

## CHAPTER THREE

### CONFIDENTIALITY AND RECORDS ACCESS

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## **CHAPTER THREE**

### **CONFIDENTIALITY AND RECORDS ACCESS**

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#### **I. CONFIDENTIALITY OF JUVENILE DELINQUENCY HEARINGS**

*In general, juvenile delinquency hearings are open to the public unless the petition alleging delinquency includes only allegations that are status offenses or acts that would be misdemeanors if committed by an adult. Juvenile delinquency hearings may also be closed to protect a child witness or child victim or by order of the court.*

##### **A. DELINQUENCY PROCEEDINGS INVOLVING MURDER OR A FELONY ARE OPEN TO THE PUBLIC**

Except to protect a child witness or child victim [Ind. Code 31-32-6-4], a delinquency proceeding is open to the public whenever a petition alleging that a child has committed an act that would be murder or a felony if committed by an adult is filed under Ind. Code 31-37-10. Ind. Code 31-32-6-3.

Taylor v. State, 438 N.E.2d 275, 278-80 (Ind. 1982), *cert. denied* (In determining whether public and media representatives should be allowed access to juvenile's records and court proceedings, the need to protect juvenile from dissemination of information regarding minor offenses must be weighed against constitutional guarantees of free speech and press. Courts must strive to adhere strictly to mandates of Ind. Code 31-6-7-10 (repealed; see Ind. Code 31-32-6-2) governing access or exclusion of public from juvenile hearings, both in form and substance, and care and discernment should mark court's approach to balancing of competing interests.).

##### **1. Proceedings Can Be Closed to Protect a Child Witness Or Child Victim**

###### **a. Motion Required**

Pursuant to Ind. Code 31-32-6-4(a), upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a child witness or child victim if the court finds that:

- (1) An allegation or a defense involves matters of a sexual nature; and
- (2) Closing the proceeding is necessary to protect the welfare of a child witness or child victim.

###### **b. Factors in Determining Whether to Close the Proceeding**

Pursuant to Ind. Code 31-32-6-5, in determining whether closing a proceeding is necessary to protect the welfare of a child witness or child victim, the court shall consider the following:

- (1) The nature of the allegation or defense.
- (2) The age of a child witness or child victim.

- (3) The psychological maturity of a child witness or child victim.
- (4) The desire of a child witness or child victim to testify in a proceeding closed to the public.

**c. Findings and Filing of Exclusion Order**

Pursuant to Ind. Code 31-32-6-6, if a proceeding is closed to the public under Ind. Code 31-32-6-4, the juvenile court shall:

- (1) Make findings of fact concerning the closing of the proceeding; and
- (2) Place the exclusion order in the file of the proceedings.

**2. Closing Hearing During HIPPA or Health Care Testimony**

Pursuant to Ind. Code 31-32-6-4(b), upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a health care provider if the court finds that:

- (1) The testimony involves matters that would be protected under 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)); or
- (2) The testimony involves matters that would be a privileged communication between a health care and the health care provider's patient.

**3. Proceeding Can Be Closed During Testimony by Certain Counselor or Therapists**

Pursuant to Ind. Code 31-32-6-4(c), upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of:

- (1) A: (A) certified social worker, (B) certified clinical social worker; or (C) certified marriage and family therapist; regarding a client;
- (2) A school counselor regarding a student; or
- (3) A school psychologist regarding a student.

**B. COURT DETERMINES WHETHER HEARINGS ARE CLOSED FOR MISDEMEANORS AND STATUS OFFENSES**

The juvenile court shall determine whether the public should be excluded from a proceeding other than a juvenile proceeding described in Ind. Code 31-32-6-3 [proceeding with allegation of murder or a felony]. Ind. Code 31-32-6-2.

**C. ALL PROCEEDINGS INVOLVING ADULTS CHARGED WITH CONTEMPT OR CRIMINAL CHARGES ARE OPEN TO THE PUBLIC**

Pursuant to Ind. Code 31-32-6-1, all proceedings in the juvenile court involving adults charged with:

- (1) Contempt of court; or
- (2) Criminal charges;

shall be tried in open court.

## **II. CONFIDENTIALITY OF JUVENILE COURT RECORDS**

The court shall take appropriate actions to protect juvenile court records from authorized disclosure. Ind. Code 31-39-1-2.

State ex rel. Shelbyville Newspapers, Inc. v. Shelby Superior Court, 396 N.E.2d 337, 272 Ind. 42 (1979) (Juvenile statutes vested in juvenile court sound discretion to order publication or nonpublication of juvenile records held by court or outside agencies. In light of historical importance of protecting juveniles from publication of juvenile reports and records, ample justification exists for statutory policy [Ind. Code 31-5-7-15 (repealed; see, Ind. Code 31-62-6-2)] of permitting release of juvenile information only after determination by court of law, and this important interest overwhelms any First Amendment interest press may have in publishing such information.).

### **A. JUVENILE COURT RECORDS THAT ARE CONFIDENTIAL**

Pursuant to Ind. Code 31-39-1-1, most juvenile court records are confidential. However, some confidential records are available to the public in accordance with Ind. Code 31-39-1-2. Access to confidential juvenile court records is dependent on the allegations contained in the petition alleging delinquency.

Juvenile court records include chronological case summaries, index entries, summonses, warrants, petitions, orders, motions, and decrees. Ind. Code 31-39-1-1.

#### **1. Status Offense Records Are Confidential and Not Subject to Public Access**

Status offender information is confidential because it is excluded from disclosure pursuant to Ind. Code 31-39-2-8(a). If the child has committed a specified number of misdemeanors, a felony, or murder, many of the juvenile court records are accessible to the public without a court order. Ind. Code 31-39-2-8(a).

#### **2. Certain Delinquency Records Are Confidential but Subject to Public Access**

##### **a. If the Child is Alleged to have Committed an Act that would be Murder, a Felony, or a Specified Number of Misdemeanors, the Records are Public**

Pursuant to Ind. Code 31-39-2-8(a), the records of the juvenile court are available without a court order to the public, subject to the restrictions in Ind. Code 31-39-2-8(b) and (c), whenever a petition has been filed alleging that a child is delinquent as a result of any of the following acts or combination of alleged acts:

- (1) An act that would be murder or a felony if committed by an adult.
- (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult if the child was at least twelve (12) years of age when the acts were committed.

- (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult if the child was less than twelve (12) years of age when the acts were committed.

**b. Information that May be Released to the Public Without a Court Order if the Child is Alleged to Have Committed an Act that would be Murder, a Felony, or a Specified Number of Misdemeanors**

Pursuant to Ind. Code 31-39-2-8(b), the following information or documents may be released to the public without a court order to the public whenever a petition has been filed alleging that a child is delinquent as the result of certain acts pursuant to Ind. Code 31-39-2-8(a):

- (1) The child's name
- (2) The child's age
- (3) The nature of the offense
- (4) Chronological case summaries
- (5) Index entries
- (6) Summonses
- (7) Warrants
- (8) Petitions
- (9) Orders
- (10) Motions, excluding:
  - (A) Motions concerning psychological evaluations; and
  - (B) Motions concerning child abuse and neglect.
- (11) Decrees
- (12) The child's photograph, but only if adjudicated delinquent for an act that would be murder, a felony or the specified number of misdemeanors as described in Ind. Code 31-39-2-8(a)(3).

**3. All Other Records, Not Specified in Ind. Code 31-39-2-8(b) Remain Confidential and Not Subject to Public Access**

The clerk of the juvenile court shall place all other records of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child. Records contained in the confidential file may only be released to persons who are allowed disclosure under Ind. Code 31-39-2-2, -3, -4, -5, -6, -7, or -10. Ind. Code 31-39-2-8 (c).

**4. Child Witness or Child Victim Information Is Confidential**

The identifying information of any child who is a victim or a witness shall remain confidential under Ind. Code 31-39-2-8. Ind. Code 31-39-2-8(c).

## **B. JUVENILE COURT RECORDS THAT ARE NOT CONFIDENTIAL**

### **1. Records Involving an Adult Charged with a Crime or Criminal Contempt of Court**

Records involving an adult charged with a crime or criminal contempt of court are not protected. Ind. Code 31-39-1-1(a)(1) and Ind. Code 31-39-2-1(a)(1).

In re T.B., 895 N.E.2d 321, 341 (2008) (This statutory exception applies only to those juvenile court records that relate specifically to both the adult and the charged crime.).

Edelen v. State, 947 N.E.2d 1024, 1029 (Ind.Ct.App. 2011) (The statutory exception to the confidentiality statutes, which allows disclosure of records involving an adult charged with a crime or criminal contempt, ensure that the confidentiality provisions do not impede the State's investigation and prosecution of the adult charged with a crime).

### **2. Records Involving a Pregnant Minor Seeking an Abortion**

Records involving a pregnant minor or her physician seeking a waiver of the requirement under Ind. Code 35-1-58.5-2.5 (before its repeal) or Ind. Code 16-34-2-4 that a physician who performs an abortion on an unemancipated minor first obtain the written consent of the minor's parent or guardian. Ind. Code 31-39-1-1(a)(2) and Ind. Code 31-39-2-1(a)(2).

## **C. WHO MAY ACCESS CONFIDENTIAL JUVENILE COURT RECORDS**

### **1. Juvenile Court Judge and Staff**

The records of the juvenile court are available without a court order to the judge or any authorized staff member. Ind. Code 31-39-2-2.

### **2. Party and Party's Counsel**

The records of the juvenile court are available without a court order to any party and the party's attorney. The party and the party's attorney may only review the records applicable to the proceeding in which the person is a party. Ind. Code 31-39-2-3(a).

#### **a. A Child Excluded from a Hearing May be Denied Access to Certain Court Records**

A child excluded from a hearing under Ind. Code 31-32-6 [child witness, child victim, termination of parental rights hearing, or child in need of services hearing] may be denied access to records pertaining to that subject matter. Ind. Code 31-39-2-3(b).



**b. A Person Denied Access to a Predisposition or Disposition Hearing Records May be Denied Access from Certain Court Records**

A person who was denied access to a predisposition report or the records for a dispositional hearing may be denied access to that subject matter. Ind. Code 31-39-2-3(c).

**3. Prosecuting Attorney and Staff**

The records of the juvenile court are available without a court order to the prosecuting attorney or any authorized staff member. Ind. Code 31-39-2-5.

Lineback v. State, 260 Ind. 503, 512, 301 N.E.2d 636, 637-38 (1973), *cert. denied* (A defendant who places his reputation before the jury through character witnesses opens his entire life to scrutiny, including juvenile matters.).

Terrell v. State, 507 N.E.2d 633, 635 (Ind. Ct. App. 1987), *reh'g denied, trans. denied*. (Juvenile adjudications for burglary were admissible for impeachment purposes in arson prosecution, where defendant's attorney made opening statement that defendant had no record.).

Brown v. Trigg, 791 F.2d 598, 601 (Ind. 1986) (Introduction of testimony at defendant's prosecution as an adult for felony-murder, which was developed for use at a juvenile court proceeding, did not violate Indiana public policy or statutory law.).

**4. Criminal Court**

The records of the juvenile court are available without court order to the judge of a court having criminal jurisdiction or any authorized staff member if the record is to be used in a presentence investigation in that court. Ind. Code 31-39-2-4.

Jewell v. State, 261 Ind. 665, 669, 309 N.E.2d 441, 443 (1974) (The convicted person's history of delinquency is specifically authorized to be part of the presentence report.).

Hineman v. State, 155 Ind.App. 293, 303-04, 292 N.E.2d 618, 624 (1973) (Highly relevant – if not essential – to the sentencing judge's selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. Criminal court may consider the juvenile court's predisposition report as long as the child's records have not been expunged.).

**5. Department Of Child Services**

Pursuant to Ind. Code 31-39-2-6, the records of the juvenile court are available without a court order to:

- (1) The attorney of the department of child services; or
- (2) Any authorized staff person of:
  - (A) The local office;
  - (B) The department of child services;

- (C) The department of correction; or
- (D) The department of child services ombudsman established by Ind. Code 4-13-19-3.

## **6. Department Of Correction**

The records of the juvenile court are available without a court order to any authorized staff person of the department of correction. Ind. Code 31-39-2-6(2)(C).

## **7. Parents**

The records of the juvenile court are available without a court order to the parents of a child whenever the custody or support of that child is an issue in an action initiated under Ind. Code 31-15 [Dissolution of Marriage] or Ind. Code 31-16 (or Ind. Code 31-1-11.5 before its repeal). Ind. Code 31-39-2-7.

## **8. Public Access**

Pursuant to Ind. Code 31-39-2-8(a), the records of the juvenile court are available without a court order to the public, subject to some restrictions, whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts:

- (1) An act that would be murder or a felony if committed by an adult.
- (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult if the child was at least twelve (12) years of age when the acts were committed.
- (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult if the child was less than twelve (12) years of age when the acts were committed.

In re T.B., 895 N.E.2d 321, 349 (2008) (Juvenile court was not authorized to grant newspaper's request, after death of child who was alleged to be neglected and murdered by mother and mother's boyfriend, for access to records in two delinquency proceedings involving mother; mother's alleged neglect and murder of child were not basis for delinquency allegations.).

## **9. Person Providing Services to Child or Child's Family**

The juvenile court may grant any person providing services to the child or the child's family access to the records on the child and the child's family. Ind. Code 31-39-2-9.

## **10. Interested Persons**

### **a. Any Person with Legitimate Interest Can Access Records with the Court's Permission**

Pursuant to Ind. Code 31-39-2-10(a) and subject to Ind. Code 31-39-2-15 [waiver of restrictions on access to records], the juvenile court may grant any person having a legitimate interest in the work of the court or in a particular case access to the court's

legal records. In exercising its discretion, the court shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:

- (1) The alleged commission of an act that would be murder or a felony if committed by an adult; or
- (2) The alleged commission of an act that would be part of a pattern of less serious offenses.

In re T.B., 895 N.E.2d 321, 349 (2008) (This statutory exception applies to both closed and pending cases and both CHINS and juvenile delinquency cases.).

**b. Interested Person is not Bound by Confidentiality Provisions**

A person having access to the records under this section is not bound by the confidentiality provisions of Ind. Code 31-39-1 and may disclose the contents of the records. Ind. Code 31-39-2-10(b).

**11. Researchers**

**a. Access to Researchers Requires Written Information from Researcher, Safeguards, and an Agreement with the Court**

Pursuant to Ind. Code 31-39-2-11, the juvenile court shall grant any person involved with legitimate research activity access to the court's confidential records if:

- (1) The person conducting the research provides written information about:
  - (A) The purpose of the person's project, including any intent to publish the person's findings;
  - (B) The nature of the data the person seeks to collect and how the person intends to analyze the data;
  - (C) The records the person seeks to review; and
  - (D) The safeguards the person will take to protect the identity of the persons whose records the person will be reviewing;
- (2) The proposed safeguards are adequate to protect the identity of each person whose records the researcher will review;
- (3) The court informs the researcher of the provisions of Ind. Code 31-39-1 and this chapter, including the criminal liability of a person who recklessly fails to protect the records; and
- (4) An agreement is executed between the court and the person responsible for the research that specifies the terms of the researcher's use of the records.

## **12. Parties to Criminal or Juvenile Delinquency Proceedings**

### **a. Disclosure for Impeaching Witness or Discrediting Person's Reputation**

Pursuant to Ind. Code 31-39-2-12(a), the juvenile court shall grant any party to a criminal or juvenile delinquency proceeding access to a person's legal records if the information may be used:

- (1) To impeach the person as a witness; or
- (2) To discredit the person's reputation if the person places reputation in issue.

Lineback v. State, 260 Ind. 503, 512, 301 N.E.2d 636, 637-38 (1973), *cert. denied* (A defendant who places his reputation before the jury through character witnesses opens his entire life to scrutiny, including juvenile matters.).

Terrell v. State, 507 N.E.2d 633, 635 (Ind. Ct. App. 1987), *reh'g denied, trans. denied*. (Juvenile adjudications for burglary were admissible for impeachment purposes in arson prosecution, where defendant's attorney made opening statement that defendant had no record.).

Brown v. Trigg, 791 F.2d 598, 601 (Ind. 1986) (Introduction of testimony at defendant's prosecution as an adult for felony-murder, which was developed for use at a juvenile court proceeding, did not violate Indiana public policy or statutory law.).

### **b. Information Must be Used in Accordance with the Law of Evidence**

The information may only be used in criminal or juvenile delinquency proceedings in accordance with the law of evidence. Ind. Code 31-39-2-12(b).

## **13. Victim of Delinquent Act or Victim's Family**

### **a. Access to Records for Civil Action Against Child who Committed the Act or the Child's Parents**

Pursuant to Ind. Code 31-39-2-13(a), the juvenile court may grant the victim of a delinquent act, or a member of the victim's family, access to the court's legal records if the information may be used in a civil action against:

- (1) The child who committed the act; or
- (2) The child's parent.

### **b. Contents May be Disclosed if Necessary for Civil Action**

A person having access to the records under this section may disclose the contents of the record if disclosure is necessary to prosecute any civil action. Ind. Code 31-39-2-13(b).

#### **14. Certain Persons to Determine Appropriateness of Certain Out-of-Home Placements**

Pursuant to Ind. Code 31-39-2-13.5, the records of the juvenile court are available without a court order to an employee of the department of child services, a caseworker, or a juvenile probation officer conducting a criminal history check (as defined in Ind. Code 31-9-2-22.5) under Ind. Code 31-26-5-3 [family preservation services], Ind. Code 31-34 [CHINS], or Ind. Code 31-37 [juvenile delinquency] to determine the appropriateness of an out-of-home placement for a:

- (1) Child at imminent risk of placement;
- (2) Child in need of services; or
- (3) Delinquent child.

#### **15. School Access**

##### **a. Upon Written Request from the School for a Specified Reason**

##### **(1) Juvenile court has discretion whether to grant access to school officials**

Pursuant to Ind. Code 31-39-2-13.8(a), the juvenile court may grant a school access to all or a portion of the juvenile court records of a child who is a student of the school if:

- (1) The superintendent, or the superintendent's designee;
- (2) The chief administrative officer of a nonpublic school, or the chief administrative officer's designee; or
- (3) The individual with administrative control within a charter school, or the individual's designee;

submits a written request that meets the requirements of subsection (b) [discussed immediately below].

##### **(2) Records must serve specified purpose**

Pursuant to Ind. Code 31-39-2-13.8(b), a written request must establish that the juvenile records are necessary for the school to:

- (1) Serve the educational needs of the child whose records are being released.
- (2) Protect the safety or health of a student, an employee, or a volunteer of the school.

##### **(3) Notice to the child and child's parent, guardian, or custodian of disclosure**

A juvenile court that releases juvenile court records upon written request of the school shall provide notice to the child and to the child's parent, guardian, or custodian that the child's juvenile records have been disclosed to the school. Ind. Code 31-39-2-13.8(c).

**(4) Records must still be kept confidential**

Pursuant to Ind. Code 31-39-2-13.8(d), a juvenile court that releases juvenile court records upon written request from the school shall issue an order requiring the school to keep the juvenile court records confidential. A confidentiality order does not prohibit the school that receives juvenile court records from forwarding the juvenile records to:

- (1) Another school;
- (2) A person if a parent, guardian, or custodian of the child consents to the release of the juvenile court records to that person; or
- (3) An entity listed in Ind. Code 31-39-9-1.

A school or a person who receives juvenile court records under this subsection must keep the juvenile court records confidential.

**b. Juvenile Court Must Disclose Certain Information to the School**

**(1) A person enrolled in primary or secondary school who has committed certain acts**

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; or
  - (J) at least two (2) Level 6 felonies; 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; or

- (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.

**(2) 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).

**(3) 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.

**(4) 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).

**D. COURT MUST RETAIN ACCESS ORDER WHEN ACCESS IS GRANTED**

Whenever the juvenile court grants access to its records, the court shall place a copy of the access order in the file of each person to whose records the order applies. However, if the access order is a general access order or an agreement under Ind. Code 31-39-2-11 (or Ind. Code 31-6-8-1(e) before its repeal) [access to researchers], the copy shall be placed in a general file containing all general access orders or agreements under Ind. Code 31-39-2-11 (or Ind. Code 31-6-8-1(e) before its appeal). Ind. Code 31-39-2-14.

**E. WAIVER OF JUVENILE COURT RECORDS ACCESS RESTRICTIONS**

A person who is at least eighteen (18) years of age may waive the restrictions on access to the person's [juvenile court] records if the person does so in writing, stating the terms of the person's waiver. Ind. Code 31-39-2-15.

### **III. CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS IN JUVENILE DELINQUENCY CASES**

Each law enforcement agency shall take appropriate actions to protect the confidential records, described at Ind. Code 31-39-3-4(a), from unauthorized disclosure. Ind. Code 31-39-3-4(b).

#### **A. WHICH LAW ENFORCEMENT RECORDS ARE PUBLIC INFORMATION**

##### **1. Certain Information Contained in Records Involving Allegations of Delinquency**

Pursuant to Ind. Code 31-39-3-2, except for information listed in Ind. Code 5-14-3-4(a)(1) through IC 5-14-3-4(a)(15) [records excepted from disclosure requirements] the following information contained in records involving allegations of delinquency that would be a crime if committed by an adult is considered public information:

- (1) The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved.
- (2) The identity of any victim.
- (3) A description of the method of apprehension.
- (4) Any instrument of physical force used.
- (5) The identity of any officers assigned to the investigation, except for the undercover units.
- (6) The age and sex of any child apprehended or sought for the alleged commission of the offense.
- (7) The identity of a child, if the child is apprehended or sought for the alleged commission of:
  - (A) An offense over which a juvenile court does not have jurisdiction under Ind. Code 31-30-1-2 [infractions, ordinance violations and felony acts of a child who was previously waived] and Ind. Code 31-30-1-4 [direct file offenses]; or
  - (B) An act specified under Ind. Code 31-30-3-3 [felony offenses related to controlled substances].

##### **2. Records Relating to a Child's Detention in a Secure Facility**

Records relating to the detention of any child in a secure facility shall be open to public inspection. Ind. Code 31-39-3-3.

**PRACTICE POINTER:** Confidentiality of both juvenile proceedings and records is important to safeguard a youth's privacy and protect them from the stigma and collateral consequences of juvenile justice involvement. However, Indiana law favors public access. One tool that could promote confidentiality for dual status children is to encourage the juvenile court to conduct concurrent delinquency and CHINS proceedings to protect the privacy of your client.



## **B. WHICH LAW ENFORCEMENT RECORDS ARE CONFIDENTIAL**

All law enforcement records, except those described in Ind. Code 31-39-3-2 and Ind. Code 31-39-3-3 [above], are confidential and are available only in accordance with Ind. Code 31-39-4. Ind. Code 31-39-3-4(a).

## **C. WHO MAY ACCESS LAW ENFORCEMENT RECORDS**

### **1. Law Enforcement Agency Head or Officer**

The records of a law enforcement agency are available, without specific permission from the head of the agency to a law enforcement officer acting within the scope of the officer's lawful duties. Ind. Code 31-39-4-2.

### **2. Juvenile Court Judge or Staff**

The records of a law enforcement agency are available, without specific permission from the head of the agency to the judge of the juvenile court or any authorized staff member. Ind. Code 31-39-4-3.

### **3. Party or Party's Attorney in Juvenile Court Proceedings**

#### **a. Most Records Accessible**

Pursuant to Ind. Code 31-39-4-4(a), the records of a law enforcement agency are available, without specific permission from the head of the agency to any party to a juvenile court proceeding and the party's attorney. However, a:

- (1) Child excluded from a hearing by Ind. Code 31-32-6 [child witness, child victim, or CHINS or termination of parental rights hearings] may be denied access to records pertaining to that subject matter; and
- (2) Person who was denied access to a predispositional report or the records for a dispositional hearing may be denied access to that subject matter.

#### **b. Only Records Applicable to Proceedings in which the Person is a Party May be Accessed.**

The party and the party's attorney may only review the records applicable to the proceeding in which the person is a party. Ind. Code 31-39-4-4(b).

### **4. Criminal Court Judge or Staff for Presentence Investigation**

The records of a law enforcement agency are available, without specific permission from the head of the agency to the judge of a court having criminal jurisdiction or any authorized staff member if the record is to be used in a presentence investigation in that court. Ind. Code 31-39-4-5.

## **5. Prosecuting Attorney or Staff**

The records of a law enforcement agency are available, without specific permission from the head of the agency to the prosecuting attorney, or any authorized member of the staff of the prosecuting attorney. Ind. Code 31-39-4-6.

## **6. Attorney or Staff of Department of Child Services**

Pursuant to Ind. Code 31-39-4-7, the records of a law enforcement agency are available, without specific permission from the head of the agency to:

- (1) The attorney for the department of child services or any authorized staff member;
- (2) Any authorized staff member of the department of child services ombudsman established by Ind. Code 4-13-19-3.

## **7. Interested Persons**

### **a. Any Person with Legitimate Interest can Access Records with Permission of the Head of a Law Enforcement Agency or that Person's Designee**

Pursuant to Ind. Code 31-39-4-8(a), the head of a law enforcement agency or that person's designee may grant any person having a legitimate interest in the work of the agency or in a particular case access to the agency's confidential records. In exercising discretion, the head of a law enforcement agency shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:

- (1) The identity of anyone charged with the alleged commission of an act that would be murder or a felony if committed by an adult; and
- (2) The identity of anyone charged with the alleged commission of an act that would be part of a pattern of less serious offenses.

### **a. Interested Person is not Bound by Confidentiality Provisions**

A person having access to the records under this section is not bound by the confidentiality provisions of Ind. Code 31-39-3 and may disclose the contents of the records. Ind. Code 31-39-4-8(b).

## **8. Researchers**

Pursuant to Ind. Code 31-39-4-9, the head of a law enforcement agency may grant any person involved in legitimate research activity access to the agency's confidential records if:

- (1) The person conducting the research provides written information about:
  - (A) The purpose of the person's project, including any intent to publish the person's findings;
  - (B) The nature of the data the person seeks to collect and how the person intends to analyze the data;

- (C) The records the person seeks to review; and
- (D) The safeguards the person will take to protect the identity of the persons whose records will be reviewed;
- (2) The proposed safeguards are adequate to protect the identity of each person whose records the researcher will review;
- (3) The agency informs the researcher of the provisions of this section, including the criminal liability of a person who recklessly fails to protect the records; and
- (4) An agreement is executed between the agency and the person responsible for the research that specifies the terms of the researcher's use of the records.

## **9. Party to Criminal or Juvenile Delinquency Proceedings**

### **a. Disclosure for Impeaching Witness or Discrediting Person's Reputation**

Pursuant to Ind. Code 31-39-4-10(a), the head of the law enforcement agency shall grant any party to a criminal or juvenile delinquency proceeding access to a person's records if the information may be used:

- (1) To impeach the person as a witness; or
- (2) To discredit the person's reputation if the person places reputation in issue.

### **b. Information Must be Used in Accordance with the Law of Evidence**

The information may only be used in criminal or juvenile delinquency proceedings in accordance with the law of evidence. Ind. Code 31-39-4-10(b).

## **10. Victim of Delinquent Act**

The victim of a delinquent act may ask a law enforcement agency if there is probable cause to believe a specified child committed the act. The head of the agency shall release the child's name to the victim if the victim requires the name to proceed with a civil action for damages. Ind. Code 31-39-4-11.

## **D. LAW ENFORCEMENT MUST RETAIN ACCESS ORDER WHEN ACCESS IS GRANTED**

Whenever the head of a law enforcement agency grants access to the agency's records, that person shall place a copy of the access order in the file of each person to whose records the order applies. However, if the access order is a general access order or an agreement under Ind. Code 31-39-4-9 (or Ind. Code 31-6-8-1.2(d) before its repeal), the copy shall be placed in a general file containing all general access orders or agreements. Ind. Code 31-39-4-12.

## **E. WAIVER OF LAW ENFORCEMENT RECORDS ACCESS RESTRICTIONS**

A person who is at least eighteen (18) years of age may waive the restrictions on access to the person's [law enforcement] records if the person does so in writing, stating the terms of the waiver. Ind. Code 31-39-4-13.

#### **F. JUVENILE COURT HAS LIMITED JURISDICTION AND CONTROL OVER LAW ENFORCEMENT RECORDS**

Pursuant to Ind. Code 31-39-4-14, a judge of a juvenile court or the judge's employees may not exercise any jurisdiction or control over:

- (1) Records kept and maintained by law enforcement agencies relating to juveniles; and
- (2) The discretion granted to heads of law enforcement agencies to release, or to grant access to, records and information unless otherwise specifically provided in the juvenile law, including Ind. Code 31-37-4-3 [notice to schools] and Ind. Code 31-39-9 [exchange of information concerning delinquent children].

Any specific authority that is granted does not imply the existence of any other jurisdiction or control.

#### **IV. CONFIDENTIALITY OF PRELIMINARY INQUIRY RECORDS COMPILED BY SCHOOL OFFICIALS**

Pursuant to Ind. Code 31-39-6-1, if:

- (1) A preliminary inquiry under Ind. Code 31-34-7 [CHINS] or Ind. Code 31-37-8 [juvenile delinquency] takes place in a school; and;
- (2) The preliminary inquiry is conducted in the presence of school officials;

any record of the proceedings compiled by school officials is confidential and is not open to public inspection under Ind. Code 5-14-3-3 [public agency records].

#### **V. EXCHANGE OF NON-CONFIDENTIAL INFORMATION REGARDING DELINQUENT CHILDREN**

##### **A. ENTITIES AND AGENCIES THAT MAY EXCHANGE INFORMATION**

Pursuant to Ind. Code 31-39-9-1, the following entities and agencies may exchange records of a child who is a child in need of services or has been determined to be a delinquent child under Ind. Code 31-37-1-2 [a crime if committed by an adult], if the information or records are not confidential under state or federal law:

- (1) A court.
- (2) A law enforcement agency.
- (3) The department of correction.
- (4) The department of child services.
- (5) The office of the secretary of family and social services.
- (6) A primary or secondary school, including the public or nonpublic school.
- (7) The department of child services ombudsman established by Ind. Code 4-13-19-3.

##### **B. RECORDS MAY BE RELEASED WITHOUT COURT ORDER**

Pursuant to Ind. Code 31-39-2-6.5, the juvenile court may release court records to an entity listed in Ind. Code 31-39-9-1 without a court order.

## **VI. MODIFICATION OF RECORDS**

### **A. MODIFICATION OF JUVENILE COURT RECORDS**

A person on whom juvenile court records subject to Ind. Code 31-39-1 [confidentiality of juvenile court records] and Ind. Code 31-39-2 [access to juvenile court records] are maintained may request the court to modify any information that the person believes is incorrect or misleading. Ind. Code 31-39-7-1.

### **B. MODIFICATION OF LAW ENFORCEMENT RECORDS**

A person on whom law enforcement records subject to Ind. Code 31-39-3 [confidentiality of law enforcement records] and Ind. Code 31-39-4 [access to law enforcement records] are maintained may request the law enforcement agency to modify any information that the person believes is incorrect or misleading. Ind. Code 31-39-7-2.

## **VII. EXPUNGEMENT, SEALING, AND/OR DESTRUCTION OF RECORDS**

### **A. EXPUNGEMENT OF JUVENILE RECORDS BY PETITION (IND. CODE 31-39-8-3)**

Pursuant Ind. Code 31-39-8, records created as a result of allegations that a child is a delinquent child may be expunged. Juvenile records may be expunged by a petition filed under Ind. Code 31-39-8-3, or by court motion that occurs automatically (subject to exception) under Ind. Code 31-39-8-3.5.

#### **1. Venue**

The juvenile court in the county of the original action has exclusive original jurisdiction over petitions to expunge records of a child alleged to be a delinquent child or a child in need of services. Ind. Code 31-39-8-1.5.

#### **2. Standing for Expungement Request (Expungement by Petition)**

Pursuant to Ind. Code 31-39-8-2(a), any person may petition a juvenile court at any time to remove from:

- (1) The court's files;
- (2) The files of law enforcement agencies; and
- (3) The files of any other person who has provided services to a child under a court order;

Those records pertaining to the person's involvement in juvenile court proceedings.

#### **3. Petition for Expungement**

Pursuant to Ind. Code 31-39-8-3(a), a person may initiate a petition for expungement of records of a child alleged to be a delinquent child by filing a verified petition that sets forth the following:

- (1) The allegations and date of adjudication, if applicable, of the juvenile delinquency adjudications.
- (2) The court in which juvenile delinquency allegations or petitions were filed.
- (3) The law enforcement agency that employs the charging officer, if known.
- (4) The case number or court cause number.
- (5) Date of birth of the petitioner.
- (6) Petitioner's Social Security number.
- (7) All juvenile delinquency or child in need of services adjudications and criminal convictions occurring after the adjudication of the action sought to be expunged.
- (8) All pending actions under Ind. Code § 31-34 or Ind. Code § 31-37 or criminal charges.

There is a sample expungement petition in the Juvenile Delinquency Benchbook that may be used as a petition for expungement under Ind. Code 31-39-8. A copy of the form is included in the Appendix [\(Link to form\)](#).

#### **4. Cost**

There is no statutory provision of a filing fee for a petition for expungement pursuant to Ind. Code 31-39-8.

#### **5. Service**

The petition for expungement shall be served on the prosecuting attorney. Ind. Code 31-39-8-3(b).

#### **6. Hearing may be Required**

The prosecuting attorney or DCS has 30 days to reply or otherwise objection to the petition. The court may reduce the time in which a response must be filed for a show of good cause or within its discretion after a hearing is held. Ind. Code 31-39-8-3(c).

If the prosecutor or DCS timely files an objection to the petition, the matter shall be set to a hearing. Ind. Code 31-39-8-3(d).

If no objection is filed, the court may set the petition for a hearing or rule on the petition without a hearing. Ind. Code 31-39-8-3(d).

#### **7. Factors to Be Considered for Expungement**

Pursuant to Ind. Code 31-39-8-3(e), in considering whether to grant the petition, the juvenile court may review:

- (1) The best interests of the child;
- (2) The age of the person during the person's contact with the juvenile court or law enforcement agency;
- (3) The nature of any allegations;

- (4) Whether there was an informal adjustment or an adjudication;
- (5) The disposition of the case;
- (6) The manner in which the person participated in any court ordered or supervised services;
- (7) The time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) Whether the person acquired a criminal record; and
- (9) The person's current status.
- (10) Whether the person has been:
  - A. charged with; or
  - B. convicted of;
    - murder or another felony offense as an adult;
- (11) whether the person was waived to an adult criminal court for a reason described in IC 31-30-3;
- (12) whether an adult sentence for the person was not suspended for a reason described in IC 35-50-2-2.1; and
- (13) whether:
  - A. the person has been adjudicated a delinquent child for committing an act that would be a serious violent felony (as defined in IC 35-47-4-5) if committed by an adult; and
  - B. the:
    - (i) person is currently suffering from a mental health issue;
    - (ii) mental health issue described in item (i) is chronic or ongoing;
    - (iii) person has received, or is receiving, treatment for a current or chronic mental health issue; or
    - (iv) person is compliant with a treatment regimen recommended by a mental health professional, if applicable.

**PRACTICE POINTER:** If the court sets the matter for a hearing, you may consider presenting the following as evidence to support the petition for expungement: (1) Report cards; (2) High school diploma or proof of GED; (3) Pay stubs or other proof of employment; (4) Proof of rent or mortgage payments as examples of stability; (5) Reference letters; (6) College admission letters, class schedule or other proof of college enrollment; (7) Testimony from family or friends; and (8) Evidence to support reasons why the client wants or needs the record expunged.

## 8. No Partial or Conditional Expungement

Owens v. State, 544 N.E.2d 1375, 1379 (Ind. 1989) (No procedures exist for partial or conditional expungement of juvenile records.).

## **9. Expungement of Law Enforcement Records and Person Providing Treatment To Child**

If the court grants the expungement petition, the court shall order each law enforcement agency and each person who provided treatment for the child under an order of the court to send that person's records to the court. Ind. Code 31-39-8-5.

**PRACTICE POINTER:** It is important to be familiar with all of the paperwork generated through the juvenile delinquency proceeding so that all references to the child will be destroyed. Records include file cards, police officer notes, computer entries, and any other records maintained by law enforcement agencies or service providers.

## **10. Method of Expungement**

The records shall be destroyed upon a grant of an expungement by the court, including an expungement order issued under Ind. Code 31-39-8-3.5. Ind. Code 31-39-8-6(a).

Data from the records shall be maintained by the court on a secure data base that does not enable identification of the offender to the public or another person not having legal or statutory authority to access the records. Ind. Code 31-39-8-6(b).

The records maintained in the data base may be used only for statistical analysis, research, and financial auditing purposes. Ind. Code 31-39-8-6(c).

## **11. Use of Expunged Records in Civil Action**

If a person whose records are expunged brings an action that might be defended with the contents of the records, the defendant is presumed to have a completed defense to the action. For the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of records, the defendant may prove the existence of the records in any manner compatible with the law of evidence. Ind. Code 31-39-8-7.

## **12. Subsequent Petitions Following Denial**

There is no statutory limitation on how many times a person can petition for expungement pursuant to Ind. Code 31-39-8.

## **B. EXPUNGEMENT WITHOUT A PETITION (IND. CODE 31-39-8-3.5)**

In addition to expungements by a petition, the court is supposed to expunge certain juvenile records "automatically," but the offenses that qualify are limited and there is an exception which makes the "automatic" nature of the expungement a bit of a misnomer.

- 1. Does not apply to acts that would be felonies or acts that would be misdemeanor firearm offenses. Ind. Code 31-39-8-3.5(a).**



2. Only applies to records for a child adjudicated after June 30, 2021. Ind. Code 31-39-8-3.5(b).
3. Occurs upon the later of when a child reaches 19 years of age, or one year after the child is discharged from the juvenile court. Court has 60 days to act after the triggering event. Ind. Code 31-39-8-3.5(c).
4. Court can consider the nature of the delinquent act and needs of the child, and refuse to expunge if it would not serve the interests of justice. Ind. Code 31-39-8-3.5(c).
5. Does not prevent the child (or any person) from filing a petition to expunge juvenile court records. Ind. Code 31-39-8-3.5(d).

## **C. EXPUNGEMENT AND SEALING OF JUVENILE COURT RECORDS PURSUANT TO CRIMINAL CODE**

### **1. Standing for Expungement Request**

Pursuant to Ind. Code 35-38-9-1(a), a person who has been arrested, charged with an offense, or alleged to be a delinquent child may request expungement if:

- (1) The arrest, criminal charge or juvenile delinquency allegation:
  - (a) did not result in a conviction or adjudication even if the arrest, criminal charge, or juvenile delinquency allegation resulted in an adjudication for an infraction; or
  - (b) resulted in a conviction or adjudication and the conviction or adjudication was expunged under sections Ind. Code 35-38-9-2 through -5, or was later vacated; and
- (2) The person is not currently participating in a pretrial diversion program unless the prosecuting attorney authorizes the person to petition for an expungement under this section

### **2. One Year Must Pass Before Requesting Expungement Unless Prosecutor Agrees to Earlier Time**

Not earlier than one (1) year after the date of arrest, criminal charge, or juvenile delinquency allegation (whichever is later), if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final, the person may petition the court for expungement of the records related to the arrest, criminal charge, or juvenile delinquency allegation. However, a person may petition the court for expungement at an earlier time if the prosecuting attorney agrees in writing to an earlier time. Ind. Code 35-38-9-1(d).

### **3. Jurisdiction In Which to File Petition**

A petition for expungement must be filed in circuit or superior court in the county where the criminal charge, or juvenile delinquency allegation was filed, or if no criminal

charges or juvenile delinquency allegation was filed, in the county where the arrest occurred. Ind. Code 35-38-9-1(e).

#### **4. Requirements of Petition**

Pursuant to Ind. Code 35-38-9-1(e), a petition for expungement of records must be verified and must set forth:

- (1) The date of the arrest, criminal charges, or juvenile delinquency allegation, and conviction (if applicable);
- (2) The county in which the arrest occurred, the county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;
- (3) The law enforcement agency employing the arresting officer, if known;
- (4) The court in which the criminal charges or juvenile delinquency allegation was filed, if applicable;
- (5) Any other known identifying information such as:
  - a) The name of the arresting officer;
  - b) Case number, or court cause number;
  - c) Any aliases or other names used by the petitioner;
  - d) The petitioner's driver's license number; and
  - e) A list of each criminal charge and its disposition, if applicable;
- (6) The date of the petitioner's birth; and  
The petitioner's Social Security number.

#### **5. No Filing Fee Required**

A person who files a petition under this section is not required to pay a filing fee. Ind. Code 35-38-9-1(e).

#### **6. Service**

The court shall serve a copy of the petition on the prosecuting attorney. Ind. Code 35-38-9-1(f).

#### **7. Court Ruling on Petition**

Pursuant to Ind. Code 35-38-9-1(g), upon receipt of a petition for expungement, the court:

- (1) May summarily deny the petition if the petition does not meet the requirements of this section (Ind. Code 35-38-9-1), or if the statements contained in the petition indicate that the petitioner is not entitled to relief;
- (2) Shall grant the petition unless:

- a) The conditions described in subsection (a) (35-38-9-1(a)) have not been met;  
or
- b) Criminal charges are pending against the person.

Pursuant to Ind. Code 35-38-9-1(i): if the court issues an order granting a petition for expungement or issues an order for expungement without a petition under Ind. Code 35-38-9-1(b) or (c), the order must include the information described in Ind. Code 35-38-9-1(e).

**8. Automatic Expungement When Person Was Charged with An Offense or Alleged To Be a Delinquent Child After June 30, 2022 and the Allegations Were Dismissed, Were Not Prosecuted, There Was No True Finding, or True Finding Was Vacated (IC 35-38-9-1(b)).**

**a. Dismissal, Lack of Prosecution, No True Finding or Vacatur**

If a person charged with an offense or alleged to be a delinquent child after June 30, 2022, and:

- (1) A court dismisses all criminal charges or juvenile delinquency allegations filed and pending against a person;
- (2) One year has passed since juvenile delinquency allegations were filed against a child, and there is no disposition, and the state is not actively prosecuting the allegations; or
- (3) In a criminal trial a defendant is acquitted of all charges, or the defendant's conviction is later vacated; or juvenile proceeding the court finds all allegations not true, or the juvenile's true finding is later vacated;

The court shall immediately order all records related to the juvenile delinquency allegations expunged. Ind. Code 35-38-9-1(b) [effective July 1, 2022].

**b. Expungement in Effect Immediately if Based on Lack of Prosecution**

An expungement order that is issued based on non-prosecution under Ind. Code 35-38-9-1(b)(2) goes into effect immediately. Ind. Code 35-38-9-1(b).

**c. Expungement in Effect at Least Sixty Days After No True Finding, Dismissal, or Vacatur**

An expungement order issued under Ind. Code 35-38-9-1(b)(1) or (3) may not go into effect earlier than sixty days from the date of the dismissal, acquittal, or no true finding. Ind. Code 35-38-9-1(b).

**d. Court May Delay Implementation of Expungement at Prosecutor Request**

Upon motion by the prosecuting attorney, if the court finds specific facts exist in the particular case which justify a delay, the court may delay implementation of an expungement order under Ind. Code 35-38-9-1(b)(1) or (3) for up to one year from the date of the dismissal, acquittal, or no true finding. Ind. Code 35-38-9-1(b).

**e. Expungement of Arrest Records if Arrest Occurred after June 30, 2022, and No Charge Followed Arrest**

If a person was arrested after June 30, 2022, and

- (1) the person was arrested
- (2) 180 days have elapsed since the date of the arrest; and
- (3) no charges are pending against the person,

the prosecuting attorney shall notify a judge exercising criminal jurisdiction in the county (or a designated judge, if applicable) of these facts. Upon receipt of the notification the judge shall immediately order the expungement of all records related to the arrest. Ind. Code 35-38-9-1(b).

**9. Expungement and Sealing of Records**

Pursuant to Ind. Code 35-38-9-1(h), whenever the petition of a person under this section is granted, or if an expungement order is issued without a petition under subsection (b) or (c):

- (1) No information concerning the arrest, criminal charges, or juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication (including information from a collateral action that identifies the petitioner), may be placed or retained in any state central depository for criminal history information or in any alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency.
- (2) The clerk of the supreme court shall seal or redact any records in the clerk's possession that relate to the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication.
- (3) The records of:
  - a) The sentencing court;
  - b) The court that conducted a collateral action;
  - c) A juvenile court;
  - d) A court of appeals; and
  - e) The supreme court;Concerning the person shall be redacted or permanently sealed, and
- (4) With respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, or who is identified in a collateral action, the court shall:
  - a) Redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and
  - b) Provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order or expungement.

The supreme court and the court of appeals are not required to redact, destroy, or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

#### 10. Use of Expunged Records as Defense

Pursuant to Ind. Code 35-38-9-1(j), if a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal or juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

### **VIII. TAKING, STORING, DESTRUCTION AND EXPUNGEMENT OF FINGERPRINT AND PHOTOGRAPH RECORDS**

#### **A. TAKING AND STORING FINGERPRINTS AND PHOTOGRAPHS**

If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a completed defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of records, the defendant may prove the existence of the records in any manner compatible with the law of evidence. Ind. Code 35-38-9-1(i).

#### Limitations on Taking and Filing of Fingerprints or Photographs

Pursuant to Ind. Code 31-39-5-1(a), a law enforcement agency may take and file the fingerprints or photographs of a child if:

- (1) The child is taken into custody for an act that would be a felony if committed by an adult; and
- (2) The child was at least fourteen (14) years of age when the act was allegedly committed

#### **1. Juvenile Court May Limit Fingerprinting and Photographing**

A juvenile court may, by general order, limit fingerprinting and photographing of children to situations in which children are charged with specified offenses. Ind. Code 31-39-5-1(b).

#### **2. Notice of Rights When Taking Fingerprints and Photographs**

At the time a law enforcement agency takes a child's fingerprints or photographs, the law enforcement agency shall give written notice to the child and the child's parent, guardian, or custodian of the child's rights under Ind. Code 31-39-5-4 [destruction of fingerprints

and photographs]. The agency shall comply with any request for destruction or surrender of the records not later than sixty (60) days of the request. Ind. Code 31-39-5-5.

### **3. Fingerprint and Photographs Record Are Confidential and Must Be Stored Separately from Adult Records**

Fingerprint and photograph files of children shall be separated from those of adults. These files are subject to the confidentiality provisions of Ind. Code 31-39-3 [confidentiality of law enforcement records]. Ind. Code 31-39-5-2.

J.B. v. State, 868 N.E.2d 1197, 1200-01 (Ind.Ct.App. 2007), *trans. denied* (Juvenile fingerprint and photograph records must be stored, including in a computerized system, such that persons authorized to access adult records, but not juvenile records will not be able to access the latter while accessing the former.).

K.K. v. State, 98 N.E.3d 648 (Ind. Ct. App. 2018) (State did not have to prove fingerprints were taken in compliance with juvenile fingerprinting statutes as a prerequisite for the admission of fingerprint evidence.).

**PRACTICE POINTER:** If the State does not comply with the Juvenile Fingerprinting Statutes in obtaining evidence used against the child, you may be able to challenge the admissibility of the evidence on that basis. See K.K. v. State, 98 N.E.3d 648 (Ind. Ct. App. 2018).

## **B. DESTRUCTION AND EXPUNGEMENT OF FINGERPRINTS AND PHOTOGRAPHS**

### **1. Destruction of Fingerprints and Photographs Held by Law Enforcement Agency**

Pursuant to Ind. Code 31-39-5-4(a), upon written request of the child or the child's parent, guardian, or custodian, a law enforcement agency shall destroy or deliver to the child any of the child fingerprints or photographs taken under Ind. Code 31-39-5-1 that are within that agency's possession if:

- (1) The child was taken into custody and no petition was filed against the child;
- (2) The petition was dismissed because of mistaken identity;
- (3) The petition was dismissed because no delinquent act was actually committed; or
- (4) The petition was dismissed for lack of probable cause.

#### **a. No Required Destruction if Prior Arrests or Other Charge Pending**

If the child has a record of prior arrests or if another charge is pending against the child, the law enforcement agency does not have to destroy the child's fingerprints or photographs. Ind. Code 31-39-5-4(b).

#### **b. Requested Destruction Must Occur Within 60 Days of Request**

At the time a law enforcement agency takes a child's fingerprints or photographs, the law enforcement agency shall give written notice to the child and the child's parent, guardian, or custodian of the child's rights under Ind. Code 31-39-5-4. The agency

shall comply with any request for destruction or surrender of records not later than sixty (60) days of the request. Ind. Code 31-39-5-5.

**2. Destruction of Fingerprints and Photographs Forwarded to Another Law Enforcement Agency**

Any law enforcement agency that has forwarded copies of fingerprints or photographs that the law enforcement agency must destroy under Ind. Code 31-39-5-4 to any agency of the United States, of any other state, or of this state, shall request in writing that all copies be returned for destruction or for presentation to the child. Ind. Code 31-39-5-6.

**3. Expungement of Record of Fingerprints and Photographs**

Whenever fingerprints or photographs are expunged from the files of a law enforcement agency under Ind. Code 31-39-5-4, the law enforcement agency may retain no other information on the incident. However, this section does not require alteration of any law enforcement record, such as a blotter entry made at the time of arrest, or of any record in the juvenile court. Ind. Code 31-39-5-7.