



## Juveniles and Prior Record Level

**Author :** Jamie Markham

**Categories :** [Sentencing](#), [Uncategorized](#)

**Tagged as :** [juvenile](#), [prior record level](#), [proba](#)

**Date :** April 28, 2009

I am occasionally asked about the adult sentencing consequences of a defendant's juvenile history.

The first-order answer is easy: juvenile adjudications never count toward felony prior record level or misdemeanor prior conviction level. This is true of all juvenile adjudications, even those for acts that would be Class A - E felonies if committed by an adult. They can support an aggravating factor under G.S. 15A-1340.16(d)(18a), as discussed [here](#), but they never count for points. There is no exception to this rule allowing one juvenile adjudication to count toward adult prior record level.

A closer question comes up when youthful offenders still on juvenile probation or resident in a youth development center commit crimes for which they are prosecuted as adults—a not uncommon scenario in light of the jurisdictional overlap between North Carolina's adult and juvenile worlds. Under G.S. 15A-1340.14(b)(7), a felony defendant [note: there is no analogous provision for misdemeanor defendants] gets one additional prior record point if his or her offense was "committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution." The question is: does confinement in a YDC count as "imprisonment"? Do juvenile "probation" and "post-release supervision" count?

As to the first question, we know it does not. In *State v. Tucker*, 154 N.C. App. 653 (2002), the court of appeals held that a defendant in training school (the precursor to today's YDC) was not "serving a sentence of imprisonment" for purposes of G.S. 15A-1340.14(b)(7). The court pointed out G.S. 7A-2412, which says that "[a]n adjudication that a juvenile is delinquent or commitment of a juvenile to the Department for placement in a youth development center shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights." The opinion then noted that the objectives of the Juvenile Code are far different from the purposes of criminal sentencing. Even when there is an apparent statutory overlap between the two systems, the court said, "[t]here is a fundamental legal difference between these wording choices unrelated to mere delicacy of diction."

That brings us to "juvenile probation" and "post-release supervision." Though our appellate courts haven't considered the question, I read *Tucker* to stand for the broader point that the adult and juvenile worlds—even when they use the same words to describe something—just don't mix. Even without reference to *Tucker*, I think it's fairly clear as a matter of statutory interpretation that "probation" in G.S. 15A-1340.14(b)(7) is not meant to include juvenile probation. The word is modified by the terms "supervised or unsupervised," concepts that apply only to adult probation. "Post-release supervision" (which exists in both the adult and juvenile worlds) is unmodified in G.S. 15A-1340.14(b)(7), but the list of qualifying statuses includes words like "parole," "imprisonment," and "correctional institution"—all uniquely adult things. As one of my law school professors would say, "I'm not sure how the Romans would pronounce it, but I believe the term is *ejusdem generis*"—the textual canon that a list of things should be read to fall within the same kind, class, or nature.

All of this is subject to change, of course, as the General Assembly considers a series of bills increasing the connectivity between the adult and juvenile worlds (e.g., [S 984](#) and [S 1082](#)). In the meantime I welcome your thoughts.