

INDIANA COLLATERAL CONSEQUENCES
FOLLOWING ADJUDICATION

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I. IMPACT ON EDUCATION

A. PRIMARY OR SECONDARY EDUCATION

1. Grounds for Suspension or Expulsion

Pursuant to IC 20-33-8-14(a), subject to the procedural requirements of IC 20-33-8 and as stated by school corporation rules, the following are grounds for student suspension or expulsion:

- (1) Student misconduct.
- (2) Substantial disobedience.

(a) During School Events or Activities

Pursuant to IC 20-33-8-14(b), the grounds for suspension or expulsion listed in IC 20-33-8-14(a) apply when a student is:

- (1) On school grounds immediately before or during school hours, or immediately after school hours, or at any other time when the school is being used by a school group;
- (2) Off school grounds at a school activity, function, or event; or
- (3) Traveling to or from school or a school activity, function, or event.

(b) Anytime

Pursuant to IC 20-33-8-15, in addition to the grounds specified in IC 20-33-8-14, a student may be suspended or expelled for engaging in unlawful activity on or off school grounds if:

- (1) The unlawful activity may reasonably be considered to be an interference with school purposes or an educational function; or
- (2) The student's removal is necessary to restore order or protect persons on school property;

including an unlawful activity during weekends, holidays, other school breaks, and the summer period when a student may not be attending classes or other school functions.

B. COLLEGE EDUCATION

1. College Applications

Many of the Indiana University campuses and Purdue University applications ask questions that may require the applicant to reveal juvenile delinquent behavior on the college admissions applications.

(a) Purdue University

In the section titled "Personal Conduct" there are the following required questions:

- (1) Have you ever been disciplined (e.g. placed on probation, suspended or expelled) by any secondary school, college, or university you have attended because

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of academic dishonesty, research misconduct, financial impropriety, or an offense that harmed or had the potential to harm others?

- (2) Have you ever pleaded guilty or no contest, participated in a presentencing diversion program and/or been convicted of a criminal offense (including in a juvenile court), or are there criminal charges pending against you at this time?

Available at:

http://www.purdue.edu/Admissions/Undergrad/documents/Undergrad_App.pdf. Last visited September 15, 2011.

(b) Indiana University (Bloomington, East, Kokomo, Northwest, Southeast and Indiana University Purdue University Indianapolis)

The criminal activity disclosure statement asks, in part, “Have you ever been convicted of a felony or engaged in behavior that resulted in injury to a person(s) or personal property.”

See, e.g., http://admit.indiana.edu/doc/IU_freshman_app_12-13.pdf. Last visited September 15, 2011.

2. State College Financial Aid Resources

The Twenty-First Century Scholarship Program requires a student to certify in writing that the student has not used controlled substances, illegally consumed alcoholic beverages, and has not committed any other crime or a delinquent act. IC 21-12-6-6(a)(5).

II. IMPACT ON DRIVER’S LICENSE AND PERMITS

A. LICENSE SUSPENSION FOR MULTIPLE ACTS OF TRUANCY

Pursuant to IC 31-37-19-4(a), this section applies if a child

- (1) Is a delinquent child under IC 31-37-2 [status offense] due to the commission of a delinquent act under IC 31-27-2-3 [violation of compulsory school attendance law]; and
- (2) Has been previously determined to be a delinquent child under IC 31-37-2 due to the commission of a delinquent act under IC 31-37-2-3.

1. Truancy License Suspension for 90 Days to 1 Year

The juvenile court shall, in addition to any order or decree the juvenile court makes, order the bureau of motor vehicles to invalidate the child’s driver’s license or permit for a period specified by the court that is not less than ninety (90) days but not more than one (1) year. IC 31-37-19-4(b).

B. LICENSE SUSPENSION FOR OPERATING WHILE INTOXICATED

This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be an offense under IC 9-30-5 [Operating a Vehicle While Intoxicated]. IC 31-37-19-17.3(a).

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1. Court May Order Same Suspension As An Adult Would Receive Under IC 9-30-5 (Range From 6 months to 5 years)

The juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, recommend the suspension of the child's driving privileges as provided in IC 9-30-5. IC 31-37-19-17.3(b).

C. LICENSE SUSPENSION FOR DEALING OR POSSESSION CONTROLLED SUBSTANCES

Pursuant to IC 31-37-19-13(a), this section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

- (1) Dealing in: (A) a controlled substance (as defined in IC 35-48-1-9); or (B) a counterfeit substance (as defined in IC 35-48-1-10);
- (2) Possessing: (A) a controlled substance (as defined in IC 35-48-1-9); or (B) a prescription drug (as defined in IC 35-48-1-25); for which the child does not have a prescription; or
- (3) Conspiring to commit an act described in subdivisions (1) or (2).

1. First Adjudication -- License Suspension for 6-12 Months

The juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles to invalidate the child's operator's license or permit for a period specified by the court of at least six (6) months but not more than one (1) year from the time the child would otherwise be eligible for a learner's permit. IC 31-37-19-13(b).

2. License Suspension if Child Has a Previous Adjudication or if Act Occurred At or Near School Property is 6 Months to 2 Years

The juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles to invalidate the child's operator's license for a period specified by the court of at least six (6) months but not more than two (2) years from the time the child would otherwise be eligible for a learner's permit. IC 31-37-19-14(b).

3. First Adjudication -- No Learner's Permit for 6-12 Months

The juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles not to issue the child a learner's permit for a period specified by the court of at least six (6) months but not more than one (1) year from the time the child would otherwise be eligible for a learner's permit. IC 31-37-19-15(b).

4. Denial of Learner's Permit if Child Has a Previous Adjudication or if Act Occurred At or Near School Property is 6 Months to 2 Years

The juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles not to issue the child a learner's permit for a period specified by the court of at least six (6) months but not more than two (2) year from the time the child would otherwise be eligible for a learner's permit. IC 31-37-19-16(b).

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D. LICENSE SUSPENSION FOR CRIMINAL MISCHIEF WITH GRAFFITI

This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be criminal mischief or institutional criminal mischief under IC 35-43-1-2 that involves the use of graffiti. IC 31-3-19-17(a).

1. Discretionary Suspension of License or Invalidate Permit for 1 Year

The juvenile court may, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles to: (1) suspend the child's operator's license; or (2) invalidate the child's learner's permit for one (1) year beginning the date of the order. IC 31-37-19-17(b).

2. Court May Rescind License Suspension if Restitution Paid

Pursuant to IC 31-37-19-20(b), following a determination by the juvenile court that the child has removed or painted over the graffiti or has made other suitable restitution, the court may:

- (1) Rescind the order for suspension or invalidation, and
- (2) Allow the child to receive a license or permit before the period of suspension or invalidation ends.

E. LICENSE SUSPENSION FOR FUEL THEFT

This section applies to a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be a theft or criminal conversion described in IC 35-43-4-8 [fuel theft]. IC 31-37-19-17.2(a).

1. Same Suspension As Adult Convicted of Fuel Theft

Pursuant to IC 31-37-19-17.2(b), the juvenile court shall, in addition to any other order or decree the court makes under IC 31-37-19, order the bureau of motor vehicles to:

- (1) Suspend the child's operator's license; or
- (2) Invalidate the child's learner's permit;

under IC 9-25-6-21 in the same manner as the bureau of motor vehicles is required to suspend the driving privileges of a person convicted of fuel theft.

2. License Suspension for 30 Days

Pursuant to IC 9-25-6-21(b), the suspension of the driving privileges of a person who is the subject of an order issued under IC 35-43-4-8(b): (1) begins five (5) business days after the date on which the bureau mails the notice to the person under subsection (a)(2); and (2) terminates thirty (30) days after the suspension begins.

III. HIV TESTING AND DISCLOSURE

A. ONLY APPLIES TO CRIMINAL SEXUAL ACT OR CERTAIN CONTROLLED SUBSTANCE-RELATED ACTS

Pursuant to IC 31-37-19-12(a), the HIV testing requirement only applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

- (1) an offense related to a criminal sexual act (as defined by IC 35-41-1-19.3) and the offense created an epidemiologically demonstrated risk of

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- transmission of the human immunodeficiency virus (HIV); or
- (2) an offense relating to controlled substances (as defined by IC 35-41-1-19.4) if the offense involved:
- (A) the delivery by a person to another person; or
- (B) the use by a person on another person;
- of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

B. SCREENING HIV TEST MAY BE ORDERED

The juvenile court shall, in addition to any other order or decree the court makes under this chapter, order the child to undergo a screening test for the human immunodeficiency virus (HIV). IC 31-37-19-12(b).

C. CONFIRMATORY TEST REQUIRED IF SCREENING TEST IS POSITIVE

If the screening test indicates the presence of antibodies to HIV, the court shall order the child to undergo a confirmatory test. IC 31-37-19-12(c).

D. POSITIVE CONFIRMATORY TEST MUST BE REPORTED TO STATE DEPARTMENT OF HEALTH

If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health. IC 31-37-19-12(d).

E. STATE DEPARTMENT OF HEALTH SHALL NOTIFY AND PROVIDE COUNSELING TO POTENTIAL VICTIMS

Pursuant to IC 31-37-19-12(e), the state department of health shall do the following:

- (1) Notify potentially affected victims of the offense relating to a criminal sexual act (as defined by IC 35-41-1-19.3) or offense relating to controlled substances (as defined in IC 35-41-1-19.4) of the HIV screening results.
- (2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

IV. SEX OFFENDER REGISTRY

The sex offender registry in Indiana is available at <http://www.icrimewatch.net/indiana.php>.

PRACTICE POINTER: Counsel must explain to the child and their parent, guardian, or custodian that the child's picture, address, sex-related adjudications, and other identifying information will be placed on a website that is available to the public and the possible future criminal convictions that may result if the child does not maintain the registry process.

A. DEFINITION OF SEX OFFENDER

A "sex offender" is a person convicted of rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, Class A, B, or C felony sexual misconduct with a minor, incest, sexual battery, kidnapping, criminal confinement, possession of child pornography, promoting prostitution, promotion of human trafficking, sexual trafficking of a minor, human trafficking, an attempt or conspiracy to commit any

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of the listed acts, or a similar crime in another jurisdiction, including a military court. IC 11-8-8-4.5(a).

A “sex or violent offender” is a person who is convicted of the sex offender offenses [IC 11-8-8-4.5(a)], murder, or voluntary manslaughter. IC 11-8-8-5(a).

Pursuant to IC 11-8-8-4.5(b) and 11-8-8-5(b), the terms “sex offender” and “sex or violent offender” includes a child who has committed a delinquent act and who:

- (1) Is at least fourteen (14) years of age;
- (2) Is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility, or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be a listed offense; and
- (3) Is found by a court by clear and convincing evidence to be likely to repeat an act that would be a listed offense.

B. DETERMINING PLACEMENT ON THE REGISTRY

In making a determination about placement of a juvenile on the sex offender registry, the court shall consider expert testimony concerning whether the child is likely to repeat an act that would be a listed offense if committed by an adult. IC 11-8-8-4.5(c) and 11-8-8-5(c).

State v. K.H., 860 N.E.2d 1284, 1287 (Ind.Ct.App. 2007); *citing B.J.B. v. State*, 805 N.E.2d 870, 874 (Ind.Ct.App. 2004) (The focus of the inquiry, with respect to a juvenile who has been released from a secure facility, is whether the treatment received in that facility has resulted in the juvenile’s rehabilitation. If that is the case, there cannot be clear and convincing evidence that the juvenile is likely to re-offend and the juvenile cannot be placed on the sex offender registry.).

A.O. v. State, 837 N.E.2d 219, 221 (Ind.Ct.App. 2005) (Prosecutor’s arguments that the child should be placed on sex offender registry did not consist of evidence that child was likely to re-offend; order to register as a sex offender reversed.).

M.L.H. v. State, 799 N.E.2d 1, 3 (Ind.Ct.App. 2003), *trans. denied* (Evidence of four experts testifying that the child was at a high risk to re-offend was sufficient for sex offender registry order.).

R.G. v. State, 793 N.E.2d 238 (Ind.Ct.App. 2003) (Evidence of expert opinion that the child had "demonstrated pedophilic interests" and was at high risk for recidivism was sufficient, despite evidence from two therapists that child was not likely to re-offend, for sex offender registry order.).

<p>PRACTICE POINTER: Current research shows that, in general, the recidivism rate for juvenile offenders is low. Consult with the State’s expert prior to the hearing to determine what information she will use during her testimony and to determine if an expert on behalf of the juvenile will be necessary.</p>

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1. Full Evidentiary Hearing Required

B.J.B. v. State, 805 N.E.2d 870, 872 (Ind.Ct.App. 2004) (Before a child who has been adjudicated a delinquent child for committing a sex offense may be ordered to publicly register as a sex offender, a court must hold an evidentiary hearing and determine, by clear and convincing evidence, that the child is likely to commit another sex offense.).

(a) Hearing Held After Child's Release from Detention/Treatment

In re G.B., 709 N.E.2d 352, 354 (Ind.Ct.App. 1999) (When a child is placed in a secure facility, a sex offender registry hearing can only be conducted after the child has been released from the facility so that children who have been rehabilitated by virtue of their detention are not required to register as sex offenders. Order requiring child to register as sex offender was reversed because the court held the Registry hearing before child was discharged from DOC.).

K.J.P. v. State, 724 N.E.2d 612, 615-16 (Ind.Ct.App. 2000) (sex offender registry hearing was not premature where child, still on probation, had been released from detention but was still receiving counseling.).

J.B. v. State, 819 N.E.2d 137, 140 (Ind.Ct.App. 2004) (Child considered a discharged by DOC as sex offender under IC 5-2-12-4(b)(2) even though child did not spend time at DOC facility due to being over age 18.).

(b) State Bears Burden By Clear and Convincing Evidence

In re Z.H., 850 N.E.2d 933, 940 (Ind.Ct.App. 2006) (The State bore the burden of proving, by clear and convincing evidence that the juvenile was likely to commit another sex offense.).

(c) Determination Independent of Any Plea Agreement Terms

In re G.B., 709 N.E.2d 352, 354 (Ind.Ct.App. 1999) (The fact that the child's plea agreement did not specifically refer to the sex offender registry is irrelevant; the court must place a child on the registry if evidence, at time of his release, supports a finding that he is likely to be a repeat sex offender.).

C. INFORMATION DISCLOSED FOR THE REGISTRY

Pursuant to IC 11-8-8-8. the sex or violent offender registration must include the following information:

1. Full name, prior names, and aliases; date of birth; sex; race; height; weight; hair color; eye color; any scars or tattoos; Social Security number; driver's license number or state identification card number; vehicle description and vehicle plate number if owned or operated on a regular basis; principle residence address, other address used frequently, and mailing address.
2. Description of offense, date of conviction, county of conviction, cause number, and sentence imposed, if applicable.
3. Name and address of employers, name and address of campus or school where offender is enrolled, if required by law.
4. Recent photograph.

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5. If the offender is sexually violent predator.
6. If the offender is required to register for life.
7. Any electronic mail address, instant messaging username, electronic chat room username, or social networking web site username that the offender uses or intends to use.
8. Any other information required by the department.

D. DURATION OF REGISTRY

1. Ten-Year Registration

Pursuant to IC 11-8-8-19(a), except when lifetime registration is required, a sex or violent offender is required to register for ten (10) years after the date the sex or violent offender:

- (1) Is released from a penal facility or a secure juvenile detention facility of a state or another jurisdiction;
- (2) Is placed in a community transition program;
- (3) Is placed in a community corrections program;
- (4) Is placed on parole; or
- (5) Is placed on probation;

for the sex or violent offense requiring registration, whichever occurs last. The registration period is tolled during any period that the sex or violent offender is incarcerated.

2. Lifetime Registration

(a) Predators

A sex or violent offender who is a sexually violent predator is required to register for life. IC 11-8-8-19(b).

(b) Bodily Injury, Death, Force, Unconsciousness

Pursuant to IC 11-8-8-19(d), a sex or violent offender who is convicted of at least one (1) offense under IC 11-8-8-5(a) in which the sex offender:

- (1) Proximately causes serious bodily injury or death to the victim;
- (2) Used force or the threat of force against the victim or a member of the victim's family, unless the offense is sexual battery as a Class D Felony; or
- (3) Rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(c) Two Unrelated Offenses

A sex or violent offender who is convicted of at least two (2) unrelated offenses under IC 11-8-8-5(a) is required to register for life. IC 11-8-8-19(e).

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V. IMPACT ON REQUEST TO PLACE CHILDREN IN A HOME

A. FOSTER PARENT APPLICATION

Pursuant to IC 31-27-4-13(b)(2), the Department of Child Services may deny a license to an applicant who has an adjudication for any of the following that, if committed by an adult, would be a felony [IC 31-27-4-13(a)]:

1. Murder (IC 35-42-1-1).
2. Causing Suicide (IC 35-42-1-2).
3. Assisting Suicide (IC 35-42-1-2.5).
4. Voluntary Manslaughter (IC 35-42-1-3).
5. Reckless Homicide (IC 35-42-1-5).
6. Battery (IC 35-42-2-1) within the past five (5) years.
7. Domestic Battery (IC 35-42-2-1.3).
8. Aggravated Battery (IC 35-42-2-1.5).
9. Kidnapping (IC 35-42-3-2).
10. Criminal Confinement (IC 35-42-3-3) within past five (5) years.
11. A felony sex offense under IC 35-42-4.
12. Carjacking (IC 35-42-5-2) within past five (5) years.
13. Arson (IC 35-43-1-1) within past five (5) years.
14. Incest (IC 35-46-1-3).
15. Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
16. Child Selling (IC 35-46-1-4(d)).
17. A felony involving a weapon under IC 35-47 or IC 35-47.5 within the past five (5) years.
18. A felony relating to controlled substances under IC 35-48-4 within the past five (5) years.
19. An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
20. A felony that is substantially equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state.

B. ADOPTION

The petition for adoption addresses criminal history only. IC 31-19-2-6(7).

C. CHINS OUT-OF-HOME PLACEMENTS

The court may not place a child in need of services in any out-of-home placement, including placement with a blood or adoptive relative caretaker, a de facto custodian, or a stepparent who has a juvenile adjudication for an act listed in IC 31-27-4-13(a) [see list in Foster Parent Application section above] that, if committed by an adult, would be a felony, unless the person's commission of the delinquent act is not relevant to the person's ability to care for a child and the placement is in the best interest of the child. IC 31-34-4-2(f).

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D. JUVENILE DELINQUENCY OUT-OF-HOME PLACEMENTS

The juvenile court generally may not award wardship of a delinquent child to a person who has a juvenile adjudication for reckless homicide or Class C or D felony battery, Class C or D felony criminal confinement, Class C or D felony arson, or a felony involving a weapon or controlled substances. IC 31-37-19-6.5(d).

VI. WORKING WITH CHILDREN --EARLY INTERVENTION ADVOCATE AND PREVENTIVE CARE PROGRAM

A court may not appoint an individual if the results of the criminal history check disclose that the person has a record of felony convictions, misdemeanor convictions relating to the health and safety of a child, or a juvenile adjudication that would be a felony listed in IC 31-27-4-13(a) [see list in Foster Parent Application section above], if committed by an adult. IC 31-32-3-11(b).

VII. IMPACT ON GOVERNMENT HOUSING (SECTION 8)

A. MANDATORY DENIAL OF HOUSING FOR LIFETIME SEX OFFENDER REGISTRY

The housing authority must prohibit housing assistance if any member of the household is subject to a lifetime sex offender registration program. 24 C.F.R. § 982.553(c)(2)(i).

B. PERMISSIVE DENIAL OR TERMINATION OF HOUSING

Pursuant to 24 C.F.R. § 982.553(c)(2)(ii), at any time, the housing authority may deny assistance to an applicant or terminate assistance to a participant family if any member of the family commits:

- (1) Drug-related criminal activity;
- (2) Violent criminal activity;
- (3) Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or person residing in the immediate vicinity; or
- (4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the housing authority.

1. Definitions

Drug-related criminal activity – As defined by 42 U.S.C. 1437f(f)(5). 24 C.F.R. § 982.4. The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance. 42 U.S.C. 1437f(f)(5).

Violent Criminal Activity – Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another. 24 C.F.R. § 982.4

2. No Denial or Termination of Seeking Drug Treatment

The housing authority may not deny or terminate assistance if the family can demonstrate an addiction and is recovering or has recovered from such addiction and does not currently use or possess controlled

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substances. 24 C.F.R. § 982.553.

3. Evidence of Criminal Activity

In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the housing authority may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted. 24 C.F.R. § 982.553.