

Intersection of Immigration and Juvenile Justice

When a young person is adjudicated in the juvenile legal system, that decision remains with them far beyond the conclusion of the case. The "collateral consequences" of being found delinquent in a juvenile court matter can create barriers to education, employment, military service, and public benefits, greatly hampering the ability to learn and move on youthful mistakes as they step into adulthood. This overview explores how these collateral consequences of a juvenile court adjudication pose additional harms for youth from immigrant families.

I. Collateral Consequences of Juvenile Court Adjudication on Immigration Rights

The collateral consequences of a juvenile court case create barriers to success for all youth, but there are specific, additional harms that face immigrant youth— especially those who are undocumented. Juvenile legal system involvement creates a potential pipeline to immigration detention and deportation for adolescent behavior, and can also prevent these young people, while still coming of age, from ever being able to gain United States citizenship.

What is a "juvenile court adjudication"? ¹

A Juvenile Court judge or jury's determination that a young person between the ages of 12-17 is responsible (guilty) for committing a delinquent (criminal) act is called an adjudication.

What are the different types of adjudications?

If a charge is proven beyond a reasonable doubt, or the youth enters a plea admitting responsibility for the charge, the youth is found "delinquent" and the court proceeds to

¹ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section58>; see also <https://www.mass.gov/info-details/information-about-juvenile-court-adjudication-and-dispositions>

the disposition (aka sentencing) phase. A delinquent finding, while not considered a criminal "conviction" under Massachusetts General Laws due to the matter being handled in the juvenile system, is analogous to a person being "convicted" or found "guilty" in an adult criminal court.

A youth can also "admit to sufficient facts" and have a case in juvenile court "continued without a finding" for a period of time. If the youth abides by certain conditions set by the judge during the time period, the case can be dismissed in lieu of a finding of delinquency. However, it's important to note that this disposition requires an admission that there are facts in the case that could support a finding of delinquency, even though it avoids a finding of delinquency.

If the charges against a youth are not proven beyond a reasonable doubt at trial, a court will find the youth "not delinquent". This is the equivalent of being found "not guilty" in an adult court. In this situation, the youth's case is closed. A juvenile court judge can also dismiss a case, either based on a finding of a lack of probable cause, or at the request of one of the prosecution or defense.

What is a definition of a "youth offender"?²

Massachusetts "youthful offender" statute opens up the option of adult legal system treatment and sanctions to young people between 14-17 who have been convicted of a serious felony (i.e. one that carries a state prison sentence when committed by an adult) and where one of the following criteria is present: 1) a has previous DYS commitment, 2) has committed a certain firearms offense, and/or 3) has committed an offense which involves the infliction or threat of a serious harm.

What is a "collateral consequence"?

Collateral consequences are legal restrictions instituted by a court to limit or prohibit certain conduct of an offender following adjudication.

Some examples of collateral consequences are:

² <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section52>

- Hurdles to attaining high school diplomas or college entrance
- Loss of voting rights
- Barriers to military service
- Barriers to subsidized housing
- Loss of driving privileges
- Deportation or risks to immigration status

Are juvenile adjudications considered convictions for immigration purposes?³

No. A delinquency finding on a deportable offense that requires a conviction, therefore, will not cause a juvenile to be deported. There is a possibility that youthful offender convictions may be considered convictions for immigration purposes, but courts have yet to definitively rule on this issue.

Can juvenile adjudications still cause immigration consequences?

Yes. There are some offenses for which a conviction is not necessary to cause a non-citizen to be inadmissible or deportable.

What are some examples of offenses which can cause a non-citizen to be inadmissible or deportable?

Violating a restraining order, for instance, is a deportable offense that does not require a conviction, so a mere delinquency finding is sufficient to result in a youthful offender being deported.

In addition, the Immigration and Nationality Act provides that a person who the Attorney General has "reason to believe" is a drug trafficker is inadmissible to the United States. Under immigration laws, drug trafficking includes possession with intent to distribute, so a youth who is found delinquent for this offense is inadmissible and could be denied a green card.

³ <https://www.masslegalservices.org/system/files/library/IIU-Guide-2022.pdf> (pg. 24)

Finally, a noncitizen is both deportable and inadmissible for being a drug abuser or addict, and a noncitizen is inadmissible for engaging in prostitution.

Are there any implications on DACA for a juvenile adjudication?

Yes, where the exercise of discretion is involved, immigration may deny a noncitizen a benefit based on delinquency determinations. For example, Deferred Action for Childhood Arrivals (DACA)– the program that provides undocumented young people with work authorization and a promise not to deport them– may be denied in the exercise of discretion based on juvenile delinquency adjudications. Juvenile adjudications can also be used to prevent a finding of "good moral character," which is a requirement for naturalization and for certain forms of relief from removal. Delinquency findings can also be used as negative discretionary factors in applications for legal status or defenses to removal.

II. Gang Databases and Juvenile Immigrants

In Massachusetts, different police departments label young people– US citizens and non-citizens alike– as 'gang affiliated' or 'gang members' using subjective evidence based on 'stop and frisk' policing techniques and other police 'intelligence.' Alleged gang affiliation may land an undocumented young person in a "gang member database," jeopardizing possible pathways to immigration status or benefits and potentially subjecting them to harsher criminal penalties.

What is a "gang database"?

A "gang database" is a law enforcement system that labels, tracks and shares information about people, including juveniles, that are alleged to be involved in or associated with gangs. Gang databases are ubiquitous in the US a modern-day law enforcement tool, despite well-documented flaws and racial discrimination.⁴

The Boston Police Department's ("BPD") gang database, which is called the "Gang Assessment Database," is maintained by Boston Regional Intelligence Center and lists

⁴ Diaz Ortiz v. Garland, 23 F.4th 1, 22 (1st Cir. 2022) (“[T]he BRIC database does not contain “reasonable, substantial, and probative evidence” of gang membership or association . . .”).

an estimated 4,000 individuals with "active status".⁵ As of 2019, more than 90 percent of the individuals in the BPD's gang database were either Black or Latino,⁶ despite Black and Latinos combined comprising less than 40% of Boston's population. Beyond Boston, there are many other municipalities in Massachusetts that keep lists or databases of alleged gang members.

What is the Boston Police Department's definition a "gang"?

Rule 335 of the BPD's "Rules and Procedures" defines a gang as:

. . . an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, which meets both of the following criteria:

1. Has a common name or common identifying signs or colors or symbols or frequent a specific area or location and may claim it as their territory and
2. Has associates who, individually or collectively, engage in or have engaged in criminal activity which may include incidents of targeted violence perpetrated against rival gang associates.

What are the criteria to be included in the BPD's gang database?

The Boston Regional Intelligence Center (BRIC) gang database is organized using a point system. Law enforcement, school resource officers and even school liaisons to local police departments may assign points to individuals based on conduct that they believe demonstrate association with or membership in a gang.

Once an individual is assigned a total of ten or more points, he or she is labeled a "Gang Associate" and added to the database for a minimum of five years from the last date of contact with another gang member / associate or participation in some form of gang activity.

In 2021, the BPD updated Rule 335: Gang Assessment Database, including its non-exhaustive list of activities and conduct that can result in being assigned points and

⁵ <https://commonwealthmagazine.org/criminal-justice/boston-centers-gang-database-lists-3853-people/>

⁶ <https://www.bostonglobe.com/2022/01/24/opinion/boston-police-gang-database-gets-overdue-attention/>

added to the gang database.⁷ Below are some examples of the points attributed to certain activities:

Activity	Points
Contact with a Known Gang Associate	2
Known Group Tattoo or Marking	8
Information from Anonymous Informant or Tipster	1
Published News Accounts	1
Group Related Photograph	2

Gang assessment point systems are a significant cause for concern the criteria used in them are subjective and make it easy for an individual to be identified as a gang member, whether or not they are affiliated. The point system assigns point values for different characteristics about a person or actions taken by them. If a person reaches a certain point threshold, they are labeled as gang affiliated and placed in the police department's gang database. There are no explanations or criteria for why categories are assigned a specific number of points in any departments' gang policy. This exhibits how arbitrary and subjective the use of the point system can be in gang member identification. Also notable is that different police departments use nearly identical language and categories in the gang databases, but have different point values for these categories, creating different outcomes depending on where a citizen resides.

What happens to an undocumented youth who is added to the gang database?

Denial of Immigration Benefits and Deportation

The immigration consequences of being added to the gang database can be severe. Undocumented youth who are alleged to be associated with or members of gangs are often the target of enforcement actions by the Department of Homeland Security ("DHS"). If DHS believes that an undocumented youth is a gang member, DHS will likely

⁷ <https://www.boston.gov/news/boston-police-department-police-reform-policy-update>

deny that individual immigration benefits, such as adjustment of status or a U Visa. U.S. Immigration and Customs Enforcement ("ICE"), which has access to the BPD's database, have also sought to seize and deport juvenile immigrants based solely on information shared via the gang database.

For instance, in 2018, ICE arrested and detained teenager Cristin Josue Diaz Ortiz in East Boston on suspicion that he was a member of MS-13. When Mr. Ortiz sought asylum, the immigration judge and Board of Immigration Appeals denied his petition and ordered that Mr. Ortiz be deported, relying heavily on information originating from the BPD's gang database.

In Mr. Ortiz' case, the Government did not allege that Mr. Ortiz had been involved in any criminal activity. Rather, ICE's deportation efforts were based almost entirely on local law enforcement accounts that Mr. Ortiz was seen in the presence of known MS-13 gang members and carried a bike lock, which the Government alleged is commonly used as a weapon by MS-13 gang members.

Admissibility of Alleged Gang Membership and Sentencing

Prosecutors may attempt to use information in the gang database in criminal proceedings to allege that a defendant is a member of or affiliated with a gang.⁸ Though this type of information may only be offered for certain evidentiary purposes, including to prove motive or joint venture, researchers have concluded that the introduction of evidence showing potential gang affiliation increases the chances that a jury will find the defendant guilty.⁹

In addition, many states have introduced sentencing enhancement for gang- motivated crimes. For example, in Arizona, committing a felony with the intent to "promote, further or assist any criminal conduct by a criminal street gang" increases the minimum and maximum sentence for the offense by 3-5 years.¹⁰ California also has laws providing for

⁸ *Cmmw. v. Wardsworth*, 124 N.E.3d 662, 678 (Mass. 2019)

⁹ Mitchell Eisen, Brenna Dotson, Gregory Dohi, *Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?*, 62 *UCLA L. Rev. Discourse* 2 (2014) ("When faced with potent gang testimony in the absence of persuasive evidence, some jurors appeared to disregard reasonable doubt and vote to convict the defendant who was depicted as a dangerous gangster.").

¹⁰ *Ariz. Rev. Stat. Ann.* § 13-714.

sentencing enhancements for felony convictions committed in furtherance of a street gang that range from 2-10 years, depending on the nature of the underlying felony.

Sincere and heartfelt thanks to the legal department at Liberty Mutual– Thomas Neumeier, Carmen Chan, and Adam Markey– for conducting the research for this document.

