

Juvenile Record Requests under *Herget* Procedures
State ex rel. Herget v. Waukesha County Circuit Court
84 Wis. 2d 435, 267 N.W.2d 309 (1978)

(NOT INSPECTION REQUESTS WITH VALID STATUTORY EXCEPTION*)

Start with WHAT TYPE of Record:

- Court Records
- Social Services Records
- Police Records
- Did the record make it into a CHIPS (JC), JIPS/Delinquency (JV), Juvenile Mental (JM), Juvenile Guardianship (JG), or TPR (TP) file?
 - IF SO THE REQUEST FILING GOES IN THAT FILE WHETHER IT IS OPEN OR CLOSED.
 - IF NOT THEN OPEN A NEW Group Juvenile file (GJ).

EVERYTHING EXCEPT ADOPTION RECORDS!!!! Adoption records See 48.433 separate procedure for records.

STEP 1

- Court Hearing on if the Request meets the following requirements, The person seeking disclosure of the records must describe:
 - the information sought,
 - the basis for the belief that the information is in the records,
 - its relevance to the action,
 - the probable admissibility of the information as evidence at trial, and
 - efforts made to obtain the information elsewhere.
- Notice of hearing must be given by CLERK with the request to everyone who is a subject of the record (may need to look for addresses with the division and CCAP)
 - IF it's a Social Services Record, DFS should provide under seal to the Court and the contact information of the Subjects of the record to the Court to make the notice.
 - NOTICE is confidential.
- Subjects of the Record have the right to Counsel. Children who are now adults must hire own attorney.
- Subjects of Record still children get GAL (regardless of JV or JC filing or SPD counsel.) IF JIPS/delinquency case still active, SPD Counsel may represent but STILL need GAL.
- At hearing the Court should make sure everyone notified and represented (if needed), then hear arguments on if the Request meets the standard.

STEP 2

- If the Request meets the relevancy standard, the Court should conduct an in camera review of the records and apply the following standards:
- **If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child/juvenile, parent, or expectant mother in avoiding the stigma that might result from disclosure.**
- If disclosure is ordered only as much information as is necessary.
- The Court's reasoning for making or refusing disclosure must be either on the record or in writing. The Court's reasoning is confidential. This can be done on the record or in Court.

IF for a Criminal Case, the Criminal Court then must conduct a *Shiffra-Green* analysis before admissibility in the criminal case. See *In Interest of KKC*, 143 Wis. 2d 508 (Ct. App. 1988).

*These statutory exceptions would include (but not limited to):

1. Form JD-1738A/JD-1738B provides a list of the exceptions under ss. 48.396 and 938.396 that would not necessarily need an order from the judge, unless someone is requesting copies of the record listed under section #1, the juvenile clerk has a concern regarding the request, or an order is required pursuant to a local rule/policy. These forms should be used to document when there is a request and the information that is released. Upon receipt of the request, the juvenile clerk must review the request to ensure it is proper. For example, that the person is making the request covered under one of the exceptions and that the records are related to the specific juvenile/child.

2. Form JD-1739A/JD-1739B is used when a child, parent, guardian, or legal custodian is requesting or authorizing another person to have access to the juvenile court records. This request requires an order from the judge indicating that release of these records would not result in imminent harm to anyone. Before providing copies, the judge would also need to specifically indicate that copies were permitted in the order.

3. Electronic juvenile records/interfaces that fall under ss. 48.396(3) and 938.396(2m).