

# LEGAL ISSUES



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JAIL TRACT  
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# Echo Legal Disclaimers

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- NOT LEGAL ADVICE
- Meant to be “quick-hitters” on variety of topics
  - Scratch the surface only - issues—too complex for short didactic

## Overview

- Discrimination/Civil Rights
- Social Security Disability
- Family Law/DCS Issues
- MAT in Jail
- Women & Pregnancy in Jail
- Expungement
- Specialized Driving Privileges
- Advance Directives
- HIPAA

# Civil Rights Issues

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SUD is a protected “disability” under civil rights laws (ADA/FHA). Protects employment and housing.

Two elements:

1. The person is in active treatment AND
2. “not currently engaging in illegal use of drugs”

NOTES:

What “currently” means is unclear.

Employers/landlords (and many others) cannot take adverse actions on the basis of the disability.

Protection provided:

1. Discrimination against adverse treatment because of protected class, including disability
2. Employer has a duty to make reasonable accommodations

# Civil Rights Issues

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If Individual is engaged in illegal drug use, they are NOT an “individual with a disability.”

This does NOT include a person with a *history* of drug addiction, but is not *currently* using. This person qualifies for protection.

An employer MAY prohibit the illegal drug use *and* use of alcohol in the workplace.

An employer MAY test employees for illegal use of drugs.

An employer MAY discharge or deny employment for illegal use of drugs.

An employer MAY require disabled employees to meet the same standards of performance as other employees.

*Source:* United States Commission on Civil Rights

# Social Security Disability

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Basic Eligibility: disability substantially impairs you from working

Addictions are not considered in this context

To get disability with addictions, must show that, even if there was no addiction, other disabilities would prevent work

Really important role for providers to explain interactions between addictions and other medical conditions, especially co-occurring mental illness

Medical records usually aren't enough (need provider participation and advocacy)

# Family Law/D.C.S.

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Indiana DCS is overwhelmed (epidemic/OUD factors into that)

- Quality/attitudes vary greatly by caseworker
- Real role for providers to explain nature/course of treatment to DCS and CHINS court
  - Slowly starting to appreciate the OUD epidemic and shifting/opening minds.
- Attitudes towards MAT vary greatly

**True that in Indiana, DCS will *not* get involved with a pregnant mother with no other children**

If pregnant mother has children and is substantiated/CHINS, DCS will become involved with infant once born.

TPR – Indiana has no registry for parents who terminate their parental rights upon birth of a child (see, e.g., Michigan).

Serious miss – DCS involved, mother/parents TPR, DCS releases the case, they have more children.

# Family Law/D.C.S.

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Child Support—major re-entry barrier

It really depends upon what the incarceration is for:

- Incarcerated for failure to pay child support
  - Criminal Non-support (PUNISH)
    - Rare, severe sanction
    - All states have, felony or misdemeanor
  - Civil Contempt (PROMPT COMPLIANCE)
    - Much more common
    - Usually less severe penalties
- Incarcerated (for other conviction) with child support order
  - Indiana (and most states) allow for modification during incarceration
  - Need to be proactive as incarcerated, non-custodial parent

# MAT in INDIANA JAILS

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- Growing movement to get MAT programs into jails
  - Challenges:
    - Misunderstandings/Stigma
    - Concerns about diversion
    - Cost of MAT
  - Coordinate with a community-based MAT program
    - Makes little sense to begin MAT during short term jail stay only to release an inmate and d/c MAT
    - Also allows for inmates who come into jail on MAT for jail to continue the program

BUT

Legal challenges are already out there and many more will follow

- Disability
- Civil Rights
- More of a WHEN not IF scenario for any jail
- Smart move? Start planning for the likely scenario – its a great move!

# WOMEN IN PRISON

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Number of women in prison is increasing at twice the rate of men.

Women are jailed before prison.

-70% of women in prison are mothers

-typical incarcerated female is

- of child rearing age,
- unmarried,
- a minority group member,
- a mother of minor children,
- undereducated,
- economically marginal,
- and has considerable experience with or is dependent on drugs or alcohol

# INDIANA COUNTY JAILS & PREGNANCY

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Reality – County jails do not want pregnant inmates

- Huge liability issue
- expensive treatment
- capacity issues

Criminal justice system works to keep pregnant offenders out of jail

- No or low bond

Essentially, fair to consider: "a pregnant defendant would have to *want* to remain in jail" in most Indiana county jails.

# Expungements

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Variance between what is really a “Sealing” of a conviction versus a true “Expungement.”

Time limitations:

- 8 years for most felony convictions.
- 10 years for limited violent felonies and elected officials.
- 5 years for misdemeanor (or old Class D felony).
- Can receive permission to “file early” with prosecutor’s consent.
- Some offenses are not eligible for expungement (sexual, weapons)

One time only

Effect: person is treated (outside of the legal system) as if the conviction or arrest never occurred:

- Employment
- Licensure (including professional)
- Can still be utilized if arrested in future of bail and enhancement purposes.

# Specialized Driving Privileges

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- For any reason, including multiple OWIs, HTV, Child Support, Failure to provide insurance, etc.
- Relatively recent (2015) provision that dramatically permitted people to obtain driving privileges
- Applies to:
  - Suspensions related to criminal convictions.
  - Suspensions related to administrative (i.e. BMV) issues such as unpaid reinstatement fees.
  - Suspensions related to child support.
  - Suspensions related to arrest.
- Two basic types (not necessarily mutually exclusive):
  - “time/place/manner” (certain hours, locations, etc.)
  - Prior restraint (Ignition interlock, mandatory treatment etc.).
- Completely up to the court.
- Insurance is a hurdle, and some courts require proof of prepayment and/or SR-22.
- ONLY EXCEPTION: Refusal to take chemical test.

# Advanced Directives

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## WHAT

- Written directive by individual instructing healthcare providers on wishes relative to medical treatment in event of incapacitation

Doesn't need to be overly-formal

- Part I: Appointment of Healthcare Surrogate / POA
- Part II: Indiana Declaration
  - Living Will Declaration
  - Life-prolonging Procedures Declaration
- Part III: Signatures (witnessed by two *independent* adults) (if granting POA – **notarized** as well)

Can attach organ donation instructions, formal form

Can be revoked orally or in writing

# Advance Directives (Cont'd.)

## Psychiatric Advance Directives

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Instructive PAD: gives instructions about specific mental health treatment a person wants should he or she experience a mental health crisis

- Wishes can be overridden for health or practical reasons (Ulysses Clause)  
Proxy PAD: names a healthcare proxy or agent to make treatment decision

Advance directives for substance use

Not codified anywhere

Being studied by some states

Could be a useful tool, some ideas for provisions:

Proxies

Individuals that hinder or negatively impact recovery

Temporary custody of children, pets

Brand new area—open for examination and creativity

# HIPAA

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First and foremost, of the love of all things great and small....

- SPELL IT CORRECTLY (2 A's!!!)

Way too broad to really scratch the surface

No private cause of action for violation of HIPAA

BUT

- Understand how serious it is
- licensure issues
- employment issues

*Walgreen Co. v. Hinchy, 21 N.E.3d 99 (Ind. Ct. App. 2014)*

- PLEASE DON'T BE A WITHERS!

# HIPAA vs HIPPA vs HIPPO

	HIPAA Health Insurance Portability and Accountability Act	HIPPA Health Information Privacy Protection Act	HIPPO Hippopotamus
Name			
Protects health coverage for people who change jobs.	✓	✗	
Requires medical providers to give patients access to their personal health information	✓	✗	
Requires medical providers to protect the privacy of health information	✓	✓	
Prohibits stores and restaurants from asking for proof of vaccination	✗	✓	
Prohibits stores and restaurants from requiring you to wear a mask	✗	✓	
Prohibits anyone from asking you for any health information for any reason	✗	✓	
History	Passed by Congress and signed into law by President Bill Clinton in 1996.	Invented by people on the internet during the COVID-19 pandemic.	
Is it a real law?	✓	✗	✓

# Questions?

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