

CHAPTER SEVENTEEN **COLLATERAL CONSEQUENCES OF JUVENILE** **ADJUDICATIONS**

I.	FEDERAL CONSEQUENCES.....	1
A.	ELIGIBILITY FOR PUBLIC HOUSING	1
1.	Sex Offenses.....	1
2.	Drug-Related Offenses	1
3.	Criminal Activity.....	2
B.	MILITARY SERVICE	2
II.	INDIANA CONSEQUENCES	2
A.	IMPACT ON ELEMENTARY AND SECONDARY SCHOOL EDUCATION	2
1.	Notice to School of Arrest if Child Detained	2
2.	Notice to School By Court of Disposition.....	3
3.	School Suspension or Expulsion from School	5
B.	IMPACT ON ACCESS TO THE NATIONAL GUARD YOUTH CHALLENGE PROGRAM ...	6
C.	IMPACT ON ACCESS TO HIGHER EDUCATION AND FINANCIAL AID	6
1.	Access to Public Universities	6
2.	State Financial Aid Program – Twenty-First Century Scholars	6
D.	SUSPENSION OF DRIVER’S LICENSE OR PERMIT	6
E.	IMPACT ON ABILITY TO BECOME A FOSTER PARENT, ADOPT, OR HAVE A CHILD PLACED IN HOME	7
1.	Foster License.....	7
2.	Placement of a Delinquent Child in the Home	7
3.	Placement of a Child in Need of Services (CHINS) in the Home.....	8
4.	Adoption.....	11
F.	IMPACT ON ACCESS TO EMPLOYMENT.....	12
1.	Public Record	12
2.	Certain Jobs with Juveniles	13
G.	IMPACT ON ABILITY TO POSSESS AND CARRY FIREARMS	13
H	SEX OFFENDER REGISTRY	14

CHAPTER SEVENTEEN

COLLATERAL CONSEQUENCES OF JUVENILE ADJUDICATIONS

There is currently no legal requirement that the juvenile's attorney advise the client of the collateral consequences of a juvenile adjudication. Attorneys should be aware of the collateral consequences, much in the same way that attorneys must be aware of immigration consequences following the Padilla decision. Padilla v. Kentucky, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010).

Gathering the data and advising the client has become the focus of the American Bar Association's collateral consequences project detailing potential state and federal consequences and information about each state, available at: <http://www.beforeyouplea.com>. The project's Indiana-specific page is located at <https://www.beforeyouplea.com/indiana> and serves as a helpful starting point for identifying potential collateral consequences of a juvenile delinquency adjudication in Indiana (although the citations on the site indicate that the content is based on 2010 law). The National Juvenile Defender Center has also compiled a Juvenile Defender's Guide to Conquering Collateral Consequences, which lists a myriad of potential collateral consequences. That guide is found at <https://njdc.info/wp-content/uploads/2018/10/Collateral-Consequences-Checklist-for-Juvenile-Defenders.pdf>.

For information about confidentiality and who has access to records and proceeding information, see *Chapter Three – Confidentiality*.

For information about the sex offender registry, see *Chapter Thirteen – Post-Disposition*, and IPDC's *Sex Offender Pamphlet*.

I. FEDERAL CONSEQUENCES

A. ELIGIBILITY FOR PUBLIC HOUSING

1. Sex Offenses

Public housing authorities shall deny admission to public housing if any member of the household is subject to a lifetime sex offender registration requirement. 42 U.S.C. § 13663(a).

2. Drug-Related Offenses

Juveniles may be banned from public housing for three years when evicted for drug-related activity, including drug abuse. 42 U.S.C. § 13661(a); 24 C.F.R. § 982.553; 42 U.S.C. § 13361(b). The housing provider may make an exception for a family if the juvenile successfully completes a supervised drugs rehabilitation program approved by the local public housing authority or the circumstances leading to the eviction no longer exist (for example, if the juvenile is placed in a secure facility.). 42 U.S.C. § 13662 (2010). Persons involved in the manufacturing of or otherwise producing methamphetamine on the premises of a federally assisted housing program are also permanently banned. 42 U.S.C. § 1437n(f); 24 C.F.R. § 966.4(1)(iii)(A).

The U.S. Supreme Court has held that public housing authorities may evict families in which a youth has engaged in drug-related delinquent behavior. Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 133-36, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002).

3. Criminal Activity

Public housing authorities may deny admission to public housing if the juvenile has engaged within a reasonable time preceding the date when the juvenile's household would otherwise have been selected for admission in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by others. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.

B. MILITARY SERVICE

An application for military service requires a criminal background check, which would include all juvenile citations, arrests, and adjudications. See, e.g., https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN6642-AR_601-210-001-WEB-1.pdf (see Sections 2-11 and 2-14, discussing the conduct criteria and background investigation, which includes collection of records from courts, probation offices, and juvenile correctional facilities, for Army enlistment). The applications for the military require that the applicant sign releases of information to provide access to the juvenile record and may disclose psychological information if the child received services as part of a disposition. A juvenile record may require that the applicant receive a waiver in order to join the military, depending on the circumstances and the branch.

II. INDIANA CONSEQUENCES

A. IMPACT ON ELEMENTARY AND SECONDARY SCHOOL EDUCATION

The information that follows is not exhaustive. See Ind. Code 20-33-8 for additional information about suspensions and expulsions.

1. Notice to School of Arrest if Child Detained

Pursuant to Ind. Code 31-37-4-3(b), if a child is taken into custody under Ind. Code 31-37-4 for a crime or act listed in Ind. Code 31-37-4-3(a), the law enforcement agency that employs the law enforcement officer who takes the child into custody shall notify the chief administrative officer of the primary or secondary school, including a public or nonpublic school, in which the child is enrolled or, if the child is enrolled in a public school, the superintendent of the school district in which the child is enrolled:

- (1) That the child was taken into custody; and
- (2) Of the reason why the child was taken into custody.

a. Notice must be within 24 hours

The notification required by law enforcement to the school under Ind. Code 31-37-4-3(b), must occur within forty-eight (48) hours after the child is taken into custody. Ind. Code 31-37-4-3(c).

b. Offenses that require notification to the school when the child is detained

Pursuant to Ind. Code 31-37-4-3(a), the school notification requirement applies if a child is arrested or taken into custody for allegedly committing an act that would be any of the following crimes if committed by an adult:

- (1) Murder (Ind. Code 35-42-1-1);
- (2) Attempted Murder (Ind. Code 35-41-5-1);
- (3) Voluntary Manslaughter (Ind. Code 35-42-1-3);
- (4) Involuntary Manslaughter (Ind. Code 35-42-1-4);
- (5) Reckless Homicide (Ind. Code 35-42-1-5);
- (6) Aggravated Battery (Ind. Code 35-42-2-1.5);
- (7) Battery (Ind. Code 35-42-2-1);
- (8) Kidnapping (Ind. Code 35-42-3-2);
- (9) A sex crime listed in Ind. Code 35-42-4-1 through Ind. Code 35-42-4-8;
- (10) Sexual Misconduct with a Minor (Ind. Code 35-42-4-9);
- (11) Incest (Ind. Code 35-46-1-3);
- (12) Robbery as a Level 2 Felony or a Level 3 Felony (Ind. Code 35-42-5-1);
- (13) Burglary as a Level 1 Felony, Level 2 Felony, Level 3 Felony, or Level 4 Felony (Ind. Code 35-43-2-1);
- (14) Assisting a Criminal as a Level 5 Felony (Ind. Code 35-44.1-2-5);
- (15) Escape as a Level 4 Felony or Level 5 Felony (Ind. Code 35-44.1-3-4);
- (16) Trafficking with an inmate as a Level 5 Felony (Ind. Code 35-44.1-3-5);
- (17) Causing Death Or Catastrophic Injury When Operating a Motor Vehicle (Ind. Code 9-30-5-5);
- (18) Criminal Confinement as a Level 2 Felony or a Level 3 Felony (Ind. Code 35-42-3-3);
- (19) Arson as a Level 2 Felony, Level 3 Felony or Level 4 Felony (Ind. Code 35-43-1-1);
- (20) Possession, Use, or Manufacture of a Weapon of Mass Destruction (Ind. Code 35-47-12-1);
- (21) Terroristic Mischief as a Level 2 or Level 3 Felony (Ind. Code 35-47-12-3) (before its repeal);
- (22) Hijacking or disrupting an aircraft (Ind. Code 35-47-6-1.6);
- (23) A violation of Ind. Code 35-47.5 (controlled explosives) as a Level 2 Felony, Level 3 Felony, or Level 4 Felony;
- (24) A controlled substance offense under Ind. Code 35-48;
- (25) A criminal organization offense under Ind. Code 35-45-9;
- (26) Domestic battery (Ind. Code 35-42-2-1.3);
- (27) A felony terrorist offense (as defined in Ind. Code 35-50-2-18).

2. Notice to School By Court of Disposition

Pursuant to Ind. Code 35-50-8-1(a), if an individual is enrolled in a primary or secondary school, including a public or nonpublic school, and:

- (1) Is convicted of:
 - (A) a Class A felony;
 - (B) a Class B felony;
 - (C) a Class C felony;
 - (D) at least two (2) Class D felonies;

- (E) a Level 1 felony;
- (F) a Level 2 felony;
- (G) a Level 3 felony;
- (H) a Level 4 felony;
- (I) a Level 5 felony;
- (J) at least two (2) Level 6 felony; or

(2) Has been adjudicated as a delinquent child for:

(A) An act that would be:

- (i) a Class A Felony;
- (ii) a Class B Felony;
- (iii) a Class C Felony;
- (iv) a Level 1 felony;
- (v) a Level 2 felony;
- (vi) a Level 3 felony;
- (vii) a Level 4 felony;
- (viii) a Level 5 felony; or

(B) Acts that would be at least two (2)

- (i) Class D felonies; or
 - (ii) Level 6 felonies;
- if committed by an adult;

the judge who presided over the trial, accepted the plea agreement, or adjudicated the child a delinquent child shall give written notification of the conviction or adjudication to the chief administrative officer of the primary or secondary school, including a public or nonpublic school, or, if the individual is enrolled in a public school, the superintendent of the school district in which the individual is enrolled.

a. Notification must occur within seven (7) days

Notification must occur within seven (7) days after the conclusion of the trial, the date a plea agreement is accepted, or the date the child is adjudicated a delinquent child. Ind. Code 35-50-8-1(b).

b. Required notification elements

Pursuant to Ind. Code 35-50-8-1(c), the notification sent to a school or school district must include only:

- (1) The felony for which the individual was convicted or that the individual would have committed if the individual were an adult; and
- (2) The individual's sentence or juvenile law disposition.

c. Additional notice required if sentence or disposition is modified

If the court later modifies the individual's sentence or juvenile law disposition after giving notice, the court shall notify the school or the school district in which the

individual is enrolled of the sentence or disposition modification. Ind. Code 35-50-8-1(d).

3. School Suspension or Expulsion from School

Pursuant to Ind. Code 20-33-8-14(a), the following are grounds for student suspension or expulsion, subject to the procedural requirements of Ind. Code 20-33-8, and as stated by school corporation rules:

- (1) Student misconduct.
- (2) Substantial disobedience.

a. Grounds for Suspension or Expulsion May Include School Activities

Pursuant to Ind. Code 20-33-8-14(b), the grounds for suspension or expulsion listed in Ind. Code 20-33-8-14(a) apply when a student is:

- (1) On school grounds immediately before or during school hours, or immediately after school hours, or any other time when the school is being used by a school group;
- (2) Off school grounds at a school activity, function, or event; or
- (3) Traveling to or from school or a school activity, function, or event.

b. Grounds for Suspension or Expulsion May Include Activities Unrelated to School

Pursuant to Ind. Code 20-33-8-15, in addition to the grounds specified in Ind. Code 20-33-8-14, a student may be suspended or expelled for engaging in unlawful activity on or off school grounds if:

- (1) The unlawful activity may reasonably be considered to be an interference with school purposes or an educational function; or
- (2) The student's removal is necessary to restore order or protect persons on school property;

including an unlawful activity during weekends, holidays, other school breaks, and the summer period when a student may not be attending classes or other school functions.

c. If Child is Disabled, Special Procedures Must be Followed

If the child is disabled, the school district may be required to provide homebound services if the child has an Individual Education Plan (IEP).

Pursuant to Ind. Code 20-33-8-34(a), notwithstanding any other law, a suspension, an expulsion, or another disciplinary action against a student who is a child with a disability (as defined in Ind. Code 20-35-1-8) is subject to the:

- (1) Procedural requirements of 20 U.S.C. 1415; and
- (2) Rules adopted by the state board.

B. IMPACT ON ACCESS TO THE NATIONAL GUARD YOUTH CHALLENGE PROGRAM

The Hoosier Youth Challenge Academy is a 17 ½ month program in a quasi-military environment during which the child will obtain a TASC and gain independent living and job skills at no cost to the child or family. It is available to “crime-free and drug-free at risk youth who have not graduated from high school 16-18 years of age.” The application asks if the child has been arrested or convicted in a criminal or adjudicated delinquent in a juvenile court, and if there are any pending cases. If the child has a felony conviction or adjudication, the child will be ineligible for admission. See <https://www.in.gov/indiana-national-guard/adjutant-generals-office/hyca/> for additional information.

C. IMPACT ON ACCESS TO HIGHER EDUCATION AND FINANCIAL AID

1. Access to Public Universities

There are seven (7) colleges and universities that are defined as state educational institutions in Indiana: Ball State University, Indiana University, Indiana State University, Ivy Tech Community College, Purdue University, University of Southern Indiana, and Vincennes University. Ind. Code 21-19 through 21-25. Of those, Ball State University, Indiana University, and Purdue University currently accept the Common Application for admission, which in 2019 removed the collection of criminal history information.

<https://www.commonapp.org/blog/change-criminal-history-question-2019-2020-application-year>. Vincennes University currently requires applicants “that have ever been adjudicated guilty, convicted of a felony, or other crime must submit a completed Felony Charge Form, including a personal statement addressing the criminal charge(s), and any other documentation the applicant believes supports their statement.” (last accessed Nov. 21, 2022).

2. State Financial Aid Program – Twenty-First Century Scholars

Pursuant to Ind. Code 21-12-6-6(a)(5), to qualify for the Twenty-First Century Scholars Program (an annual tuition scholarship program), the student must certify in writing that before the student’s graduation from high school the student:

- (1) Did not illegally use controlled substances (as defined in Ind. Code 35-48-1-9);
- (2) Did not illegally consume alcoholic beverages;
- (3) Did not commit any other crime or a delinquent act (as described in Ind. Code 31-37-1-2 or Ind. Code 31-37-2-2 through Ind. Code 31-37-2-5).

D. SUSPENSION OF DRIVER’S LICENSE OR PERMIT

Many adjudications have mandatory or discretionary driver’s license suspensions as part of any disposition. For the relevant statutes, see *Ch. 12 – Disposition*.

E. IMPACT ON ABILITY TO BECOME A FOSTER PARENT, ADOPT, OR HAVE A CHILD PLACED IN HOME

1. Foster License

a. Mandatory denial of license for certain criminal convictions

Pursuant to Ind. Code 31-27-4-13(a), DCS shall deny a foster license to an applicant who has been convicted of a nonwaivable offense (as defined in Ind. Code 31-9-2-84.8).

b. Discretionary denial of license for additional convictions or juvenile adjudications

Pursuant to Ind. Code 31-27-4-13(b), DCS may deny a foster license to an applicant who:

- (1) has been convicted of a felony that is not described in Ind. Code 31-27-4-13; or
- (2) has had a juvenile adjudication for an act described in Ind. Code 31-27-4-13(a) that, if committed by an adult, would be a felony.

2. Placement of a Delinquent Child in the Home

Except as provided by Ind. Code 31-37-19-6.5(d), the juvenile court may not enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-1(a)(3) or Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-1(a)(4) or Ind. Code 31-37-19-6(b)(2)(E) if a person who is currently residing in the home in which the child would be placed under Ind. Code 31-37-19-1(a)(3), -1(a)(4), -6(b)(2)(D), or -6(b)(2)(E) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-37-19-6.5(a).

a. Included nonwaivable offenses pursuant to Ind. Code 31-9-2-84.8

see below 3(a)

b. Court may order placement if convictions irrelevant

Pursuant to Ind. Code 31-37-19-6.5(d), the juvenile court may enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-1(a)(3) or Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-1(a)(4) or Ind. Code 31-37-19-6(b)(2)(E) if:

- (1) A person described in Ind. Code 31-37-19-6.5(a) has:
 - (A) Committed an act resulting in a substantiated report of child abuse or neglect;
 - (B) Been convicted of:
 - (i) a felony under Ind. Code 9-30-5;
 - (ii) Battery (Ind. Code 35-42-2-1);

- (iii) Criminal Recklessness (Ind. Code 35-42-2-2;
 - (iv) Criminal Confinement (Ind. Code 35-42-3-3) as a felony;
 - (v) Carjacking (Ind. Code 35-42-5-2) (repealed) as a felony;
 - (iv) Arson (Ind. Code 35-43-1-1) as a felony;
 - (vi) Nonsupport of a Dependent Child (Ind. Code 35-46-1-5);
 - (vii) Operating a Motorboat While Intoxicated (Ind. Code 35-46-9-6) as a felony;
 - (viii) A felony involving a weapon under Ind. Code 35-47; or ;
 - (ix) a felony relating to controlled substances under Ind. Code 35-48-4; or
- if the conviction did not occur within the last five (5) years; or
- (C) Had a juvenile adjudication for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 that, if committed by an adult, would be a felony; and
- (2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's ability to care for a child, and placing a child in another home is in the best interest of the child.

However, a court may not enter a dispositional decree placing a child in another home under Ind. Code 31-37-19-1(a)(3) or Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility under this subsection if a person with whom the child is or will be placed has been convicted of a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 that is not specifically excluded under subdivision (1)(B).

c. Considerations for placement

Pursuant to Ind. Code 31-37-19-6.5(e), in considering the placement under Ind. Code 31-37-19-6.5(d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

3. Placement of a Child in Need of Services (CHINS) in the Home

Except as provided by Ind. Code 31-34-20-1.5(d), the juvenile court may not enter a dispositional decree approving or ordering placement of a child in another home under Ind. Code 31-34-20-1(a)(3) or awarding wardship to the department that will place the child in another home under Ind. Code 31-34-20-1(a)(4) if a person who is currently residing in the home in which the child would be placed under Ind. Code 31-34-20-1(a)(3) or -1(a)(4) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 that, if

committed by an adult, or has a conviction for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-34-20-1.5(a).

a. Nonwaivable Offenses

Pursuant to Ind. Code 31-9-2-84.8, the nonwaivable offenses are:

- (1) Murder (Ind. Code 35-42-1-1).
- (2) Causing suicide (Ind. Code 35-42-1-2).
- (3) Assisting suicide (Ind. Code 35-42-1-2.5).
- (4) Voluntary manslaughter (Ind. Code 35-42-1-3).
- (5) Involuntary manslaughter (Ind. Code 35-42-1-4).
- (6) Reckless homicide (Ind. Code 35-42-1-5).
- (7) Feticide (Ind. Code 35-42-1-6).
- (8) Battery (Ind. Code 35-42-2-1) within the past five (5) years.
- (9) Domestic battery (Ind. Code 35-42-2-1.3).
- (10) Aggravated battery (Ind. Code 35-42-2-1.5).
- (11) Criminal recklessness (Ind. Code 35-42-2-2) within the past five (5) years.
- (12) Strangulation (Ind. Code 35-42-2-9).
- (13) Kidnapping (Ind. Code 35-42-3-2).
- (14) Criminal confinement (Ind. Code 35-42-3-3) within the past five (5) years.
- (15) Human and sexual trafficking (Ind. Code 35-42-3.5).
- (16) A felony sex offense under Ind. Code 35-42-4.
- (17) Arson (Ind. Code 35-43-1-1) within the past five (5) years.
- (18) Incest (Ind. Code 35-46-1-3).
- (19) Neglect of a dependent (Ind. Code 35-46-1-4(a)(1) and Ind. Code 35-46-1-4(a)(2)).
- (20) Child selling (Ind. Code 35-46-1-4(d)).
- (21) Reckless supervision (Ind. Code 35-46-1.4-1).
- (22) Nonsupport of a dependent child (Ind. Code 35-46-1-5) within the past five (5) years.
- (23) Operating a motorboat while intoxicated (Ind. Code 35-46-9-6) within the past five (5) years.
- (24) A felony involving a weapon under Ind. Code 35-47 within the past five (5) years.
- (25) A felony relating to controlled substances under Ind. Code 35-48-4 within the past five (5) years.
- (26) An offense relating to material or a performance that is harmful to minors or obscene under Ind. Code 35-49-3.
- (27) A felony under Ind. Code 9-30-5 within the past five (5) years.
- (28) A felony related to the health or safety of a child (as defined in Ind. Code 31-9-2-13(h)) or an endangered adult (as defined in Ind. Code 12-10-3-2).

PRACTICE POINTER – When representing a juvenile alleged delinquent for one of the above nonwaivable offenses, if the extended family has DCS involvement and the juvenile's core family home may be considered for placement, examine whether an admission to a non-nonwaivable offense may be possible.

b. Criminal History Check Performed by DCS

The department or caseworker who prepared the predispositional report shall conduct a criminal history check (as defined in Ind. Code 31-9-2-22.5) to determine if a person described in Ind. Code 31-34-20-1.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-34-20-1.5(b).

c. Prior Report Establishes Criminal History

The department or caseworker is not required to conduct a criminal history check under Ind. Code 31-34-20-1.5 if criminal history information under Ind. Code 31-34-4-2 or Ind. Code 31-34-18-6.1 establishes whether a person described in Ind. Code 31-34-20-1.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-34-20-1.5(b).

d. Court May Order Placement if Convictions Irrelevant

Pursuant to Ind. Code 31-34-20-1.5(d), a juvenile court may enter a dispositional decree that approves placement of a child in another home or award wardship to the department that will place the child in a home with a person described in Ind. Code 31-34-20-1.5(a) if:

(1) The person described in Ind. Code 31-34-20-1.5(a) has:

(A) Committed an act resulting in a substantiated report of child abuse or neglect;

(B) Been convicted of:

(i) Battery (Ind. Code 35-42-2-1);

(ii) Criminal Recklessness (Ind. Code 35-42-2-2) as a felony;

(iii) Criminal Confinement (Ind. Code 35-42-3-3) as a felony;

(iv) Arson (Ind. Code 35-43-1-1) as a felony;

(v) Nonsupport of a Dependent Child (Ind. Code 35-4-1-5);

(vi) Operating a Motorboat While Intoxicated (Ind. Code 35-46-9-6) as a felony;

(vii) a felony involving a weapon under Ind. Code 35-47;

(viii) a felony relating to controlled substances under Ind. Code 35-48-4; or

(ix) a felony under 9-30-5;

if the conviction did not occur within the last five (5) years; or

- (C) Had a juvenile adjudication for a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 that, if committed by an adult, would be a felony; and
- (2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's ability to care for a child and placing a child in another home or awarding wardship to the department is in the best interest of the child.

However, a court may not enter a dispositional decree that approves placement of a child in another home or awards wardship to the department if the person has been convicted of a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8 that is not specifically excluded under subdivision (1)(B).

e. Court Considerations

Pursuant to Ind. Code 31-34-20-1.5(e), in considering placement under Ind. Code 31-34-20-1.5(d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

4. Adoption

a. Criminal History Check Required

Before giving written approval for placement in a proposed adoptive home, a licensed child placing agency or DCS shall conduct a criminal history check (as defined in Ind. Code 31-9-2-22.5) concerning the proposed adoptive parent and any other person who is currently residing in the proposed adoptive home. Ind. Code 31-19-7-1(b).

b. Extent of Criminal History Check

Pursuant to Ind. Code 31-9-2-22.5 a criminal history check includes:

- (1) a fingerprint based criminal history background check or a national name based criminal history record check;
- (2) collection of each substantiated report of child abuse or neglect;
- (3) a check of the national sex offender registry; and
- (4) a check of local criminal records.

PRACTICE POINTER – DCS will often substantiate an allegation of abuse or neglect on a juvenile perpetrator of a sex offense and a juvenile may appear on the sex offender registry as part of a juvenile delinquency case.

c. If the Child is a Ward, DCS Must Approve Adoption

Whenever the written approval for placement of a child in a proposed adoptive home is obtained from a licensed child placing agency, the consent of the department is not required unless the child is a ward of the department. Ind. Code 31-19-7-2.

d. Basis for Denial

Pursuant to Ind. Code 31-19-11-1(c), a juvenile adjudication for an act listed in Ind. Code 31-9-2-84.8 that would be a felony if committed by an adult, a conviction of a misdemeanor related to the health and safety of a child, or a conviction of a felony not listed in Ind. Code 31-9-2-84.8 by a petitioner for adoption or household member is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner has been convicted of a nonwaivable offense under Ind. Code 31-9-2-84.8. However, the court is not prohibited from granting an adoption upon a felony conviction for:

- (1) a felony under Ind. Code 9-30-5;
- (2) battery (Ind. Code 35-42-2-1);
- (3) criminal recklessness (Ind. Code 35-42-2-2) as a felony;
- (4) criminal confinement (Ind. Code 35-42-3-3);
- (5) arson (Ind. Code 35-43-1-1);
- (6) nonsupport of a dependent child (Ind. Code 35-46-1-5);
- (7) operating a motorboat while intoxicated (Ind. Code 35-46-9-6_ as a felony;
- (8) a felony involving a weapon under Ind. Code 35-47; or
- (9) a felony relating to controlled substances under Ind. Code 35-48-4;

if the date of the conviction did not occur within the immediately preceding five (5) year period.

A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in Ind. Code 11-8-8-5) or a sexually violent predator (as defined in Ind. Code 35-38-1-7.5). Ind. Code 31-19-11-1(d).

F. IMPACT ON ACCESS TO EMPLOYMENT

1. Public Record

Employers are not listed as having statutory access to juvenile court records; however, the bulk of the records of a juvenile case are available without a court order to the public whenever a petition has been filed alleging that a child is a delinquent as the result of any of the following alleged acts or combination of alleged acts: (1) murder or a felony if committed by an adult, (2) an aggregate of two unrelated acts that would be misdemeanors if committed by an adult if the child is at least twelve years old when the acts were committed, or (3) an aggregate of five unrelated acts that would be misdemeanors if committed by an adult if the child is less than twelve years of age when the acts were committed. Ind. Code 31-39-2-8(a).

If the child is placed on the sex or violent offender registry, the employer will have access to some information about the case through the registry website. See *Indiana Sex and Violent Offender Registry*, .

PRACTICE POINTER – DCS will often substantiate an allegation of abuse or neglect on a juvenile perpetrator of a sex offense and a juvenile may appear on the sex offender registry as part of a juvenile delinquency case.

2. Certain Jobs with Juveniles

Court appointed special advocate (CASA) and guardian ad litem applicants must complete an application process that includes a criminal history and child abuse registry check. .

A voluntary preventative program for at-risk children is statutorily prohibited from employing an applicant who has a juvenile adjudication for an act that, if committed by an adult, would be a nonwaivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-32-3-11(b).

G. IMPACT ON ABILITY TO POSSESS AND CARRY FIREARMS

A person who is prohibited from carrying a handgun or possessing a firearm may not obtain a license to carry a handgun under Ind. Code 35-47-2-3. Even though there is no longer a requirement to have a permit or license to carry in Indiana, permits still have the benefit of providing readily available credentials for the lawfulness of the act of carrying, and are required by several other states.

1. Commitments to Mental Health Institutions by the Juvenile Court

A person “committed to a mental institution” may not knowingly or intentionally carry a handgun. Ind. Code 35-47-2-1.5(b)(7)(C). “Commitment to a mental institution” means the formal commitment by a court for cognitive or mental defect or mental illness but does not include voluntary commitments or commitments for observational purposes. Ind. Code 35-47-2-1.5(a)(3). A person who has been committed to a mental institution who subsequently carries a handgun commits unlawful carry, a Class A misdemeanor, which is elevated to a Level 5 felony if the person has a prior conviction for that offense.

2. Adjudicated Delinquent for Serious Violent Felonies (SVF)

A person who has been adjudicated as a delinquent child for an act that would be an offense under I.C. 35-47-4-5 (SVF), had they been an adult, may not carry a handgun until they reach the age of twenty-three (23). Ind. Code 35-47-2-1.5(b)(10)(B). A person who has been adjudicated as a delinquent child for an offense that would be a SVF who subsequently carries a handgun commits unlawful carry, a Class A misdemeanor, which is elevated to a Level 5 felony if the person has a prior conviction for that offense.

3. Adjudicated Delinquent for Serious Violent Felonies (SVF) While Armed with a Firearm

A person who has been adjudicated as a delinquent child for an act that would be an offense under I.C. 35-47-4-5 (SVF), had they been an adult, and the act is committed while armed with a firearm, may not possess a firearm until reaching the age of twenty-six (26) if the act would have been a Level 3, 4, 5, or 6 felony, and may not possess a firearm until reaching the age of twenty-eight (28) if the act would have been a Level 1, 2, or murder felony. Ind. Code

35-47-4-9. Knowingly or intentionally possessing a firearm in violation of this statute is a Level 6 felony, elevated to a Level 5 felony for subsequent offenses.

4. Adjudicated Delinquent for a Children and Firearms Offense

An adjudication as a delinquent for an offense under I.C. 35-47-10-5(a) makes any subsequent act a Level 5 felony. If the child is sixteen (16) or seventeen (17), and is charged with any offense under I.C. 35-47-10 (children and firearms) that is a felony, the juvenile court does not have jurisdiction over that offense, and it is filed in a court of criminal jurisdiction. Ind. Code 31-30-1-4(9).

H. SEX OFFENDER REGISTRY

For information about the sex offender registry, see Chapter Thirteen – Post-Disposition, and IPDC’s Sex Offender Pamphlet.