

Confidentiality in Juvenile Cases

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Kenosha County Circuit Court
Kenosha

Objectives

- Identify the various sources of confidential records in juvenile court
- How to perform the “gatekeeper” role of the juvenile court
- How to handle juvenile court information in other cases.



Background

Statutes "...which mandate confidentiality of the records as the general principle and disclosure as the exception, express the legislature's determination that the best interests of the child and the administration of the juvenile justice system require protecting the confidentiality of police, court and social agency records relating to juveniles."

State ex rel Herget, 84 Wis.2d 435, 450-51 (1978)

Background

- Confidentiality is essential to the goal of rehabilitation
- Juvenile court operates on a family rather than due process model
- Confidentiality is promised to encourage the furnishing of information which might not be disclosed in an adversarial or open proceeding
- Confidentiality reduces the stigma for youth (shame)

State Statutes

- | | |
|----------|-----------|
| ▪ 48.293 | ▪ 48.93 |
| ▪ 48.371 | ▪ 48.98 |
| ▪ 48.38 | ▪ 48.981 |
| ▪ 48.396 | ▪ 51.30 |
| ▪ 48.432 | ▪ 118.125 |
| ▪ 48.433 | ▪ 146.82 |
| ▪ 48.48 | ▪ 938.396 |
| ▪ 48.57 | ▪ 938.78 |
| ▪ 48.78 | |



Starting Point

- Assume that confidential information cannot be shared in any manner without:
 - ▶ Statutory Exception (JD-1738A & JD-1738B)
 - ▶ Written Authorization (JD-1739A & JD-1739B)
 - ▶ Court Order

Process

- WHAT type of records are being sought?
 - ✓ Court, Agency, School, Law Enforcement, Mental Health
- WHO is seeking the record?
 - ✓ Parent, GAL, Attorney, Child, or Public
- WHEN/WHY are they seeking record?
 - ✓ Discovery, Research, related case?
- HOW do they get the record?
 - ✓ Notice, Procedure, Standards

Which Records are we
talking about?

What Records?

- Juvenile Court Records
- Agency Records
- Law Enforcement Records

Court Records

- Records of the court assigned to exercise juvenile court jurisdiction including **all filings** [§§ 48.396(2)(a) & 938.396(2)(a)] CHIPS, UCHIPS, TPR, Ch. 48 guardianships, JIPS, delinquency, minor Ch. 51, juvenile injunctions, some ordinances
 - ▶ Custodian: the Juvenile Court
 - ▶ Statutory Exceptions: §§ 48.396 & 938.396 would apply unless another chapter or section provides a more specific procedure
 - ▶ Records retention governed by Supreme Court Rule 72
 - ✓ CHIPS, UCHIPS, JIPS, delinquency: 4 years after 18th birthday
 - ✓ Minor guardianships: 7 years after 18th birthday
 - ✓ TPR & adoption: 150 year
 - ✓ If felony or firearm restriction: 75 years

Court Records Statutory Exceptions: (JD-1738A)

- Statutes provide list of individuals who may inspect the juvenile court records under specific circumstances
 - ▶ See §§ 48.396(2) and 938.396(2g)
- Court order is not required unless requesting copies
 - ▶ Exception for monitoring federal requirements & CCIP research
 - ▶ Some counties have local practice of obtaining court order regardless
- Court reports, permanency plans, AODA or mental health evaluations and other records that contain "sensitive personal information" of the juvenile/family cannot be open for inspection for requests based on Serious Juvenile Offender or Repeat Offender status

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY IN THE INTEREST OF _____ Name _____ Date of Birth _____	Request to Inspect Juvenile Court Records Case No. _____
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☐ 1. I am requesting to inspect the court records relating to the child/juvenile. I am a(n):

- ☐ Authorized representative of a law enforcement agency investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under §938.12 or 938.13(12). §938.396(2g)(c), Wis. Stats.
- ☐ Authorized representative of a court of criminal jurisdiction requesting information for the purpose of conducting or preparing for a proceeding in that court. §§48.396(2)(e) and 938.396(2g)(d), Wis. Stats.
- ☐ Authorized representative of the district attorney requesting information to perform his or her official duties in a proceeding in a court of criminal jurisdiction. §§48.396(2)(e) and 938.396(2g)(d), Wis. Stats.
- ☐ Authorized representative of a court of civil jurisdiction or the attorney for a party to a proceeding in that court requesting information to impeach a witness under §906.09. §938.396(2g)(d), Wis. Stats.
- ☐ Attorney, or authorized representative of the attorney, for the person whose records are requested, to prepare that client's defense. §938.396(2g)(dm), Wis. Stats.
- ☐ Authorized representative of the Department of Corrections or any other person preparing a presentence investigation. §48.396(2)(dr) and §938.396(2g)(dr), Wis. Stats.
- ☐ Authorized representative of the Department of Corrections reviewing court records on a juvenile who has been adjudicated delinquent or found not responsible by reason of mental disease or defect, for a sexually violent offense and is a registered sex offender. §938.396(2g)(em), Wis. Stats.
- ☐ Victim-witness coordinator enforcing the constitutional and statutory rights of a victim. §938.396(2g)(f), Wis. Stats.
- ☐ Insurer of the victim to learn the amount of restitution, if any, ordered by court. §938.396(2g)(fm), Wis. Stats.
- ☐ Authorized representative of court having jurisdiction over actions affecting the family, attorney responsible for support enforcement, or a party, a party's attorney or the juvenile's guardian ad litem, to a paternity action requesting information relating to paternity for purpose of determining, or rebutting presumption of, paternity of the child/juvenile. §§48.396(2)(dm) and 938.396(2g)(g), Wis. Stats.
- ☐ Authorized representative of any court assigned to exercise jurisdiction under chapters 48 and 938, municipal court exercising jurisdiction under §938.17(2), Wis. Stats., district attorney, corporation counsel, or city, village, or town attorney requesting review of court records for the purpose of any proceedings in that court. §§48.396(2)(g) and 938.396(2g)(gm), Wis. Stats.
- ☐ Attorney or guardian ad litem for a party to a chapter 48 or 938 proceeding in this court requesting a review of court records for the purpose of this proceeding. §§48.396(2)(g) and 938.396(2g)(gm), Wis. Stats.
- ☐ Authorized representative of the court having jurisdiction over actions affecting the family, an attorney for a party or guardian ad litem in an action affecting the family, requesting a review of court records for the purpose of considering the custody of the child/juvenile. §§48.396(2)(h) and 938.396(2g)(h), Wis. Stats.

☐ Authorized representative of the court assigned probate jurisdiction, attorney general, personal representative, special administrator, attorney performing services for the estate, a person interested as defined in §851.21, attorney, attorney-in-fact, guardian ad litem or guardian of the estate of a person interested, requesting review of court records for the purpose of determining whether any juvenile was adjudicated delinquent on the basis of unlawfully and intentionally killing a person. §938.396(2g)(i), Wis. Stats.

☐ Representative of a fire investigator under §165.55(15) Wis. Stats., requesting the review of court records for the purpose of pursuing an investigation. §938.396(2g)(j), Wis. Stats.

☐ Authorized representative of the Department of Corrections, the Department of Health Services, the Department of Justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980. §938.396(10), Wis. Stats.

☐ 2. I am requesting to inspect and obtain copies of the court records relating to the child/juvenile. I am an:

☐ Authorized representative of Department of Children and Families, Department of Corrections, or a federal agency monitoring and conducting periodic evaluations of activities under 45 CFR 1355, 1356, and 1357. §§48.396(2)(b)1. and 938.396(2g)(b)1., Wis. Stats.

☐ Authorized representative of an entity engaged in bona fide research, monitoring, or evaluation of activities conducted under the Children's Court Improvement Program [42 USC 629h], as determined by the Director of State Courts. §§48.396(2)(b)2. and 938.396(2g)(b)2., Wis. Stats.

☐ 3. For any requester not listed above:

☐ The juvenile is alleged to be delinquent for committing a violation specified as a Serious Juvenile Offender Crime. §938.396(2g)(k), Wis. Stats.

☐ The juvenile is alleged to have committed a violation that would be a felony, and has previously been adjudicated delinquent. §938.396(2g)(L), Wis. Stats.

IF A REQUEST IS MADE UNDER #1 OR #3, RECORDS MAY BE INSPECTED BUT SHALL **NOT** BE COPIED UNLESS ORDERED BY THE COURT.

IF A REQUEST IS MADE UNDER #3, THE COURT REPORTS UNDER §938.33, WIS. STATS., EXAMINATIONS UNDER §938.295, WIS. STATS., AND OTHER RECORDS THAT DEAL WITH SENSITIVE PERSONAL INFORMATION OF THE JUVENILE AND THE JUVENILE'S FAMILY SHALL **NOT** BE OPEN FOR INSPECTION.

☐ 4. Other: _____

DISTRIBUTION:
 1. Court
 2. Person making request

Person Making Request
 Name Printed or Typed
 Address
 Email Address Telephone Number
 Date Date BSN No. (if any)



- There are no statutory exceptions for:
 - DCF caregiver background checks
 - Military recruiters
 - FBI firearm background checks

Court Records Written Authorization: (JD-1739A)

- Child (14 or older), parent, guardian or legal custodian requests or authorizes another person to have access to his/her juvenile court records
 - ▶ Does not include an “alleged” father
 - ▶ See §§ 48.396(1b) & (1d) and 938.396(2g)(ag) & (2g)(am)
- Court order is required under all circumstances
 - ▶ If court finds disclosure would not result in imminent danger to anyone = grant inspection
 - ▶ If court finds disclosure may result in imminent danger to someone = hold hearing
- Court would need to specifically permit copies in order
 - ▶ Use “Other” section in request and order

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY			
IN THE INTEREST OF		Request and Authorization to Open Juvenile Court Records for Inspection	
Name _____			
Date of Birth _____		Case No. _____	
To the custodian of child/juvenile court records: 1. I am the ☐ child/juvenile and am 14 years of age or older. ☐ parent of the child/juvenile. ☐ guardian of the child/juvenile. ☐ legal custodian of the child/juvenile. ☐ expectant mother, 14 years of age or older, whose unborn child is the subject of a chapter 48 proceeding. ☐ guardian ad litem for the unborn child. ☐ 2.A. I request to inspect the court records relating to the child/juvenile. ☐ 2.B. I authorize (Name) _____ to inspect the following court records pertaining to the child/juvenile: Specify record(s): _____ ☐ 3. Other: _____			
DISTRIBUTION: 1. Court 2. Child/Juvenile/Attorney/Guardian ad Litem 3. Parent/Guardian/Legal Custodian/Attorney 4. District Attorney/Corporation Counsel 5. Case Worker		_____ Person Making Request _____ Name Printed or Typed _____ Address _____ Email Address _____ Telephone Number _____ Date _____ State Bar No. (if any)	

Court Order: When No Statutory Exception or Authorization Exists

- What procedure applies when other requests are made?
 - ▶ The procedures established by case law: *State ex rel. Herget v. Waukesha County Circuit Court*, 84 Wis. 2d 435 (1978), *Courtney F. v. Ramiro M.C.*, 2004 WI App 36, and *State v. Bellows*, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998)
 - ▶ Juvenile court's decision to release the records does not equate with admissibility in other cases - *In Re KCC/Courtney F/Herget*
- Examples:
 - ▶ Party wants to use juvenile records in a civil, criminal or family court case
 - ▶ Request from a relative caregiver/foster parent
 - ▶ Media request for court records (if not SJO or Repeat Offender exception)

Herget Procedures

1. Individual seeking records must provide the juvenile court with:
 - ✓ Description of the information sought,
 - ✓ Basis for the belief that the information is in the child's/juvenile's records,
 - ✓ Relevance of the information to the court action,
 - ✓ Probable admissibility of the information as evidence at trial,
 - ✓ Efforts made to obtain the information elsewhere, and
 - ✓ Any hardship to the individual if the records are not released
2. Court sends notice of request to the parties and provides child/juvenile with an opportunity to respond (see sample letter)
 - ✓ Child/juvenile whose confidentiality interests are at stake must be represented

Herget Procedures

3. Court must conduct an in-camera inspection of the records
 - ✓ If court determines certain information is essential to the petitioner's cause and cannot be obtained with reasonable effort from other sources, the court must then determine whether the need for that information outweighs society's/child's/juvenile's interest in protecting its confidentiality
4. If, after balancing these interests, the juvenile court judge determines that certain information should be disclosed, the court must carefully tailor the order to permit disclosure of only as much information as is necessary

Court Records Unique
Situations

Court Records

- Note about Parental Consent for Abortion records:
 - ✓ All confidential except for action for Abortion without Parental Consent cases and Child Abuse/Neglect Investigation

Adoption Court Records

- § 48.93(1d) governs adoption court records
- Records are closed unless:
 - ▶ Enumerated exception pursuant to §§ 48.93 (1g), (1r), (1v), or (1w), 48.432, s. 48.433, 48.434, 48.48 (17) (a) 9., or 48.57 (1) (j); OR
 - ▶ By order of the court for good cause shown
- **Forms:** Request to Disclose Adoption Court Records (JD-1740) and Order on Request to Disclose Adoption Court Records (JD-1741)
 - ▶ Copies would be allowed at the discretion of the judge
 - ▶ These provisions also apply to requests made by DCF
 - ▶ No requirement to the DCF Adoption records search program first

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY IN THE ADOPTION OF _____ Name _____ Date of Birth _____	Request to Disclose Adoption Court Records Case No. _____
1. I am requesting adoption court records relating to the child/juvenile. I am interested as a(n): ☐ adoptee ☐ adoptive parent ☐ Department of Children and Families ☐ Other: _____ 2. The child's birth name prior to the adoption was: _____ The child's adoptive name is: _____ 3. I ☐ have ☐ have not contacted the Department of Children and Families (DCF) Adoption Records Search Program. (If the DCF Adoption Records Search Program was contacted, provide the communication between you and DCF.) 4. I am requesting ☐ to inspect the following adoption court record: _____ ☐ a copy of the following adoption court records: _____ ☐ a certified copy of the following adoption court records: _____ 5. I am requesting the above adoption court records because: _____ 6. Other: _____ Use JD-1738A or JD-1739A to request to inspect other juvenile court records. ▶ _____ Person Making Request _____ Name Printed or Typed _____ Address _____ Email Address Telephone Number _____ Date State Bar No. (if any)	
DISTRIBUTION: 1. Court 2. Person making request	

Discovery (§§ 48.293 & 938.293)

- Attorneys for the parties/GAL/CASA entitled to:
 - ▶ Prior to Plea/Fact Finding Hearing
 - ✓ Copies of all law enforcement reports and statements
 - ✓ Confidential Informant may be withheld pursuant to § 905.10
 - ✓ Notice of AV statement of the Child and ability to review it
 - ▶ Other hearings
 - ✓ Inspect all records relevant to the subject matter of the hearing

Court Records E-Filing

- §§ 48.396(3) & 938.396(2m) provides electronic access to judges, parties, and CASA of the juvenile records, however, disclosure of sensitive personal information, or information about the physical or mental condition, or a health care record is not authorized without informed consent or an order from the court

Discussion



In Interest of KKC, 143 Wis. 2d 508 (1988)

- It is the juvenile court, not the criminal court, that determines whether confidential agency records shall be disclosed

What about a subpoena from a judge in another state?

Agency and Law Enforcement Records

Agency Records

- ▶ Confidential records kept or any information received by the DCF, county department, licensed child welfare agency, or DOC about an individual in its care or legal custody [§§ 48.78(1) & 938.78]
- ▶ Custodian: the department or agency having the records
- ▶ Statutory Exceptions §§ 48.78 & 938.78
- ▶ Records Retention
 - ✓ State agencies & counties establish pursuant to §§ 16.61 & 19.21
 - ✓ DCF: <https://publicrecordsboard.wi.gov/Pages/GRS/Statewide.aspx>
 - ✓ Local: <https://publicrecordsboard.wi.gov/Pages/GRS/LocalUnit.aspx>

Agency Records

- Court involvement when a request is made by an attorney in another case or subpoena served upon the agency
- See example motion and letters in online materials
- Apply *Herget* procedure above

Agency Records

- ▶ Note about CPS reports:
 - ✓ There are many exceptions regarding disclosure, however many of the exceptions exclude the information regarding the identifying reporter
 - ✓ There is a penalty provision for violating the disclosure law (\$1,000 or 6 months)
 - ✓ See § 48.981(7)

Law Enforcement Records

- Law Enforcement Records are the confidential records of juveniles maintained by the agency separate from the adult files
 - ▶ Custodian: The law enforcement agency
 - ▶ Statutory Exceptions [§§ 48.396 (1b),(1d), (5) or (6) & 938.396(1)(b), (1)(c), (1j), or (10)]
 - ▶ Records Retention [§ 19.21]
 - ✓ Sheriff departments:
<https://publicrecordsboard.wi.gov/Documents/County%20GRS.pdf>
 - ✓ Local police agencies:
 - Generally, 7 years unless Public Records Board sets shorter period or specific statutory provision

Law Enforcement Records

- If a request is denied by the Law Enforcement Agency, the person can petition the juvenile court
- §§ 48.396(5) and 938.396(1j)
- *Hegert* standards are in the statute

So, Now I have the Records, What Can I do with them?

Confidentiality vs. Privilege

- Although confidentiality and privilege are related, they are nonetheless distinct concepts... confidential information is “that which is ‘meant to be kept secret.’ ” ...[p]rivilege, meanwhile, “is a broader concept,” which includes “the legal right not to provide certain data when faced with a valid subpoena.” “Privileges are the exception, not the rule.”... privileges are the exception to the “fundamental tenet of our modern legal system ... that the public has a right to every person's evidence.”)
- *State v. Johnson*, 2023 WI 39, ¶ 6,(citations omitted)

Confidentiality vs. Privilege

- Juvenile Court, Agency and Law Enforcement records are confidential - remember the privileges under Ch. 905
 - ▶ Note § 905.04(4)(i) and its reference back to §§ 48.78 and 939.78. See *In re the TPR of CELSO G-J* (unpublished case in materials)

Redisclosure

- Just because you KNOW something, does not mean you can SAY something
 - ▶ Ethical Conflict vs Confidentiality
- Each person who inspects must have a consent, a statutory exception, or a court order
 - ▶ There is no statute permitting redisclosure!
- In *KCC* and *Courtney F* cases, the juvenile court goes first on disclosure of confidential information under *Herget* and then the other court (TPR/CRIMINAL/CIVIL/TPR) determines the admissibility under that law



- Note § 905.04(4)(i) and its reference back to §§ 48.78 and 939.78
- See *In re the TPR of CELSO G-J* (unpublished case in materials)

Resources

- Guide to Confidentiality Laws Applicable to CHIPS Proceedings:
www.wicourts.gov/courts/programs/docs/ccipwcpconfguide.pdf
- CCIP E-Learning Project:
<https://wicciptraining.com/>

Questions or Comments?