

**Juvenile Records:**  
 Who get's What, When, and How

Hon. Jason A. Rossell  
 Kenosha County Circuit Court

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**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)

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**Starting Points:**

- Assume that confidential information **cannot** be shared in any manner without
  - Written Authorization
  - Statutory Exceptions
  - A Court Order

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### State Statutes

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

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### PROCESS

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

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### Juvenile Court Records

- Juvenile Court Records
  - Records of the Court assigned to exercise Juvenile Court Jurisdiction including all filings. (48.396(2)(a)/938.396(2)(a))
  - The Court is the custodian of the records
  - Statutory Exceptions 48.396(2) and 938.396 (2g)
    - Inspection versus copying?
  - Note about Parental Consent for Abortion:
    - All confidential except for action for Abortion without Parental Consent cases and Child Abuse/Neglect Investigation

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### Juvenile Court Records

- WHO's Asking?
  - Other Courts Criminal/ Family Courts/Other JV Courts
    - Anytime upon request 48.396(2)(dm),(e),(g),(h)
    - Inspection does not equate with admissibility in other cases. *Shiffra/In Re KCC/Courtney F/Hergert cases*

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### Juvenile Court Records

- WHO's Asking?
  - Attorney for Parent or Juvenile /GAL
    - WHEN?
      - Anytime with Authorization 48.396(2)(am)(ap)/938.396(2g)(am)
        - » Limitation: Due Notice and Hearing Court finds inspection would result in imminent danger to anyone

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### Juvenile Court Records

- WHO's Asking?
  - Attorney for Parent or Juvenile /GAL
    - WHEN?
      - Prior to Fact-Finding/Disposition of Chips Case
        - » Discovery 938/48.293(1) Available from DA/Corp Counsel
          - Copies permitted
          - AV recordings of Children's Statements
          - Confidential Informant 905.10 applies.

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### Juvenile Court Records

- WHO's Asking?
  - Attorney for Parent or Juvenile /GAL
    - WHEN?
      - Post Dispo
  - Parent's attorney retained after Disposition, you have a permanency plan coming up, absent an authorization what records can they get?
    - A. The entire file                      B. Only the Filed Perm Plan
    - C. Everything Post Dispo            D. Anything relevant to the Perm Plan hearing

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### Juvenile Court Records

- WHO's Asking?
  - Attorney for Parent or Juvenile /GAL
    - WHEN?
      - Post Dispo Discovery: All records relevant to the subject matter of the proceeding under this chapter shall be open for inspection upon demand.

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### Juvenile Court Records

- WHO's Asking?
  - Parent/Child (age 14 or older)
    - WHEN?
      - Anytime 48.396(ag),(aj),938.396(2g)(ag)
      - Limitation Due Notice and Hearing Court finds inspection would result in imminent danger to anyone.

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### Juvenile Court Records

- WHO's Asking?
  - Parent/Child (age 14 or older)
    - WHEN?
      - Adoption Records:
        - » Generally closed except for medical and genetic information
        - » 48.433 provides the procedure for the child over 18 to find the identity of their birth parents.

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### Juvenile Court Records

- WHO's Asking? OTHERS!
  - Herget procedures:
    - An in camera review of the records
    - 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.
    - The child must be notified that the records are being sought and given an opportunity to respond

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## Juvenile Court Records

- WHO's Asking?
  - Herget procedures continued:
    - 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 or expectant mother in avoiding the stigma that might result from disclosure.
    - If disclosure is ordered only as much information as is necessary.

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## WHAT 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 it's care or legal custody. (48.78(1), 938.78).
  - Custodian is the department or agency having the records.
  - Statutory Exceptions 48.78 and 938.78

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## WHAT Records

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

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### Agency Records

- WHO's Asking
  - Other Courts
    - No specific statutory exception like Court Records or Law Enforcement reports
    - In Interest of K.K.C. (DeLeu), 143 Wis. 2d 508, 422 N.W.2d 142 (Ct. App. 1988). Juvenile Court must review before Criminal Court may inspect in camera for Shiffra/Green/Richie matters
  - Parent's or Juvenile's Attorney/GAL
    - No specific statutory exception may receive the information in accordance the discovery statute 48.293/938.293

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### Agency Records

- WHO's Asking
  - Parent/Child (age 14 or older)
    - WHEN?
      - Anytime 48.78(2)(ag),(aj),(am), (ap)/938.78(2)(ag)(am)
      - Inspection of file unless agency determines that inspection would result in imminent danger
      - Written request for another person requires identification of specific document.

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### Agency Records

- WHO's Asking?
  - Attorneys in other cases
    - Typically as a result of a subpoena to the division.
    - Have to apply the Herget procedure the same as with Court records

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### WHAT Records

- Law Enforcement Records
  - Law Enforcement Records are the confidential records of juveniles maintained by the agency separate from the adult files.
  - The Law Enforcement Agency is the custodian of the records
  - Exceptions: 48.396(1), 938.396(1)

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### Law Enforcement Records

- WHO's Asking
  - Attorney for the Parent's or Juveniles
    - WHEN?
      - No specific statutory exception may receive the information in accordance the discovery statute 48.293/938.293
  - Parent/Child(age 14 or older)
    - WHEN?
      - Anytime 48.396(1b)(1d), 938.78(1)(c) 1 and 2.
      - Copy of report subject to agency policy
      - Written request for another person requires identification of specific report.

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### Law Enforcement Records

- WHO's Asking
  - Attorneys in other cases
    - No statutory exception
    - Typically as a result of a subpoena
    - Herget case
      - Plaintiff's in civil damages case sought records regarding the Juvenile's vandalism
      - Herget case factors were codified in 48.396(5) and 938.396(1j)(a)

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## Law Enforcement Records

- WHO's Asking
  - Media
    - May provide information about the case without identifying the Juvenile's identity.  
48.396(1)/938.396(1)(a).

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