

## Joining the Military with a Juvenile Record

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A question often asked by younger clients is whether they will be able to join the military with a juvenile record. Specifically, they want to know how a juvenile record will affect their chances of enlisting and if they should disclose their record when they try to enlist. The answer is?it depends. It depends on the type of offense and the disposition of the case. It also depends on whether the records were sealed, the likelihood of getting a military waiver, and what the applicant discloses during the enlistment process. Clearly, many of the children in the juvenile justice system have made some poor choices. As they get older, some begin

thinking about the military as a way to improve their life, but a juvenile record may lead the military to conclude that a person is not morally fit to serve. All of this should be considered when representing a juvenile client and deciding how to proceed with his or her case. There are certain steps that the client and attorney can take while navigating the juvenile justice system to keep the military option open.

Cases in juvenile court move quickly through the process compared to adult cases, which typically take much longer to resolve. Generally, a petition is filed in juvenile court, and the entire case is disposed of in a matter of weeks. In the event that services are needed by the child and family, the court and probation department want to get them started as quickly as possible. Oftentimes, because these cases are resolved so quickly, juveniles remain oblivious to the long-term impact of their plea agreements. Very few realize how adjudications for delinquent conduct can hinder their future.

The main focus of the juvenile system is treatment and rehabilitation and not necessarily the long-term impact of the legal case. If a child is in detention awaiting resolution of the case, a week is an eternity. He or she wants to have the case disposed of quickly so they can go home. Children focus on short-term payoffs and are less able to comprehend long-term consequences. Due to this inability to anticipate the long-term impact of their decisions, juveniles may require a heightened standard of representation that includes honest and clear communication about how their legal case may affect their future.<sup>1</sup>

One way a child's future can be negatively impacted is by not being able to join the armed forces. For many of our youth, joining the military is a ticket to a better life. The military provides an opportunity for employment, a steady income, health insurance, education, and, maybe more importantly, a sense of purpose and pride.

The military requires its servicemembers to be morally fit, and a juvenile record may lead the military to conclude otherwise. Juveniles should be made aware of how certain plea agreements may hinder their future plans so they can take this into consideration when making decisions about their case. It is important that our younger clients fully understand the long-term collateral impact of their legal case. The attorney should establish early on if the juvenile has an interest in joining the military. This information may affect negotiations with the state and the way the attorney and juvenile proceed and finally dispose of the case.

It is becoming increasingly difficult to join the military with a juvenile record. According to one Army recruiter, recruitment standards are stricter today than they were a few years ago. This is partly due to the pullout from Iraq and drawing down of forces in Afghanistan. Today, a drug-related charge can render someone unfit for the Army. Offenses ranging from multiple minor traffic citations to felonies can be problematic. Offenses involving serious aggression or a weapon can automatically dis-qualify someone from enlisting. Domestic violence cases will raise red flags, and almost certainly any type of sexually re-lated offense will disqualify a person from every branch of the armed forces—even if the case was disposed of with some kind of diversion program.<sup>2</sup> Recruiters focus on the type of offense and whether there was any kind of "adverse adjudication" associated with the charges. Adverse adjudication includes any conviction, finding, decision, sentence, judgement, or disposition other than unconditionally dropped, unconditionally dismissed, or acquitted. Participation in a pretrial diversion program is considered an adverse adjudication.<sup>3</sup>

In recent years, society has become less tolerant of behaviors that were once dealt with informally and not through the legal system. At one time, calling the parent was a greater threat than calling the police. Today, for example, schoolyard fights are no longer resolved by the school, the child, and the families. These incidents are frequently reported to the police. In many instances, a fight at school results in assault charges being filed. At home, siblings may get into a fight and someone calls 911. It is likely that one of them will be taken into custody and charged with domestic violence. Disposing of these cases quickly in order to provide individual treatment and/or family counseling may not be in the client's long-term interest, particularly if he or she has expressed an interest in the military. Knowing this, clients and their attorneys may need to slow the process down and care-fully consider all options in determining how to proceed with the case.

A juvenile record will not necessarily disqualify a person from enlisting. The military can choose to waive certain offenses. These waivers are generally reviewed by officials higher up in the chain of command. If someone does not qualify due to past delinquent conduct, he or she may request a waiver for the specific offense that renders them unqualified. The waiver procedure is not automatic, and approval is based on each individual case. A waiver involves an application process whereby the applicant is requesting that a particular branch of the military make an exception in his or her case. The burden is on the applicant to demonstrate that the waiver will benefit the military regardless of his or her past. Waiver authorities will consider the "whole person" concept when reviewing applications. In processing waiver requests, the military considers the "who, what, when, where, and why" of the offense in question.<sup>4</sup> If past delinquent conduct is disclosed to the recruiter, having had the record sealed may increase the chances of receiving a waiver because it shows rehabilitation efforts on the part of the applicant. However, depending on the offense and the circumstances, it could also permanently disqualify the person from enlisting. The standards for waivers can be complex and are different for each branch of the military. The standards also change depending on world events and the need to expand or decrease the size of the armed forces. Currently, fewer waivers are being approved, in part due to the downsizing of the military.<sup>5</sup>

If the juvenile has expressed any interest in joining the military, it is imperative that his or her records are sealed. The general rule in Texas is that a child's records and files are confidential and may not be shared unless specifically authorized by law. Many younger clients wrongly believe their records will be automatically sealed at a certain age with no effort on their part. Texas does allow for automatic restriction to certain records, which means that the records can be accessed by fewer entities than could access them if there were simply confidential, but these restricted records are not sealed and remain in place.<sup>6</sup> Giving clients some insight into the actual process of how and where their juvenile records are generated and stored may drive home the importance of sealing.

In Texas, information regarding a juvenile's delinquent conduct is entered into the Juvenile Justice Information System (JJIS). The JJIS is a computerized database maintained by the Texas Department of Public Safety and is the point of entry for juvenile justice information into the FBI Interstate Identification Index (III), a database that stores criminal history record information. JJIS maintains only information relating to delinquent conduct that if committed by an adult would constitute a criminal offense of class B misdemeanor or higher.<sup>7</sup> These records include but are not limited to biographical data, fingerprints, referral history (including the level and degree of the alleged offense), specific information regarding the adjudication and disposition, and a description of each appellate proceeding.<sup>8</sup> The information in JJIS is not public but may be accessed by certain agencies identified by statute. Information can be disseminated to military personnel with permission of the juvenile.<sup>9</sup> DPS may also release information to the military that is restricted with written permission of the juvenile who is applying for enlistment.<sup>10</sup> The information in the JJIS is subject to sealing. Once DPS receives a sealing order, all information is completely removed from the criminal history database. DPS will then send an electronic message to the FBI to have the juvenile's information removed from the Interstate Identification Index system. DPS will also follow up by sending the FBI a copy of the sealing order. Subsequently, if the military requests records that have been sealed, they will receive notice that no records exist.<sup>11</sup>

Military recruiters can also access juvenile records maintained by Texas Juvenile Justice Division, the probation department, clerk of the court, prosecutor's office, and law enforcement agency so long as they have permission of the subject of the records and in the same manner as those entities can release non-restricted records.<sup>12</sup> This is how the process works in Texas, however; sealing statutes and provisions differ for every state.

Being familiar with the enlistment process and giving the client a preview of some tough questions they will be asked regarding any involvement with the juvenile justice system may also give the client a better understanding of the importance of having their records sealed.

For purposes of enlistment, the applicant is required to list all offenses for which he or she was arrested, charged, summoned, cited, or ticketed. One of the questions on the Army Enlistment Security Questionnaire specifically asks, "Have you ever been told by anyone (judge, lawyer, any army personnel, family, friends, etc.) that you do not have to list a charge because the charge(s) were dropped, dismissed, not filed, expunged, stricken from the record or were juvenile related?"<sup>13</sup> As part of the enlistment process, recruiters will routinely run fingerprints through the FBI database to find out if the applicant has a criminal history and also do sex offender checks on every applicant. If the applicant has a juvenile record that has not been sealed or expunged, the recruiter will receive a rap sheet containing the person's complete criminal history. One recruiter I spoke to insisted that disclosure of the offense(s) from the very beginning, whether sealed or expunged, is the better route to take. Another recruiter referred to this as "a grey area" but recommended being truthful—"violating the circle of trust can be more damaging in the long run."<sup>14</sup> To be clear, if the person discloses any delinquent conduct, or the recruiter finds criminal activity from the records search, the enlistment process is put on hold and the recruiter must begin to gather information regarding the offense(s). The military will fully investigate an offense if there was any type of adverse adjudication.

If the applicant admits to an offense, or the recruiter has reason to believe the applicant is concealing an offense, or if criminal activity is discovered when a background check is run, the recruiter will request information from local law enforcement agencies. The recruiter will also ask the applicant for a re-lease of records. If the applicant does not disclose any delinquent conduct and the offense(s) do not show up during the back-ground check, then the enlistment process continues up the channel to Military Entrance Processing Station (MEPS) for a battery of testing and final interview(s). MEPS is a Department of Defense joint-service organization staffed with military and civilian personnel. It determines the applicant's physical qualifications, aptitude, and moral standards as set by each branch of military service.<sup>15</sup> If the applicant failed to mention delinquent conduct to the recruiter at the initial interview and it is disclosed or revealed during the MEPS interview, the process will be suspended. Every situation is different and will be dealt with accordingly. Generally, the applicant will be routed back to the recruiter for investigation and fact gathering. Depending on the offense(s) and the circumstances, a waiver may be re-requested. However, at this point, according to one recruiter, the applicant's trustworthiness has been compromised.

The general consensus of the recruiters I spoke to was to disclose delinquent conduct and pursue a waiver. Fraudulent enlistment can result in a discharge from the military and being barred from ever enlisting again. On the other hand, given the stricter recruitment guidelines, disclosing previous criminal activity could reduce one's chances of enlisting. Keep in mind, recruiters want people to qualify. "They are not out on a witch hunt," as one recruiter put it. No one wants an applicant to get into the military any more than the recruiter. Their job is to get people in and not keep them out. If the person chooses not to disclose past delinquent conduct, he or she must be absolutely certain that *all* records have been sealed and be prepared to answer some pretty tough questions by military personnel. As a side note, according to one Army recruiter, medical history will not be investigated unless disclosed, and certain tattoos can be a disqualifier.<sup>16</sup>

There is no clear answer to the question of whether the client will be able to join the military if he or she has a juvenile record. However, it is important that the attorney try and establish early on what the client's future goals are, and the client should be made aware of the potential collateral impact of his or her legal case. If the client is serious about joining the military, the attorney must keep this in mind throughout the process while pursuing the best possible result. Charges that may automatically disqualify a person from the military should be diligently negotiated with the prosecutor. Plea agreements must be carefully explained to the client and the case must be litigated vigorously if necessary. Clients should understand the importance of sealing their records, and an explanation of that process will be helpful. If there was involvement with the juvenile justice system in another state, those records must also be sealed. By zealously advocating for our juvenile clients to mitigate the impact of their involvement with the juvenile justice system, we enable them to pursue a military career with more confidence.

## Notes

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3. Rod Powers, U.S. Military Expert, "U.S. Military Enlistment Standards." (© 2015), [5] [http://usmilitary.about.com/od/joiningthemilitary/a/enlstandards2\\_2.htm](http://usmilitary.about.com/od/joiningthemilitary/a/enlstandards2_2.htm).
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7. Kaci Sohr, "Ethics: Restricted Access and Sealing of Juvenile Records in Texas," *Nuts and Bolts of Juvenile Law* 9 (2014), available at [8] <http://www.juvenilelaw.org/Portals/0/Article%20Library/Articles%202014/R...>
8. Tex. Family Code §58.104.
9. Tex. Family Code §58.106(a)(1).
10. Tex. Family Code §58.204(b)(3).
11. Kendall A. at DPS (March 17, 2015), email interview.
12. Tex. Family Code §58.207(c).
13. Enlistment Security Questionnaire, Moral Screening Criteria, 14 (2015).
14. Army Recruiter (March 13, 2015), personal interview.
15. "Your Visit to MEPS," U.S. Army?Army Strong® (n.d.), [9]<http://www.goarmy.com/learn/your-visit-to-meps.html>.
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[8] <http://www.juvenilelaw.org/Portals/0/Article%20Library/Articles%202014/Restrict%20Access.pdf>

[9] <http://www.goarmy.com/learn/your-visit-to-meps.html>