

Answering Questions About Your Juvenile Criminal History on a Job Application in Florida

Many employment applications include a question about the applicant's past criminal history. Youth and young adults who have been involved with the juvenile justice system often ask how they should answer questions about their involvement in the juvenile justice system on employment applications. This paper will discuss some of the issues about answering these types of questions. However, there are no easy answers and it often depends on your unique situation. The information presented here is for general information purposes only. It is not intended to substitute for legal advice. One should always consult an attorney for advice specific to their individual case.

The information in this paper is for those whose judicial case was handled in juvenile delinquency court in Lee County, FL and does not address cases handled in traffic court or adult court. The information in this document is based upon Florida law as of 2009. Laws may be different in other states. The information provided here may not apply in other states.

Here are some things to consider.

Know the consequences.

It is important to be truthful in all of your answers on an employment application. Lying on a job application can be a felony.

Many employment applications ask the applicant to sign a statement stating that everything is true on the application and is not misleading. For many employers, the application states that, if hired, the employee can be fired if the employer discovers that there is false or misleading information on the application.

How may employers use information from a criminal history record?

By law, employers are supposed to consider whether a previous criminal offense is job related. They may consider the nature and seriousness of the offense, how long ago it occurred, and whether it has any relationship to the job duties for the position. They may only use this information to disqualify someone if the conviction is substantially work related.

How is the criminal history question asked on the job application?

The wording of the questions on job applications that ask about criminal history can be very different from one employer to the next. Some will specifically ask about juvenile offenses and some will not. Pay attention to how the question is worded because this will help determine how to best answer the questions.

How was your case handled? What was the outcome of your case?

Knowing how your case was handled and what the outcome was is important to knowing how to answer questions on a job application about your juvenile criminal history record. It is often a good idea to know what is in your criminal history record so that what you say about it in your job application and in interviews matches what is in the record. It is also a good idea to check your record for accuracy so that you can avoid losing out on job opportunities due to false information in your record. Hopefully you have saved any papers you received about the outcome of your case. If not, you may want to inquire about your case outcomes at the Lee County Clerk of Courts Juvenile Division, 2000 Main Street, Third Floor, Fort Myers at 533-1400. *(Note: There is a fee of \$2.00 for each year searched, plus \$1.00 per page. There is an additional fee of \$2.00 per document for certified copies.)*

Was your case sealed or expunged?

If your charges were sealed or expunged, you may lawfully deny ever being arrested or being taken into custody on job applications for most non-criminal justice agencies. However, there are some exceptions. The Florida Department of Law Enforcement (FDLE) may share your juvenile records if you apply for a job with a criminal justice agency. They may also share your records for some jobs working with children, the disabled, and the elderly. If you have no further arrests as an adult, after the age of 24 your juvenile criminal record should be automatically expunged. However, if you were placed in a residential commitment facility as a juvenile, your juvenile criminal records may not be expunged until you reach 26 years of age. For more information about sealing or expunging criminal records, go to the Florida Department of Law Enforcement web site at www.fdle.state.fl.us/expunge/.

Background checks are not all the same.

The Florida Department of Law Enforcement is the state repository for all arrest records. When a youth is arrested for a felony or certain misdemeanor crimes, the arresting agency is required by law to submit information about the arrest to the FDLE. The FDLE is authorized under state statute to provide this information to the general public. It does so for a fee. Depending upon what background checks the employer uses, your juvenile arrest record may or may not be discovered. Although it is more difficult for an employer to discover a juvenile record than an adult record, this does not mean that it will not happen. Many of Florida's laws about confidentiality of juvenile criminal histories came about before the internet was widely used. In times past, when records were kept on paper documents, it was much easier for agencies to keep records confidential or to destroy all records when required to do so. Now, many arrest records, including those of juveniles, are posted online by law enforcement agencies. Private companies that sell data to employers for the purpose of background checks are able to download criminal history information from the internet. While government agencies are required to keep certain juvenile records confidential or to destroy records in accordance with state statutes, private agencies do not have the same requirements. They may not be notified if a record has been sealed or expunged. Their information may not be current. Even an expunged record can show up if their data base has not been updated after the time when a record was expunged. Employers may be able to find information in public records about a previous arrest or adjudication, even if your record has been sealed or expunged.

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If a job application asks, "Have you have ever been arrested?" or "Have you ever received a Notice to Appear?"

Was your criminal history record for this charge either sealed or expunged?

Yes

No

- A person whose record has been expunged after successfully completing a pre-arrest or post-arrest court diversion program may lawfully deny or fail to admit the arrest covered by the expunged record on a job application, except if applying for employment with a criminal justice agency.
- A person whose record has been sealed or expunged, other than for a pre-arrest or post-arrest diversion program, may lawfully deny or fail to admit the arrest covered by the expunged record on a job application, except if applying for employment with a criminal justice agency and for certain jobs working with children, the disabled, and the elderly.

Were you ever physically taken into custody by law enforcement? *(If the law enforcement officer handcuffed you and took you to the Juvenile Assessment Center, then you were in his or her physical custody. If you were given a copy of your charges and told to appear in court on a certain date and then released, you were not physically taken into custody.)*

Yes

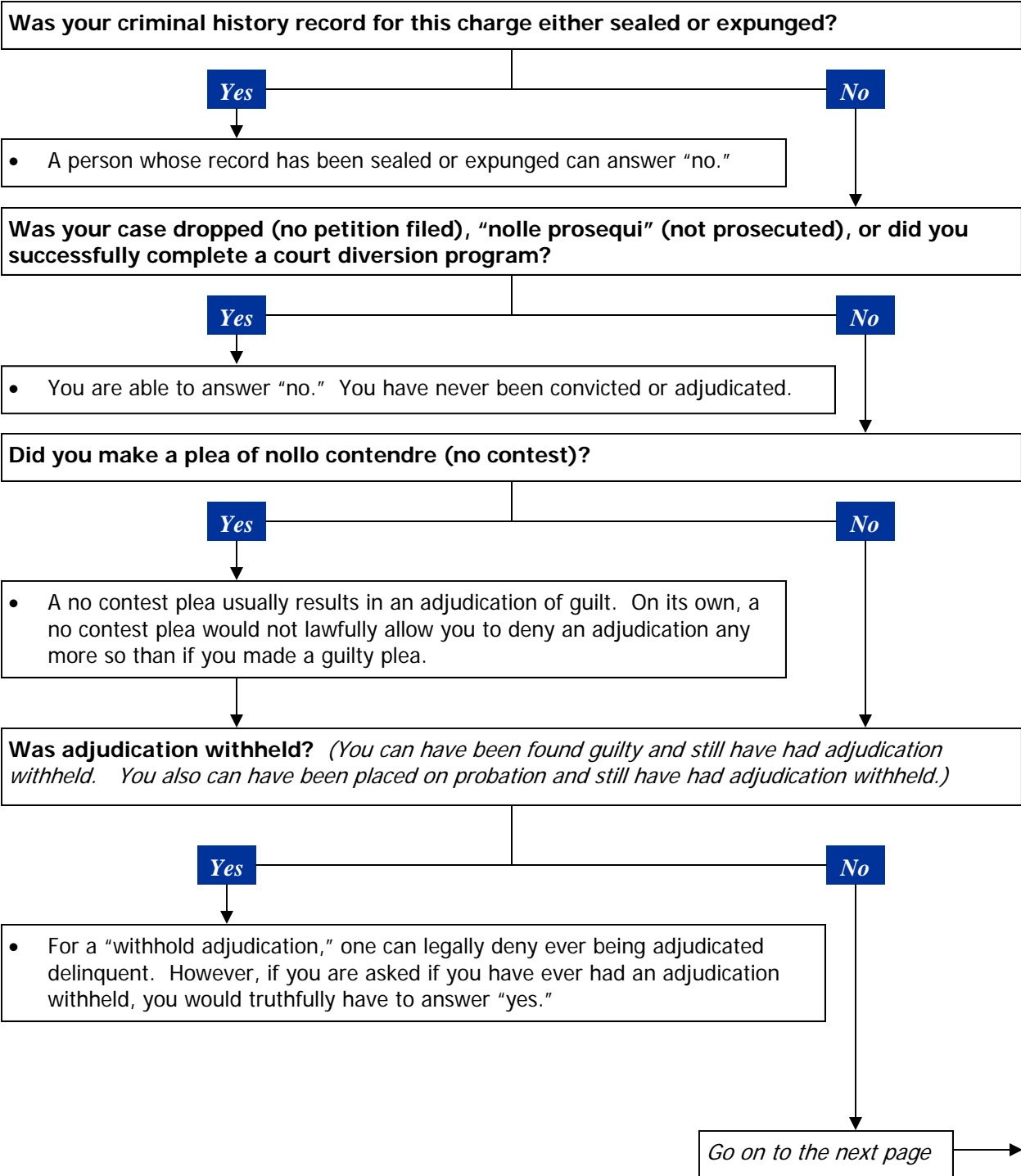
No

- If asked on a job application if you were ever "physically taken into custody" you would have to answer "yes" to be truthful.
- If asked if you were ever "arrested", you could technically deny that you have been arrested because juveniles are technically not "arrested" but are "taken into custody" in Florida. However, the term "arrest" is commonly used for juveniles and many are not aware of this difference. This may include the employer. Employers may be able to access your criminal history record, which also may not make the technical distinction between being "taken into custody" as a juvenile and being "arrested." Many employers are looking for credibility and truthfulness in job applicants. It may be to your advantage to fully disclose your past juvenile criminal history to avoid being seen as misleading. You may want to consider the recommendation that one should always be truthful and let the employing agency decide whether or not you were "arrested."

- If you were given a copy of the charges and told to appear in court, you would truthfully have to answer "yes" if asked if you have ever been given a Notice to Appear. However, if you are asked if you were ever "arrested," "physically arrested," or "physically taken into custody," you could truthfully answer "no."

Note: A juvenile whose case was dropped, not prosecuted, or has successfully completed a diversion program, but has not had their criminal history record sealed or expunged, would still have a juvenile arrest history and should follow which ever of these guidelines apply to you.

If a job application asks, "Have you ever been convicted of a criminal offense?" or "Have you ever been adjudicated of a criminal offense?" or "Have you ever been convicted of a felony, filed a plea of nolo contendere (no contest) or other plea amounting to an admission of guilt?"



Did you plead guilty or were you found guilty in a juvenile court?

Yes

No

If the juvenile court found that you were "not delinquent," then you could truthfully answer on a job application that you have never been convicted or never have been adjudicated delinquent.

- If a job application asks if you were ever adjudicated delinquent, you would truthfully have to answer "yes." Your juvenile adjudication for delinquency will stay on your record and will show up on a background check at least until you turn 24 years of age, or age 26 if you ever went to a residential commitment program.
- If the job application asks if you were ever "convicted" or "adjudicated for a crime" (or criminal act) you could technically deny that you have because juveniles in Florida are technically not convicted or found guilty of a crime. They are "adjudicated delinquent" or found guilty of a "delinquent act." However, there are many who do not know these difference between juvenile law and adult criminal law and this may include employers. When an employer does a background check your juvenile criminal history record will show up at least until you turn 24 years of age, or age 26 if you ever went to a residential commitment program. Many employers are looking for credibility and truthfulness in job applicants. It may be to your advantage to fully disclose your past juvenile criminal history to avoid being seen as misleading. You may want to consider the recommendation that one should always be truthful and let the employing agency decide whether or not you were "convicted."
- If the job application asks, "Were you were ever adjudicated delinquent for a felony?", but you were adjudicated delinquent for only a misdemeanor charge, then you could truthfully answer "no."