency Adjudications for Criminal Sentencing Purposes | 16 |
| Lapsing of Juvenile Adjudications | 18 |

| | |
|---|----|
| Pennsylvania Supreme Court’s Record Retention and Disposition Schedule | 18 |
| Law Enforcement Records | 18 |
| Public Availability | 19 |
| Fingerprints and Photographs | 19 |
| Juvenile History Record Information | 20 |
| DNA Samples | 21 |
| Expungement of DNA Records | 22 |
| Expungement of Juvenile Records | 22 |
| Definition of “Expunge” | 22 |
| Expungement Process | 23 |
| Requirements for the Expungement of Records | 24 |
| Expungement Orders | 25 |
| Distribution of Expungement Orders | 25 |
| Expungements Related to the Intercounty Transfer of Delinquency Cases | 25 |
| Expungement of DNA Records | 26 |
| Expungement of PennDOT Driver History Information | 26 |
| Glossary | 27 |
| Appendix | 29 |

Introduction

There is a general misconception among the public that juvenile court records remain confidential, or are completely destroyed, when a juvenile reaches the age of majority. The reality is that records pertaining to a juvenile's involvement with the juvenile justice system can have longstanding and significant consequences upon the future of that individual.

This document was produced to assist professionals in Pennsylvania's juvenile justice system to understand the different types of records that exist in various locations as a result of a juvenile's involvement with law enforcement and the court. Written reports in law enforcement agencies, fingerprints, juvenile probation records and reports, juvenile court files, and DNA records all exist in juvenile probation departments, law enforcement agencies, offices of the clerk of courts, and numerous other agencies that provide services to juveniles referred to their programs.

The dissemination of juvenile court records is a critically important issue. Juvenile court dispositions, and records of those dispositions, may result in additional consequences to individuals such as the loss of operating privilege of a motor vehicle, the inability to enter certain careers including the military, acceptance into institutions of higher learning, the loss of the right to purchase or possess firearms, and in the calculation of prior record scores in conjunction with sentencing related to subsequent criminal behavior.

This document includes recommendations regarding the maintenance of this information and also includes information regarding the expungement of juvenile court records including procedures set forth by the Supreme Court and existing statutes that guide this process.

Juvenile Court Records

Access to court records regarding juveniles who have involvement in the juvenile justice system is governed by the Juvenile Act (42 Pa. C.S. Ch. 63) and the Pennsylvania Rules of Juvenile Court Procedure. This section of the handbook will define the different types of juvenile court records, explain who may inspect files, records, and reports, and describe the circumstances under which limited information may be provided to the public.

Definitions

The terms “juvenile court files” and “juvenile probation records and reports” have been defined in the Pennsylvania Rules of Juvenile Court Procedure, as follows:

Juvenile Court Files – include all original records, papers and orders filed, copies of all court notices, and docket entries.¹ These records must be maintained by the clerk of courts and may not be taken from the custody of the clerk of courts without a court order.

Juvenile Probation Records or Reports – include, but are not limited to, social summaries, psychological and psychiatric evaluations, personal histories, school records and reports, mental health histories and reports, drug and alcohol evaluations and placement facility records and reports.²

Inspection of Juvenile Court Files / Juvenile Probation Records or Reports

Both the Pennsylvania Rules of Juvenile Court Procedure and the Juvenile Act set forth who may inspect juvenile court files and juvenile probation records and reports.³ Juvenile court files and juvenile probation records and reports are open to inspection only by:

¹See Pa. R.J.C.P. 166.

²See Comment to Pa. R.J.C.P. 160.

³See Pa. R.J.C.P. 160 and 42 Pa. C.S. §6307(a).

- the judges, masters, juvenile probation officers, and staff of the court;
- the attorney for the Commonwealth, the juvenile’s attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except at the discretion of the court;
- a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;⁴
- a court and its probation officers and other officials or staff and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under the Juvenile Act;
- a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions and petitions relating thereto, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;
- the Administrative Office of the Pennsylvania Courts (AOPC);
- the judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties;
- officials of the Department of Corrections (DOC) or a state correctional institution or other penal institution to which an individual who has been previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category are not permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;
- a parole board, court or county probation official in considering an individual’s parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but these persons are not permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

⁴The term “supervision” in this context should be interpreted broadly to include responsibility, oversight or other authority over a juvenile, granted pursuant to an order of court.

- the state Sexual Offenders Assessment Board (SOAB) for use in completing assessments; and
- with leave of court, any other person, agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

It is critical that courts establish written policies and procedures governing the inspection and dissemination of court files and records, especially with regard to records that are open to inspection only with leave of court.

Factors to be Considered in Authorizing the Inspection of Juvenile Court Files and Juvenile Probation Records and Reports

How a court determines whether to grant an individual or agency the opportunity to inspect the files and records of a juvenile, if the individual or agency is not statutorily entitled to do so, is an important issue. It is imperative, therefore, for courts to have objective criteria and consistent policies governing the inspection of juvenile court files and juvenile probation records and reports. Recommendations in this regard are set forth in the Juvenile Court Judges' Commission (JCJC) Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports.⁵

According to these JCJC Standards, requests for access to, or copies of, juvenile court files or juvenile probation records or reports should be in the form of a motion to the court that specifies the information being sought and the purpose for which the information will be used. In determining whether to grant the motion the court should consider:

- the purpose for which the information will be used;
- the nature of the information requested;
- administrative or legislative authority governing the release of the information;
- the nature of the offense; and
- the impact that the release of the information would have on the juvenile and the community.

⁵See 37 Pa. Code §200.802 et seq.

With respect to the issue of subpoenas being issued for juvenile court records, it is recommended that so long as the subpoena clearly sets forth the records being sought, there is no need to have a court order entered by the court whose juvenile court records are being sought. However, if the subpoena is ambiguous, a court order should be issued by the court whose records are being sought, to authorize and provide guidance regarding the release and use of the records.

Policies regarding the Dissemination of Juvenile Court Records and Reports

The JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports recommend that courts adopt written policies and procedures governing the dissemination of juvenile probation records and reports. It is specifically recommended that the policies include a requirement that a representative from the juvenile probation department must be present throughout the inspection of records, and that the representative be responsible for the duplication of records. Juvenile probation departments should maintain a case-specific written record listing the names and addresses of individuals to whom copies of records are provided. A statement prohibiting the secondary dissemination of information should accompany records provided to individuals. It should be noted that drug and alcohol treatment information should not be disseminated without the written consent of the juvenile. Absent a written consent, drug and alcohol treatment may only be disseminated with a court order issued upon a showing of good cause.⁶

Release of Information to Schools

The Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, and JCJC Standards set forth provisions relating to the release of information to schools.⁷ When a juvenile is adjudicated delinquent, the court, through the juvenile probation department, must provide the name and address of the juvenile, the delinquent acts the juvenile was found to have committed, a brief description of the

⁶See 42 CFR Part 2 §2.14(b), 71 P.S. §1690.108 and 4 Pa. Code §255.5.

⁷See 42 Pa. C.S. §6341(b.1), Pa. R.J.C.P. 163, and 37 Pa. Code §200.803.

acts and the disposition of the case to the building principal, or his or her designee, of the school where the juvenile is enrolled.

When a juvenile is adjudicated delinquent for a felony, the juvenile probation department must also provide relevant information in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the juvenile. Additional information may likewise be provided to the principal or designee by the juvenile probation department as deemed necessary to protect public safety or to enable appropriate treatment, supervision or rehabilitation of the juvenile.

Information shared with schools is to be for the limited purpose of protecting school personnel and students from danger posed by the juvenile and to arrange appropriate counseling and education for the juvenile. Any information provided to the school by the juvenile probation department must be shared with the juvenile's teachers and must be kept separate from the juvenile's official school record. The information may not be used for admissions purposes or disciplinary decisions unless the act(s) surrounding the adjudication occurred within 1,500 feet of school property.

When a juvenile transfers from one school to another, any information provided to the building principal, or his or her designee, must be transferred to the building principal, or designee, of the school to which the juvenile transfers enrollment. School officials should maintain a written log listing the names and addresses of individuals to whom copies of records are provided to assist with the expungement of records should the court enter an expungement order.

Public Availability

Under certain circumstances, the public is entitled to receive limited information regarding juvenile court proceedings. The Juvenile Act and the Rules of Juvenile Court Procedure⁸ set forth criteria under which information may be released to the public, the specific information that may be released, and procedures regarding the release of such information.

⁸See 42 Pa. C.S. §6307(b) and Pa. R.J.C.P. 160(B).

Public Disclosure of Information based upon an Adjudication of Delinquency

42 Pa. C.S. §6307(b)(1)(i) provides that the public is entitled to receive certain information when a juvenile has been adjudicated delinquent for a felony committed when the juvenile was 14 years of age or older, or when a juvenile has been adjudicated delinquent for one of the following offenses committed when the juvenile was 12 or 13 years of age:

- Murder;
- Voluntary manslaughter;
- Aggravated assault as defined in 18 Pa. C.S. § 2702 (a)(1) or (2);
- Arson as defined in 18 Pa. C.S. § 3301 (a)(1);
- Involuntary deviate sexual intercourse;
- Kidnapping;
- Rape;
- Robbery as defined in 18 Pa. C.S. § 3701 (a)(1)(i), (ii) or (iii);
- Robbery of motor vehicle; or
- Attempt or conspiracy to commit any of the offenses listed in this paragraph.

When the aforementioned criteria are met, the Rules of Juvenile Court Procedure require the court to include a designation on the dispositional order as to whether the case is eligible for limited public information.⁹ The Rules of Juvenile Court Procedure also provide that, upon request, the clerk of courts is to create a public document if the case is deemed eligible for public inspection, which includes the following information:

- the juvenile's name;
- the juvenile's age;
- the juvenile's address;
- the offenses alleged in the petition;
- the adjudication on each allegation; and
- the disposition of the case.¹⁰

⁹See Pa. R.J.C.P. 515(A)(3).

¹⁰See Pa. R.J.C.P. 160(B).

Because release of information to the public is based, in large part, upon the offense, it is critical that courts make determinations regarding all offenses alleged in the petition. Courts are required to specify the particular offenses which the juvenile has been found to have committed, including the grading and counts thereof, on the record.¹¹

Public Disclosure of Information based upon a Petition Alleging Delinquency

Public disclosure of certain information contained in court files may also occur when a petition alleging delinquency has been filed in certain cases. This applies to juveniles who are 14 years of age or older at the time of the currently alleged offense, the offense would be a felony if committed by an adult, and the juvenile has a previous adjudication of delinquency for a felony offense committed when the juvenile was 14 years of age or older or was adjudicated delinquent when the child was 12 or 13 years of age for one of the following offenses; or when a petition alleging delinquency has been filed and the juvenile was 12 or 13 years of age at the time of the offense, the alleged conduct constitutes one or more of the following offenses and the juvenile was previously adjudicated delinquent for any one of these offenses committed when the juvenile was age 12 or 13:

- Murder;
- Voluntary manslaughter;
- Aggravated assault as defined in 18 Pa. C.S. § 2702 (a)(1) or (2);
- Arson as defined in 18 Pa. C.S. § 3301 (a)(1);
- Involuntary deviate sexual intercourse;
- Kidnapping;
- Rape;
- Robbery as defined in 18 Pa. C.S. § 3701 (a)(1)(i), (ii) or (iii);
- Robbery of motor vehicle; or
- Attempt or conspiracy to commit any of the offenses listed in this paragraph.

When the aforementioned criteria are met, the Rules of Juvenile Court Procedure require that the petition contain an averment as to

¹¹See 42 Pa. C.S. §6341(b) and Pa. R.J.C.P. 408.

whether the case is eligible for limited public information pursuant to 42 Pa. C.S. §6307(b)(1)(ii).¹² The Rules of Juvenile Court Procedure also provide that, upon request, the clerk of courts is to create a public document if the case is deemed eligible for public inspection. The public document is to contain only the following information:

- the juvenile’s name;
- the juvenile’s age;
- the juvenile’s address; and
- the offenses alleged in the juvenile’s petition.¹³

Employment and Military Service

Prospective employers, military recruiters, and others conducting background checks frequently make requests for juvenile court information. However, unless public availability criteria are met, the JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports recommend that a court order be obtained to authorize the release of such information.¹⁴ A court order authorizing the release of information should be required, even in cases where the recruiter has a signed release from the juvenile.

All branches of the military have regulations governing the eligibility of persons who have had involvement in the juvenile justice system. Juveniles who have had involvement in the juvenile justice system should review the eligibility requirements for the branch in which they intend to apply.

The Consequences of Having a Juvenile Court Record

The Juvenile Act provides that an order of disposition, or other adjudication, in a proceeding under the Juvenile Act is not a conviction of a crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service

¹²See Pa. R.J.C.P. 330(C)(14).

¹³See Pa. R.J.C.P. 160(B).

¹⁴See 37 Pa. Code §200.802.

application or appointment.¹⁵ However, juvenile court dispositions may affect a person in a variety of ways.

Effect in Subsequent Judicial Matters

The Juvenile Act provides that juvenile court dispositions may be used against a juvenile under the following circumstances:

- in disposition proceedings after conviction for the purposes of a presentence investigation and report if the child was adjudicated delinquent;
- in a subsequent juvenile hearing, whether before or after reaching majority;
- if relevant, where the juvenile has put his reputation or character in issue in a civil matter; or
- in a criminal proceeding, if the juvenile was adjudicated delinquent for an offense, the evidence of which would be admissible if committed by an adult.¹⁶

Higher Education

An increasing number of institutions of higher learning now inquire about the prior juvenile court involvement of applicants who desire admission. Colleges and universities are increasingly using a standard application, known as the “Common Application”, which has a question about whether the applicant has ever been convicted of a felony, misdemeanor or other crime. The application also includes sections where teachers and school counselors are asked about known convictions and the student’s disciplinary record. However, juveniles currently or previously subject to juvenile court dispositions can respond in the negative to questions regarding whether they were convicted of a crime because, as previously noted, the Juvenile Act provides that an order of disposition or other adjudication in a proceeding under the Juvenile Act is not a “conviction”, and does not impose a civil disability ordinarily resulting from a conviction.¹⁷ The Common Application can be viewed at <http://www.commonapp.org/>.

¹⁵See 42 Pa. C.S. § 6354(a).

¹⁶See 42 Pa. C.S. § 6354(b).

¹⁷See 42 Pa. C.S. § 6354(a).

Suspension of Motor Vehicle Operating Privileges

This section includes information on circumstances where motor vehicle operating privileges may be suspended. Juveniles not having a license at the time of suspension are ineligible to apply for a driver's license for the time period specified by the license suspension. If a juvenile is under the age of 16 when a license suspension is ordered, the suspension will commence automatically upon the individual's 16th birthday for the specified period of time.¹⁸

It should be noted that there have been instances where driver history information, including suspensions of operating privileges related to consent decrees and adjudications of delinquency, has been released by the Pennsylvania Department of Transportation even though the court-related information could not legally have been released to the public. Please refer to the Expungement of PennDOT Driver History Information section of this handbook (page 26) for information relating to the policies of PennDOT with respect to this issue.

Felony Adjudications / Vehicle Involved

The suspension of operating privileges for one year is required when a juvenile has been adjudicated delinquent for a felony offense and the Court determines that a vehicle was essentially involved.¹⁹

Vehicle Code Violations (non-DUI)

A suspension of operating privileges is required for three years for a conviction or adjudication of delinquency for the offense of homicide by vehicle (75 Pa. C.S. §3732).²⁰

A suspension of operating privileges is required for one year for a conviction or adjudication of delinquency for the following offenses:²¹

¹⁸See 75 Pa. C.S. §1541 (a).

¹⁹See 75 Pa. C.S. §1532 (a)(1).

²⁰See 75 Pa. C.S. §1532 (a.1).

²¹See 75 Pa. C.S. §1532 (a)(3).

- Accidents involving death or personal injury (75 Pa. C.S. §3742);
- Accidents involving death or personal injury while not properly licensed (75 Pa. C.S. §3742.1);
- Dealing in titles and plates for stolen vehicles (75 Pa. C.S. §7111);
- False application for certificate of title or registration (75 Pa. C.S. §7121);
- Altered, forged or counterfeit documents and plates (75 Pa. C.S. §7122);
- Fleeing or attempting to elude a police officer (75 Pa. C.S. §3733).²²

A suspension of operating privileges is required for six months for a conviction or adjudication of delinquency for the following offenses:²³

- Racing on highways (75 Pa. C.S. §3367);
- Careless driving (75 Pa. C.S. §3714 (b));
- Driving without lights to avoid identification or arrest (75 Pa. C.S. §3734);
- Reckless driving (75 Pa. C.S. §3736); and
- Accidents involving damage to attended vehicle or property (75 Pa. C.S. §3743).

A suspension of operating privileges is required for three months for a conviction or adjudication of delinquency for the following offenses:

- Operation following suspension of registration (75 Pa. C.S. §1371);²⁴ and
- Careless driving involving serious bodily injury (75 Pa. C.S. §3714(c)).²⁵

Alcohol-related Offenses (non-vehicle code)

A suspension of operating privileges is required for convictions, adjudications of delinquency, or admissions into a pre-adjudication program for the following summary offenses:

²²See 75 Pa. C.S. §1532 (b)(3).

²³See 75 Pa. C.S. §1532 (b)(1).

²⁴See 75 Pa. C.S. §1532 (b)(4).

²⁵See 75 Pa. C.S. §1532 (b)(5).

- Misrepresentation of age to secure liquor or malt or brewed beverages (18 Pa. C.S. §6307);
- Purchase, consumption, possession or transportation of liquor or malt or brewed beverages (18 Pa. C.S. §6308); and
- Carrying a false identification card (18 Pa. C.S. §6310.3).

Unless included on a delinquency petition because the summary offense arose out of the same episode or transaction, these summary offenses would normally be heard by a magisterial district judge.

For the offenses mentioned above, a suspension of operating privileges for 90 days is required for a first offense; one year from the date of suspension for a second offense; and two years from the date of suspension for third or subsequent offenses.²⁶

DUI-related Offenses

A suspension of operating privileges is required for three months for a conviction for the offense of minor prohibited from operating with any alcohol in system (75 Pa. C.S. §3718).²⁷

Suspension of operating privileges for six months is required for juveniles who receive a consent decree disposition for driving under the influence of alcohol or controlled substance (75 Pa. C.S. §3802).²⁸

A suspension of operating privileges is required for one year for a conviction or adjudication of delinquency for the offense of aggravated assault by vehicle while driving under the influence (75 Pa. C.S. §3735.1).²⁹

A suspension of operating privileges is required for three years for a conviction or adjudication of delinquency for the offense of homicide by vehicle while driving under the influence (75 Pa. C.S. §3735).³⁰

²⁶See 75 Pa. C.S. §1532 (d) and 18 Pa. C.S. §6310.4 (b).

²⁷See 75 Pa. C.S. §1532 (b)(4).

²⁸See 75 Pa. C.S. §3804 (e)(2)(v).

²⁹See 75 Pa. C.S. §1532 (a)(3).

³⁰See 75 Pa. C.S. §1532 (a.1)(2).

Juveniles who are adjudicated delinquent for driving under the influence of alcohol or controlled substance will have operating privileges suspended pursuant to 75 Pa. C.S. §3804 (e), as follows:

- 12 months for an ungraded misdemeanor or misdemeanor of the second degree, including general impairment as defined in 75 Pa. C.S. §3802(a)(1) and (2). Generally, this includes an alcohol concentration of a minor's blood or breath of at least 0.02%, but not more than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.³¹ An individual who violates §3802(a) and has more than one prior offense, commits a misdemeanor of the second degree.³²
- 18 months for a misdemeanor of the first degree, including DUI where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a vehicle or other property; an alcohol concentration of a minor's blood or breath of more than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle; DUI while in physical control of the movement of a commercial vehicle, school bus or school vehicle where alcohol concentration of a minor's blood or breath of more than 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or school vehicle; 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or school vehicle.

Drug-related Offenses

A suspension of operating privileges is required for a conviction or adjudication of delinquency relating to any offense involving the possession, sale, delivery, offering for sale, holding for sale or giving away of any controlled

³¹See 75 Pa. C.S. §3802 (e).

³²See 75 Pa. C.S. §3803 (a)(2).

substance. A suspension for six months is required for a first offense; one year for a second offense; and two years for third and subsequent offenses.³³

School-related Offenses

A suspension of operating privileges is required for adjudications of delinquency relating to terroristic threats committed on school property, including any public school grounds, during any school-sponsored activity, or on any conveyance providing transportation to a school entity or school-sponsored activity. A suspension for six months is required for a first offense; one year for a second offense; and two years for third and subsequent offenses.³⁴

Truancy-related Dispositions

A suspension of operating privileges is required for juveniles who violate compulsory attendance requirements (24 Pa. C.S. §13 -1333). A suspension for 90 days is required for a first violation, and 6 months for a second violation.

Suspension of Operating Privileges at the Court's Discretion

The court may order the Pennsylvania Department of Transportation to suspend the operating privileges of a juvenile for any other offense at the court's discretion.

Possession or Purchase of a Firearm

18 Pa. C.S.A. §6105 prohibits juveniles who have been adjudicated delinquent of certain offenses (see the Appendix for a listing of these offenses) from possessing, using, manufacturing, controlling, selling or transferring firearms. It should be noted that this prohibition also applies to persons who have been involuntarily committed for mental health treatment under the Mental Health Procedures Act, and persons who are the subject of an active protection from abuse order issued pursuant to 23 Pa. C.S. §6108, when the order provided for the relinquishment of firearms.

³³See 75 Pa. C.S. §1532 (c)(1).

³⁴See 75 Pa. C.S. §1532 (c)(1).

The Pennsylvania State Police (PSP) maintains a registry of juveniles who have been adjudicated delinquent for the offenses set forth in this statute. However, the contents of the law enforcement records concerning juveniles are not to be disclosed in conjunction with a firearms purchase background check, unless the juvenile was 14 years of age or older at the time of the alleged offense and the juvenile:

- has been adjudicated delinquent on the basis of an offense enumerated in 18 Pa. C.S. § 6105; or
- a petition alleging delinquency has been filed alleging that the juvenile has committed any offense enumerated in 18 Pa. C.S. § 6105, and the juvenile had been previously adjudicated delinquent by a court as a result of an act or acts which included the elements of any one of these crimes.

It should be noted that it has been PSP policy to classify an adjudication of delinquency related to a drug-related offense within the past year as a conviction under federal interpretation of a “drug user”.³⁵ According to PSP policy, a juvenile who is arrested on a drug-related offense within the past 5 years and has a drug arrest in the past year, is also prohibited from purchasing or possessing a firearm.

The prohibition related to the possession, use, manufacture, control, sale or transfer of firearms terminates 15 years after the date of the last applicable adjudication of delinquency, or at age 30, whichever comes first.

The Use of Delinquency Adjudications for Criminal Sentencing Purposes

While adjudications of delinquency can be included in presentence investigations and considered by the court in framing a sentence following a criminal conviction, only certain adjudications of delinquency are counted when calculating the prior record score, pursuant to the Sentencing Guidelines developed by the Pennsylvania Commission on Sentencing. Adjudications of delinquency are

³⁵See 27 CFR §478.11.

counted in the Prior Record Score if the offense occurred on or after the juvenile's 14th birthday, and if there was an express finding by the court that the adjudication related to a felony or one of the Misdemeanor 1 offenses listed in 204 Pa. Code §303.7 (a)(4).

The following is an excerpt from 204 Pa. Code §303.7 (relating to Prior Record Score-Guideline Points Scoring):

- a. §303.7 (a)(1) - Four points are added for each prior adjudication of delinquency for the following offenses:
 - Murder, and attempt, solicitation or conspiracy to commit Murder
 - All other completed crimes of violence, excluding inchoates, as defined in 42 Pa. C.S. §9714(g) (see appendix for a listing of these offenses)
 - Murder of Unborn Child, and attempt, solicitation or conspiracy to commit Murder of Unborn Child
 - Offenses with an Offense Gravity Score (OGS) of 11 or greater, excluding inchoates and violations of the Controlled Substance Act
 - Ethnic Intimidation to any Felony 1 offense
- b. §303.7 (a)(2) – Three points are added for each prior adjudication of delinquency for Felony 1 offenses not listed in §303.7 (a)(1), inchoates to offenses listed in §303.7 (a)(1), Sexual assault, Aggravated indecent assault and violations of 35 P.S. §§ 780-113 (relating to prohibited acts; penalties).
- c. §303.7 (a)(3) - Two points are added for each adjudication of delinquency for Felony 2 offenses not listed in §303.7 (a)(1) or §303.7 (a)(2), and all felony drug offenses not listed in §303.7 (a)(2) including inchoates.
- d. §303.7 (a)(4) – One point is added for each adjudication of delinquency for felonies not listed in §303.7 (a)(1), (a)(2) or (a)(3), and for Misdemeanor 1 offenses that involve weapons or involve death or danger to children, and Driving under the

influence of alcohol or controlled substance when the grade is a misdemeanor.

- e. §303.7 (a)(5) – All other misdemeanor offenses designated by an “m” in the offense listing at §303.15. Points added depend on the number of previous convictions.

Lapsing of Juvenile Adjudications

Prior juvenile adjudications for four point offenses listed in §303.7 (a)(1) are always included in the Prior Record Score. All other adjudications currently lapse and are not counted in the Prior Record Score, if the offender was 28 years of age or older at the time the offense for which the offender is being sentenced was committed.³⁶

Pennsylvania Supreme Court’s Record Retention and Disposition Schedule

The Pennsylvania Supreme Court’s “Record Retention and Disposition Schedule with Guidelines” (Pa. R.J.A. 507) includes a schedule for juvenile delinquency and dependency records. The guidelines provide that, unless expunged, the docket and original court orders are considered “permanent” records, and may not be destroyed unless replicated pursuant to Supreme Court guidelines.

All other records, including petitions, evaluations, case supervision records, etc. are considered “non-permanent” records and, unless expunged, may not be destroyed until the child reaches twenty-five years of age or ten years after the date of the last action, whichever is later.

Law Enforcement Records

The Juvenile Act sets forth provisions regarding the inspection and dissemination of law enforcement records.³⁷ Law enforcement files and records of juveniles must be kept separate from the files and records of adults, and inspection of the files and records is permitted by only the following:

³⁶See 204 Pa. Code §303.6 (c).

³⁷See 42 Pa. C.S. §6308.

- the court having the child before it in any proceeding;
- counsel for a party to the proceeding;
- the officers of institutions or agencies to whom the child is committed;
- law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; and
- a court in which the juvenile is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which a juvenile is committed, or by a parole board in considering parole or discharge, or in exercising supervision over him.

Public Availability

Unless a charge of delinquency is transferred for criminal prosecution, the interest of national security requires, or the court otherwise determines that it would be in the interest of the juvenile, law enforcement records and files are not open to public inspection and their contents may not be disclosed to the public, unless the same criteria that exists for the public availability of court files and records are met.³⁸ If the juvenile's conduct meets the public availability criteria, the law enforcement agency is required to disclose the juvenile's name, age, address, the offenses charged and the disposition of the case.

Fingerprints and Photographs

The Juvenile Act sets forth provisions regarding the taking and dissemination of fingerprints and photographs.³⁹ Law enforcement officers have the authority to take the fingerprints and photographs of any juvenile who is alleged to have committed a misdemeanor or felony offense. The law enforcement agency that alleged the child to be delinquent is required to take fingerprints and photographs of a child who is adjudicated delinquent or transferred for criminal prosecution, and to forward those records to the PSP Central Repository. If a juvenile is adjudicated delinquent and the juvenile was alleged to be delinquent by other than a law enforcement agency, the court must

³⁸See 42 Pa. C.S. §6308(b).

³⁹See 42 Pa. C.S. §6308(c).

direct the juvenile probation department to ensure that the fingerprints and photographs are taken by a law enforcement agency.

In situations where fingerprints and photographs have been taken, and it is subsequently determined that the juvenile did not commit the offenses for which he was alleged to be delinquent, the court must direct that the records be immediately destroyed by the law enforcement agency.

Fingerprints and photographs may only be disseminated to law enforcement officers of other jurisdictions, the PSP and the Federal Bureau of Investigation, and may be used for investigative purposes.

All fingerprints and photographs of juveniles must be kept separate from adult fingerprints and photographs. A Juvenile Offense Tracking Number (JOTN) is assigned by the PSP after a juvenile is fingerprinted, unlike in criminal cases where the Offense Tracking Number (OTN) is assigned prior to fingerprinting.

Juvenile History Record Information

The Juvenile Act sets forth the provisions of juvenile history record information regarding alleged and adjudicated delinquents, which is maintained by the PSP in the Central Repository.⁴⁰ Juvenile history record information consists of fingerprints and photographs, identifiable descriptions, dates and notations of arrests or other delinquency charges, and juvenile court dispositions other than dismissal. It also includes the last known location and the juvenile court jurisdiction status of each adjudicated delinquent.

Juvenile history record information *does not* include intelligence information, investigative information, treatment information including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.

⁴⁰See 42 Pa. C.S. §6309.

DNA Samples

A juvenile who is adjudicated delinquent for a “felony sex offense” or “other specified offense” as defined at 44 Pa. C.S. §2303, must have a DNA sample drawn for inclusion in the State DNA Data Bank and State DNA Data Base administered by the Pennsylvania State Police (PSP).⁴¹

The term “felony sex offense” is defined at 44 Pa. C.S. §2303 as a felony offense, or an attempt, conspiracy or solicitation to commit a felony offense under any of the following:

- 18 Pa. C.S. Chapter 31 (relating to sexual offenses)
- 18 Pa. C.S. §4302 (relating to incest)
- 18 Pa. C.S. §5902 (c)(1)(iii) and (iv) (relating to prostitution and related offenses)
- 18 Pa. C.S. §5903 (a) (relating to obscene and other sexual materials and performances)
- 18 Pa. C.S. §6312 (relating to sexual abuse of children)
- 18 Pa. C.S. §6318 (relating to unlawful contact with minor) where the most serious underlying offense for which the defendant contacted the minor is graded as a felony
- 18 Pa. C.S. §6320 (relating to sexual exploitation of children)

The term “other specified offense” is defined at 44 Pa. C.S. §2303 as a felony offense, or an offense under 18 Pa. C.S. §2910 (relating to luring a child into a motor vehicle) or 18 Pa. C.S. §3126 (relating to indecent assault) or an attempt to commit such an offense.

All DNA samples, together with a full set of fingerprints must be delivered to the PSP within 48 hours of drawing the sample. Samples are stored at the PSP’s Bureau of Forensic Services and DNA Laboratory in Greensburg, Pennsylvania.

44 Pa. C.S. §2322 provides that unless undue hardship would result, a mandatory cost of \$250 must be assessed on any person

⁴¹See 44 Pa. C.S. §2316.

adjudicated delinquent for a “felony sex offense” or “other specified offense”. All proceeds derived from these assessments are transmitted to the DNA Detection Fund established in the State Treasury.

The JCJC Standards Governing the Intercounty Transfer of Delinquency Cases⁴² recommends that, in intercounty transfer cases, the court which adjudicates a juvenile delinquent should ensure that the DNA sample is drawn.

Expungement of DNA Records

DNA samples may only be expunged on the grounds that the adjudication of delinquency was reversed and the case dismissed, or that the DNA sample was included in the data base by mistake.⁴³ It is imperative that expungement orders contain the essential case-specific information required by the PSP to properly identify the records that are to be expunged. It is recommended that court orders to expunge DNA records include language specifically directing the PSP to notify the court of the action taken in response to the expungement order.

Expungement of Juvenile Records

Definition of “Expunge”

The Criminal History Record Information Act, which applies to alleged and adjudicated delinquents whose fingerprints and photographs are taken, and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information,⁴⁴ defines “expunge”,⁴⁵ as follows:

1. to remove information so 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

⁴²See 37 Pa. Code §200.701.

⁴³See 44 Pa. C.S. §2321.

⁴⁴See 42 Pa. C.S. §6309.

⁴⁵See 18 Pa. C.S.A. §9102.

3. maintenance of certain information required or authorized under the provisions of §9122 (c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program.

Expungement Process

Pa. R.J.C.P. 170(B) provides that juvenile records may be expunged upon motion, which is to take the form of a proposed court order, and which includes the following information:

1. the name of the juvenile;
2. the date of birth of the juvenile, if known;
3. the juvenile's case docket number, if any;
4. the allegations to which the order pertains;
5. the law enforcement agency that initiated the allegations;
6. the reference number of the police report or written allegation to be expunged or destroyed;
7. the date of arrest;
8. the disposition of the written allegation or petition;
9. the reasons and statutory authority for expunging or destroying the document; and
10. the agencies upon which certified copies of the court order shall be served.

The motion is to be filed pursuant to Pa. R.J.C.P. 345, and must also be served upon the chief juvenile probation officer. The attorney for the Commonwealth and any other person upon whom the motion was served may file an answer to the motion. Unless the attorney for the Commonwealth consents to expunging the record, the court must schedule and conduct a hearing, and thereafter grant or deny the motion.

In cases where an expungement could be granted if a juvenile were to request it, it is recommended that courts set in place procedures under which the probation department initiates the expungement process automatically after the appropriate length of time has elapsed.⁴⁶ This would alleviate the need for the person who is the

⁴⁶Pennsylvania Juvenile Delinquency Benchbook, §11-3.

subject of records to be expunged, from retaining legal counsel to initiate the process.

Requirements for the Expungement of Records

18 Pa. C.S. §9123 sets forth requirements for the expungement of juvenile records. Juvenile delinquency records are required to be expunged following a 30 day 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 is pending seeking such conviction or adjudication; or
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:
 - the type of offense;
 - the individual's age, history of employment, criminal activity and drug or alcohol problems;
 - adverse consequences that the individual may suffer if the records are not expunged; and
 - whether retention of the record is required for purposes of protection of the public safety.

When an individual or an agency files a motion to expunge a record, a request should be made to the Pennsylvania State Police (PSP) for the juvenile's history record information or rap sheet. This information can then be compared with the information contained in the juvenile court file.

Expungement Orders

Pa. R.J.C.P. 172 requires that any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs is required to include all of the elements contained in the motion. An order for expungement must also include the printed name and signature of the judge issuing the order, and the date of the court order.

Distribution of Expungement Orders

In addition to service required by Pa. R.J.C.P. 167, the clerk of courts must serve certified copies of the expungement order to the chief juvenile probation officer and any other person or agency as directed by the court.

As previously mentioned, the JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports recommend that juvenile probation departments maintain a case-specific written record listing the names and addresses of individuals to whom copies of records were provided. Copies of the expungement order must be directed to any individual or agency having possession of juvenile court records.

Some courts have found it useful to direct that the recipient of a court order for expungement subsequently respond to the court acknowledging that the record has been destroyed.

Expungements Related to the Intercounty Transfer of Delinquency Cases

It is recommended that, generally, the court making disposition in an inter-county juvenile delinquency case should be the court that orders the expungement of records associated with the case. In these

cases, it is recommended that the movant provide copies of the motion for expungement to the district attorney of the county in which the motion was made, as well as the district attorney in the county from which the case was transferred.

Expungement of DNA Records

As mentioned in the DNA section of this handbook, DNA samples may only be expunged on the grounds that the adjudication of delinquency was reversed and the case dismissed, or that the DNA sample was included in the data base by mistake.⁴⁷ It is imperative that expungement orders contain the essential case-specific information required by the PSP to properly identify the records that are to be expunged. It is recommended that court orders to expunge DNA records include language specifically directing the PSP to notify the court of the action taken in response to the expungement order.

Expungement of PennDOT Driver History Information

It has generally been the policy of PennDOT that expungement orders entered by courts do not apply to driver history records maintained by PennDOT, unless there is a specific statutory provision which allows a court to direct PennDOT to expunge a driver history record. For example, 18 Pa. C.S. §9122 (a)(3) (relating to expungement), requires the court to order the expungement of all criminal history record information and all administrative records of PennDOT pertaining to a conviction of 18 Pa. C.S. §6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), provided the person is 21 years of age and has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges. However, PennDOT does not regard other provisions of the Criminal History Record Information Act (CHRIA),⁴⁸ including the provisions of 18 Pa. C.S. §9123 (relating to juvenile records), as empowering courts to order the expungement of driver history information in conjunction with an order directing the expungement of juvenile court records or law enforcement records.

⁴⁷See 44 Pa. C.S. §2321.

⁴⁸See 18 Pa. C.S. 9101 et seq.

Glossary

Criminal History Record Information – information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in 18 Pa. C.S. §9104 (relating to scope).⁴⁸

Expungement – to remove information so that there is no trace or indication that such information existed; 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 maintenance of certain information required or authorized under the provisions of section 9122 (c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program.⁴⁹

Juvenile Court Files - include all original records, papers and orders filed, copies of all court notices, and docket entries.⁵⁰

Juvenile History Record Information - information collected concerning alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to 42 Pa. C.S. §6308 (c) and arising from the filing of a petition of delinquency. This information consists of identifiable descriptions, dates and notations of arrests or other delinquency charges and any adjudication of delinquency or preadjudication disposition other than dismissal arising therefrom. This information also includes the last known location of the juvenile and the juvenile court jurisdiction status of each adjudicated delinquent. Juvenile history record information

⁴⁸See 18 Pa. C.S. §9102.

⁴⁹See 18 Pa. C.S. §9102.

⁵⁰See Pa. R.J.C.P. 166.

does not include intelligence information, investigative information, treatment information including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.⁵¹

Juvenile Probation Records and Reports - include but are not limited to, social summaries, psychological and psychiatric evaluations, personal histories, school records and reports, mental health histories and reports, drug and alcohol evaluations and placement facility records and reports.⁵²

⁵¹See 42 Pa. C.S. §6309 (e).

⁵²See Comment to Pa. R.J.C.P. 160.

Appendix

Offenses Precluding Possessing, Using, Manufacturing, Controlling, Selling, or Transferring Firearms

1. Prohibited offensive weapons (18 Pa. C.S. §908).
2. Corrupt organizations (18 Pa. C.S. §911).
3. Possession of a weapon on school property (18 Pa. C.S. §912).
4. Murder (18 Pa. C.S. §2502).
5. Voluntary manslaughter (18 Pa. C.S. §2503).
6. Involuntary manslaughter (18 Pa. C.S. §2504) if the offense is based on reckless use of a firearm.
7. Aggravated assault (18 Pa. C.S. §2702).
8. Assault by prisoner (18 Pa. C.S. §2703).
9. Assault by life prisoner (18 Pa. C.S. §2704).
10. Stalking (18 Pa. C.S. §2709.1).
11. Weapons of mass destruction (18 Pa. C.S. §2716).
12. Kidnapping (18 Pa. C.S. §2901).
13. Unlawful restraint (18 Pa. C.S. §2902).
14. Luring a child into a motor vehicle (18 Pa. C.S. §2910).
15. Rape (18 Pa. C.S. §3121).
16. Involuntary deviate sexual intercourse (18 Pa. C.S. §3123).
17. Aggravated indecent assault (18 Pa. C.S. §3125).
18. Arson and related offenses (18 Pa. C.S. §3301).
19. Causing or risking a catastrophe (18 Pa. C.S. §3302).
20. Burglary (18 Pa. C.S. §3502).
21. Criminal trespass (18 Pa. C.S. §3503) if the offense is graded a felony of the second degree or higher.
22. Robbery (18 Pa. C.S. §3701).
23. Robbery of a motor vehicle (18 Pa. C.S. §3702).
24. Theft by unlawful taking or disposition (18 Pa. C.S. §3921) upon conviction of the second felony offense.
25. Theft by extortion (18 Pa. C.S. §3923) when the offense is accompanied by threats of violence.
26. Receiving stolen property (18 Pa. C.S. §3925) upon conviction of the second felony offense.

27. Impersonating a public servant (18 Pa. C.S. §4912) if the person is impersonating a law enforcement officer.
28. Intimidation of witnesses or victims (18 Pa. C.S. §4952).
29. Retaliation against witness or victim (18 Pa. C.S. §4953).
30. Escape (18 Pa. C.S. §5121).
31. Weapons or implements for escape (18 Pa. C.S. §5122).
32. Riot (18 Pa. C.S. §5501(3)).
33. Prohibiting of paramilitary training (18 Pa. C.S. §5515).
34. Facsimile weapons of mass destruction (18 Pa. C.S. §5516).
35. Possession of firearm by minor (18 Pa. C.S. §6110.1).
36. Corruption of minors (18 Pa. C.S. §6301).
37. Sale or lease of weapons and explosives (18 Pa. C.S. §6302).

**Offenses in 42 Pa. C.S. §9714 (g) included as 4 point offenses
in the Prior Record Score Section of the
Pennsylvania Sentencing Guidelines (204 Pa. Code §303.7)**

1. Murder of the third degree.
2. Voluntary manslaughter.
3. Aggravated assault as defined in 18 Pa. C.S. §2702 (a)(1) or (2) (relating to aggravated assault).
4. Rape.
5. Involuntary deviate sexual intercourse.
6. Aggravated indecent assault.
7. Incest.
8. Sexual assault.
9. Arson as defined in 18 Pa. C.S. §3301 (a) (relating to arson and related offenses).
10. Kidnapping.
11. Burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present.
12. Robbery as defined in Pa. C.S. §3701 (a)(1)(i), (ii) or (iii) (relating to robbery).
13. Robbery of a motor vehicle.

