

ADVISING JUVENILES IN DELINQUENCY PLEA HEARINGS

This bench card is designed to assist juvenile court judges in recognizing circumstances in which a juvenile may be taking actions in a delinquency hearing that could jeopardize his or her immigration status or eligibility for certain discretionary immigration benefits and thus should assure that the juvenile receives adequate advice from an attorney. ***We suggest that the juvenile court judge assure that a non-citizen juvenile who has engaged in any of the acts listed below has received appropriate immigration advice before accepting a plea.***

We do not believe that a simple advisement as part of a plea colloquy that a guilty plea to the charges might result in making the juvenile deportable, inadmissible, or ineligible for naturalization is adequate for advising juveniles. A juvenile's judgment can affect competence to plead guilty. A juvenile may be more likely to focus on the short term benefits of pleading guilty, such as immediate release, rather than long term consequences such as immigration consequences. Further, the ramifications of a guilty plea in a delinquency proceeding for an immigrant juvenile, as discussed below, are complex, and an immigrant juvenile is unlikely to be able to comprehend them without the assistance of a defense attorney who is familiar with Federal immigration law.

For juveniles with lawful immigration status, admitting to certain delinquent behavior in juvenile court, regardless of whether there is an adjudication of such conduct, can cause them to lose their status or bar them from readmission to the country if they leave. Juvenile delinquency dispositions are not considered adult criminal convictions for immigration purposes, so criminal convictions that make an immigrant adult deportable do not apply to juveniles who are convicted of the same acts in a delinquency proceeding. Still, there are some acts that do not require a criminal conviction to put a juvenile at risk for immigration consequences. The following behaviors that might arise in a delinquency case may later prove problematic for an immigrant juvenile by making the juvenile deportable, subject to possible waiver:

- Known or reasonably believed to have engaged in drug trafficking;
- Being a drug abuser or addict;
- Being a habitual drunkard;

- Having engaged in prostitution;
- Violating a protection order;
- Using false documents; and
- Having a mental condition that is a threat to others.

For juveniles without lawful immigration status, certain behavior can jeopardize their chance of obtaining discretionary relief that would allow them to attain lawful permanent resident status or other immigration benefits, such as Special Immigrant Juvenile (SIJ) status. Many of the grounds of inadmissibility apply to juveniles applying for SIJ status, as an applicant for SIJ status must also apply for a change in status to lawful permanent resident, and the applicant must be admissible to be eligible for lawful permanent resident status. All of the grounds listed above, except for violating a protection order, may make an unauthorized juvenile ineligible not only for SIJ status but also for other forms of immigration benefits.

For any person applying to the United States Citizenship and Immigration Services (USCIS) for naturalization, USCIS can consider any acts that, in its opinion, make the applicant undesirable, including acts committed while the individual was a juvenile. A juvenile who admits to any of the behaviors listed above with regard to deportability or inadmissibility in a delinquency proceeding may be at risk of not being able to naturalize after the individual attains the age of 18, at least until the time limit expires for consideration of the disqualifying factors. In addition, certain criminal acts that do not make a juvenile deportable if dealt with in a delinquency proceeding may still be considered by USCIS in deciding on an application for naturalization after the juvenile attains the age of 18 years. Some of those acts include:

- Any crime related to a controlled substance;
- Crimes involving moral turpitude, in the delinquency context particularly theft, fraud, and prostitution; and
- Violent offenses, particularly if associated with gang activity.

Violent offenses, sex offenses, and gang activity are particularly problematic, as they often can lead to denial of any immigration benefit.

Access of USCIS to Juvenile Court Records

As the burden of establishing eligibility for any immigration benefit, including naturalization, is on the applicant, USCIS may request the applicant to provide access to juvenile court records as a condition of meeting that burden. Juvenile court records are typically sealed, but USCIS may be able to access those records with the permission of the applicant unless state law requires permission from the juvenile court before an individual can submit his or her own juvenile court records.