

## Contradicting Court Opinions On Expungement Of Juvenile Adjudications

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Within the span of about four weeks, the Superior Court, Appellate Division issued two separate opinions with seemingly contradictory interpretations of an important provision of our state's expungement statutes. The issue is of particular importance to parents of children facing juvenile delinquency charges, and to anyone who, in the past, has faced juvenile delinquency charges. Generally speaking, someone's eligibility to have a particular arrest, charge or conviction expunged depends upon the type of charge involved, how the charge was resolved and whether the applicant for expungement has satisfied any applicable waiting period. With only very limited exceptions, if an expungement is granted, the event is deemed not to have occurred and a person is entitled by law to answer any questions accordingly.

The two court decisions in question rest on how to interpret a section of the expungement laws that addresses what impact an adjudication of juvenile delinquency may have on a subsequent expungement application. N.J.S.A. 2C:52-4.1 provides that "[f]or purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult."

[In the Matter of the Expungement Application of DB](#), (Docket No. A-0658-11T2)(May 17, 2012), the Appellate Division, in an unreported opinion, agreed with the trial court that the statute means that:

Any act which resulted in a juvenile being adjudged a delinquent, and which would have been a crime if committed by an adult, must be considered a crime for purposes of expungement. Any other interpretation of this language would result in it being superfluous.

In that case, DB's juvenile delinquency adjudications included cases that would constitute criminal convictions had they been committed by an adult. Because a person cannot expunge a criminal conviction when that person has any prior or subsequent criminal conviction, the trial court held, and the Appellate Division agreed, DB's juvenile adjudications, which would have been crimes had they been committed while he was an adult, precluded his expungement of his adult conviction pursuant to the provisions of N.J.S.A. 2C:52-4.1 cited above.

Then, on June 21, 2012, another panel of the Appellate Division decided [In the Matter of the Expungement Petition of J.B.](#) (Docket No. A-1564-11T2)(June 21, 2012), an opinion approved for publication, and presumably entitled to more weight than the unpublished opinion in DB. In J.B., the court analyzed a factual scenario very similar to the one in DB:

Based on petitioner's adjudications of delinquency, the court deemed him to have been convicted of adult crimes of burglary, criminal mischief, and firearms possession. The court then concluded petitioner's adult conviction could not be expunged pursuant to N.J.S.A. 2C:52-2, which prohibits expungement of a criminal conviction if the petitioner has "been convicted of any prior or subsequent crime."

After analyzing the legislative history and considering general principles of statutory construction, the Appellate Division held in this case that N.J.S.A. 2C:52-4.1 applies only when someone is seeking to expunge a juvenile

delinquency record itself. In other words, when considering whether an adult criminal conviction is eligible for an expungement, juvenile delinquency adjudications should not be considered as adult criminal convictions.

The fact that two different panels of the Appellate Division came to two differing conclusions regarding the interpretation of N.J.S.A. 2C:52-4.1 reveals how complex and sometimes confusing our expungement statutes can be. Anyone contemplating petitioning for an expungement, or a parent of a juvenile facing delinquency charges, should be aware that how juvenile delinquency charges are resolved may impact someone's ability to petition for an expungement later in life.

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