

PUBLIC ACCESS TO JUVENILE COURT PROCEEDINGS AND RECORDS

ATTENDING A JUVENILE COURT HEARING

Generally, when a child is charged with an act of delinquency that would be a murder or a felony if committed by an adult, the juvenile court hearings attendant to that delinquency proceeding are open to the public. (IC 31-32-6-3)

However, a court may still exclude the public and the press during the testimony of a child witness or child victim if the court finds that the case's allegations or defenses involve sexual matters and the welfare of the child would be protected by closing the courtroom during the child's testimony. In making the decision to close the courtroom, the judge must consider the nature of the charges and defenses, the age of the witness or victim, the psychological maturity of the witness or victim and the desire of the witness or victim to testify in a closed courtroom. Should the court decide to close the courtroom during the testimony of a child, the judge will make findings of fact that support the decision and place an order excluding the press and public and closing the proceedings in the case file. (IC 31-32-6-4)

Likewise, under the provisions of IC 31-32-6, the court has the authority to close an otherwise open courtroom during the testimony of a health care provider if the testimony will violate HIPAA or patient/doctor privilege. The court can also close an otherwise open courtroom during the testimony of certified social workers, a certified clinical social worker, or a certified marriage and family therapist if the individual's testimony is concerning a client and the court has the authority to close an otherwise open courtroom during the testimony of a school counselor or psychologist if the testimony is regarding a student.

Although the statute does not enumerate specific considerations, does not require specific findings or a written order of exclusion, it is probably the better practice for the court to weigh the competing interests and make written finds and an order of exclusion if the court is going to close an otherwise open proceeding. (IC 31-32-6-4)

Contrary to popular opinion, all juvenile cases, other than murder and felony cases which are, by statute, tried in open court, may be opened to the press and the public. The statute states that the juvenile court shall determine whether the public should be excluded from a proceeding other than a felony. (IC 31-32-6-3)

In the best interest of the juvenile respondent, in order to promote the child's rehabilitation, to maintain confidentiality and to better serve the purposes of juvenile justice, non-felony delinquency hearings are routinely closed.

If the press desires to attend a non-felony delinquency hearing, so as to not interrupt or delay the case, the press should bring the issue before the court before prior to the hearing. A notice expressing the desire to attend the hearing and establishing a legitimate interest in the case should probably be filed with the court. Although the Indiana Access to Public Records Act and the Supreme Court's Administrative Rule 9 both stand deep in public policy supporting open access to courtrooms, most likely a strong argument as to why press access should be paramount to the child's right to privacy will need to be made. Certainly, the juvenile code is neutral on the issue of access. However, the primary goal of the juvenile court is the child's treatment and rehabilitation and the court most firmly believes that this goal is best served when the child's confidentiality is maintained.

When attending a juvenile delinquency hearing, confidential testimony offered into evidence will no longer be confidential and the press is free to report this information unless a party or an effected files a prior or contemporary request that the evidence remain confidential.

Access to Juvenile Court Records

The juvenile code may be described as neutral in regards to whether non-murder and non-felony cases should be open to the press and public. In making access decisions, the court will likely weigh the First Amendment rights of the press against the privacy rights of the child. However, the juvenile code takes a different approach when the issue is access to court records.

First, as with all crimes or contempt charges involving an adult, which are always open to the press and public in juvenile court, so too are the juvenile court's records pertaining to these matters. Simply put, all juvenile court records that reference an adult charged with a crime or an adult charged with contempt are excluded from the statutes dealing with confidentiality of juvenile records. (IC 31-39-1-1) (IC 31-32-6-1)

Court records, which are also referred to as legal records, include by statute the chronological case summary (CCS), the index entries, the summonses, warrants, petitions, orders, motions and decrees. However, Indiana case law has found that this statutory list is not necessarily exclusive. (IC 31-39-1-1)

The confidentiality of juvenile court records starts from the basic assumption that all legal records are confidential excepting only those records specifically exempted by IC 31-39-2. (IC31-29-1-2)

The juvenile code is so grounded in the belief that most juvenile records should remain confidential that it imposes an affirmative duty upon the juvenile judge to protect the court's records from unauthorized disclosure. (IC 32-39-1-2)

The section of the juvenile code that establishes the exception to the general rule that juvenile code legal records are confidential does not apply to records involving adults charged with crimes or criminal contempt or records concerning the waiver of parental consent to an abortion on an un-emancipated minor. (IC 31-39-2-1)

Juvenile court records, including delinquency records, are available without court order to the judge and authorized staff. (IC 31-39-2-2)

Without court order, juvenile court records are available to any party or the party's attorney, but only those records applicable to the proceeding in which the person is a party. The exceptions to the general rule are two; first, a child (who is a party to juvenile proceedings) excluded from a hearing under IC 31-32-6 for good cause may be denied access to records pertaining to that hearing and its subject matter. Secondly, a person who was denied, for good cause shown, access to a predispositional report or to the predispositional hearing may be denied access to these specific records. (IC 31-39-2-3)

A criminal court judge or staff, without obtaining a court order, may have access to juvenile court records in order to prepare a presentence report. (IC 31-39-2-4)

A prosecutor and his staff are entitled to access juvenile court records without a court order. (IC 31-39-2-5)

The attorney for the Department of Family Services and staff of the DCS county office, the DCS state office, the Department of Corrections or the DCS Ombudsman are all entitled to access juvenile records without a court order. (31-39-2-6)

Juvenile records may be released without a court order to the entities listed in IC 31-39-9-1 which are a court, law enforcement, DOC, DCS, the Office of the Secretary of Family and Social Services or a primary or secondary, public or private school. (31-39-2-6.5)

Parents who are involved in custody or support litigation may have access to the juvenile court records necessary to prosecute those civil litigations. (IC 31-39-2-7)

When a delinquency petition is filed alleging a juvenile has committed an act which would be murder if committed by an adult, an act which would be a felony if committed by an adult, an act that would be a misdemeanor if committed by an adult and which is the aggregate of 2 unrelated acts if the child is at least 12 year old when the act was committed or an act that would be a misdemeanor if committed by an adult and which is the aggregate of 6 unrelated acts if the child is less than 12 years old, certain legal records of and certain information about the above described delinquency proceedings may be released to the press and the public. In these four specific cases, the only personal information that can be released is the name and age of the juvenile respondent.

Pursuant to statute, in these four specific cases, the court will release the CCS, index entries, summonses, warrants, petitions, orders, motions (excepting motions made for psychological evaluations or for evaluation concerning child abuse and neglect), decrees. Additionally, in one of these four case types, if the child is adjudicated a delinquent, the child's photograph may be released. However, in all four of the above case types, the identity of any child who is a victim or a witness shall remain confidential. (IC 31-39-2-8)

All other information and legal documents pertaining to the above four described cases shall remain confidential and those records shall be placed in a confidentiality envelope by the court clerk and will be made available only to the judge, a party or his lawyer, a criminal court judge and staff to facilitate a presentence investigation, the prosecutor and staff, the attorney for DCS, and state or county DCS staff, the DCS Ombudsman, the DOC, parents involved in custody or support litigations and interested individuals as defined by IC 1-39-2-10. (IC 31-39-2-8)

Juvenile court records may be made available to persons or agencies providing services to the child or the child's family, to persons engaged in research under certain well defined conditions and to any party to a criminal or juvenile delinquency proceeding if the juvenile records will be used, in accord with the Indiana Rules of Evidence to impeach the person as a witness or to discredit that individual's reputation if reputation is at issue.

Additionally, juvenile records will be available to the victim or the victim's family if the records are to be used to prosecute a civil action and to probation officers or DCS case workers who are conducting criminal history checks to determine the appropriateness of an out-of-home placement. (IC 31-39-2-9) (IC 31-39-2-11) (31-39-2-12) (31-39-2-13) (331-39-2-9)

The court may grant access to juvenile legal records or a portion of these records to the child's school if the superintendent requests the records in a writing that establishes that the records are being used to protect the health or safety of the child, an employee or a school volunteer. If the court releases records to the school, the court has an affirmative obligation to notify the child's parents. Additionally, the school must maintain the confidentiality of these records except when communicating with another school, law enforcement, DOC, DCS or any other person, if the parents consent. (31-39-2-13.8)

Juvenile court records, with some exceptions, are available to any person who has established, to the court's satisfaction, a legitimate interest in the court or the particular case. When the court considers access to legitimately interested persons, including the press, under this code section, the court will consider that the best interests of safety and welfare of the community are generally served when the public has access to information about the alleged commission of an act that would be murder or a felony if committed by an adult or an alleged commission of an act that would be a pattern of less serious offenses. (31-39-2-10)

If the press or the general public obtain records regarding a child charged with delinquency based upon an alleged murder, an alleged felony or a delinquency that would be a misdemeanor if it illustrates a pattern of less serious crime, the press or the general public are not bound by any confidentiality and the information may be disclosed or reported. (31-39-2-10)

The case law has not clearly established what constitutes a legitimate interest in the court or a particular case. In one case, the fact that the case was of great notoriety and involved the death of a child in DCS' care, shortly after the child was returned to his mother's home, was sufficient for the court to find that the newspaper requesting the information had a legitimate interest in the case. However, another Indiana court with a high profile case involving the death of a child found that the public curiosity about the tragedy was simply insufficient to overcome the surviving children's privacy rights.

When making a request for records based upon IC 31-39-2-10, the press should be prepared to show why access to these records outweighs the child's privacy rights.

Of course, in CHINS proceedings, under the purview of IC 31-33-18-1, the Department of Child Services is required to release, after redaction by the court, any and all records held by DCS, either county or state, by the state child fatality review committee or by the DCS ombudsman records that relate to the death of a child or the near fatality of a child due to abuse, abandonment or neglect. If DCS or a fatality review team determines that the death or the near fatality was likely the result of abuse, abandonment or neglect or if the prosecutor files charges, the records are subject to access by any persons under IC 31-33-18-1.

When DCS receives a request for records, DCS will forward the records to the juvenile court in the county where the death occurred. The court then has 30 days to redact the records and forward them to the person making the request. The juvenile court will redact all identifying information including employer ID numbers, mother's maiden name, social security numbers or any governmental issued identification numbers, unique biometric data, unique electronic identification numbers, addresses or routing codes, and telecommunication identifying information excepting the telephone number. What will not be redacted is the person's name, address, date of birth, occupation, place of employment and telephone number.

However if the person referenced in the DCS records is under the age of 18, all identifying information is redacted including the person's name, address, date of birth, occupation, placement of employment and telephone number.