



The Indiana Prosecutor

2nd & 3rd Quarter, 2022

Summer Conference Fun in French Lick

The 2022 IPAC Summer Conference was a huge success this past June with more than 200 prosecutors from around the state making their way to southern Indiana for three days of fun, camaraderie and, as always, important training for prosecutors.

The training at both our summer and winter conferences is something we work very hard on to ensure there is a little bit of something for everyone, whether they be new prosecutors or seasoned lawyers. Attendees heard from lawyers, detectives, doctors and survivors over the course of the conference. Although the most popular 'expert' was probably Hunter the white lab from the Indianapolis Metropolitan Police Department who has been trained to sniff out electronic devices. This unique skill comes in very handy during child pornography cases when investigators are searching for hidden flash drives, laptops, hard drives and other electronic storage devices. After Hunter's handler, Darin Odier, got done with his talk about how to get evidence from social media companies like Snapchat, Facebook or whatever new app has popped up recently, the audience got to see Hunter in action. The lab was able to find six different small flash drives or SD cards that Darin had hidden in the room earlier that day.

While there was plenty of great training, no summer

conference is complete without a little bit of fun. We were very excited to see how many prosecutors brought their families down with them to enjoy French Lick and the surrounding area. Almost 140 discounted tickets for Holiday World were purchased the day prior to the conference and the Wednesday night BBQ party was also well attended.

We thank each and every person who made the trip to French Lick and hope all the attendees had a great time and walked away with some new tips for prosecuting cases.

We can't wait to see everyone again this December for Winter Conference and Newly Elected School and next summer in Fort Wayne.



Indiana Disciplinary Commission Executive Director Adreinne Meiring gives an ethics update



IMPD Detective Darin Odier and Hunter, a lab trained to sniff out electronic devices



Dr. Tara Halloren speaks to the crowd about the link between animal abuse and domestic violence

News & Notes

Chris Owens Voted in as IPAC Board Chair

Scott County Prosecutor Chris Owens was recently voted in as the new Chairman of the IPAC Board of Directors during IPAC's annual Summer Conference. Chris, the prosecutor in Scott County since 2017, will serve as Chair for the 2022-23 cycle.

Chris spent the last year as Vice Chair of the Board of Directors. He succeeds Shelby County Prosecutor Brad Landwerlen, who led the Board for the 2021-22 term.

"It's an honor to be elected to this position by my peers," Owens said. "There are a lot of important items that the Board will be tackling in the area of public safety and criminal justice in the coming year and I'm confident we'll be able to meet those challenges."

Joining Chris as officers of the Board are Vicki Becker who will serve as Vice Chair and Erika Oliphant who was elected Secretary.

The full Board of Directors for 2022-23 is as follows:

Vicki Becker, Elkhart County
 Andrew Bryson, Union County
 Daniel Hampton, Kosciusko County
 Brad Landwerlen, Shelby County
 Jeremy Mull, Clark County
 Erika Oliphant, Monroe County
 Chris Owens, Scott County
 Anthony Quinn, Dubois County
 Wesley Schemenaur, Jay County
 Steven Sonnega, Morgan County



Chris Owens (left) thanks Brad Landwerlen (right) for his year of service in leading the IPAC Board of Directors. Brad was at the helm for several big events, including the selection of the High Tech Crime Units.

Nominate Your Staff for IPAC Awards (Deadline Extended to Sept. 9)

Applications are now open for IPAC's 2022 Awards Program. If you have a member of your office that you would like to recognize, consider nominating them for one of several awards that IPAC hands out at the Awards Program during Winter Conference and Newly Elected School in Indianapolis this December.

IPAC is looking for nominees in the following categories.

- Steve Johnson Award - Given to a prosecutor who has shown the highest level of skill and commitment to the field of prosecution.
- Kathy Falkner Richey Award - Given to office staff who have displayed great skill and work ethic to a prosecutor's office
- Victim Advocate of the Year - Awarded to someone in victim's services who display skill and compassion in their work
- Law Enforcement of the Year - Awarded to a law enforcement partner who went above and beyond in an investigation or incident.
- Law Enforcement Distinguished Service - For a law enforcement partner who has a decorated and long career of assisting prosecutors.

Nominations need to be submitted by September 9, 2022 to be considered.

Don't forget to also recognize staff and prosecutors who have recently achieved 10, 20, 30 or 40 years of service.

For more information, email Zach at zosowski@ipac.in.gov

Calendar of Events

- **Webinar: Children and Guns**
September 14
Online
- **Officer Involved Shootings**
October 7
Indianapolis
- **Newly Elected School & Winter Conference**
December 4-8
Indianapolis



News & Notes

First Keith Henderson Scholarships Awarded

After the untimely passing of Floyd County Prosecutor Keith Henderson, the Association of Indiana Prosecuting Attorneys, Inc. announced a memorial scholarship to honor his legacy as a prosecutor.

The scholarships are awarded, by the Board, to younger prosecutors who would like to attend in person trainings that will further their knowledge and understanding of prosecution.

Due to the COVID pandemic, in person trainings have been hard to come by but recently, the Board was able to award two scholarships to Pulaski County Prosecutor Kelly Gaumer and Delaware County Deputy Prosecutor Andrew Ramirez who attended a recent training by the National District Attorneys Association in Chicago.

Going forward, the Board plans on awarding two scholarships per year for the next four years.

IPAC will distribute information for the next round of Henderson Scholarships in early 2023.

Public Service Loan Forgiveness

Last October, the Federal government made a few, significant changes to the Public Service Loan Forgiveness program. If you're not familiar with the PSLF program, if you work for some type of federal, state or local government or a not-for-profit organization, your students loans can be forgiven after you make 120 monthly payments on your student loans.

In October of 2021, the Federal government changed some of the requirements to make it easier for borrowers to qualify but those changes end on October 31, 2022 and the old rules will be reinstated.

Nearly everyone working for a prosecutor's office in Indiana would qualify as a government employee and therefore might be eligible for loan forgiveness depending on how long an individual has been making payments.

To see if you are eligible and to formally submit a request to have your loans forgiven if you qualify, [click here](#).

Again, the new rules end on October 31. Everyone with students loans should at least check to see if they qualify for forgiveness. More than 100,000 people have already had their student loan debt wiped out thanks to this new program.

*Please note this program is different than the recent student loan forgiveness announcement from the White House

Indiana Supreme Court Upholds Child Deposition Law

Some of you may remember back in 2020 the General Assembly passed a bill regarding the depositions of child sex abuse victims younger than 16. The statute provides that if a defendant in a sex crime case wants to depose a victim who is under 16 years old, they must first request permission from the prosecutor.

There have been several rulings from lower courts over the past two years on this going back and forth but the Indiana Supreme Court has upheld the statute and said that not allowing depositions for some sex crime victims does not violate any Indiana Trial Rules.

The court also ruled that the 2020 law does not violate any of defendant's constitutional rights. Noting "the right of confrontation applies at trial, not in discovery, and no court has found the unavailability of depositions in criminal cases to be unconstitutional."

This was also covered in more detail in July's Case Notes but IPAC is very encouraged and pleased by this recent ruling.

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Naylor's Notes



By Chris Naylor
IPAC Executive Director

As we move rapidly towards 2023, this season will be marked as a period of transition for many in the prosecution community. Many prosecutors are not seeking an additional term of office, and there will be many new faces in new positions. With the start of a fresh four-year term, prosecutors will have opportunities to get more involved in IPAC activities. In particular, this will be a great time for prosecutors who are interested in making statewide contributions to step up and become a part of IPAC's robust committee structure.

Participating as member of one of IPAC's standing committees is a tremendous service opportunity for prosecutors to utilize their experience and breadth of knowledge to advance the greater goals of enhanced statewide public safety, emerging policy development, and the ongoing professional development of prosecutors of all experience levels. Almost all prosecutors who have served on IPAC committees will tell you that participating in this way is extremely rewarding and impactful.

Each standing committee convenes two to five times each year in person or via Teams to take up review of issues, course development for training, or other committee work. The work of each committee is summarized and reported to the IPAC Board at periodic Board meetings. It has been customary for prosecutors interested in serving on the IPAC Board to initially serve on one or more IPAC committees. This gives prosecutors a good first step with IPAC involvement and can help inform whether serving on the IPAC Board could be appealing.

There are currently openings on several IPAC committees. IPAC has established a simple process to enable prosecutors to express interest in serving on a committee. Interested prosecutors will be asked to [submit this form](#) to IPAC by September 30, 2022. The form includes information regarding prosecutorial experience and the committee(s) of interest. While most committee members are elected prosecutors, chief deputies and deputy prosecutors are also eligible to serve. If you are a chief deputy or deputy prosecutor and you are interested in a committee, you will be asked to get approval to serve from your elected prosecutor.

Here are the IPAC committees with open spots:

Complex Litigation Committee

This committee advises prosecutors on capital cases, law enforcement involved shootings, and cases involving custodial deaths. The committee may also advise on prosecutors on any case of a highly complex nature that involves complicated issues or considerations. The committee is comprised of very experienced prosecutors.

Diversion/Deferral and Forfeiture Committee

The committee identifies programmatic tools and resources that can be used in felony diversion. The committee drafts guidelines for the expenditure of funds derived from a deferral program or pretrial diversion program and drafts guidelines for the expenditure of funds or the use and disposition of property awarded in a forfeiture proceeding.

Domestic Violence and Sex Crimes Committee

The committee is comprised of prosecutors with significant experience in DV and sex crimes. The committee provides input in the development of pertinent curriculum and makes recommendations and provides oversight pertaining to trial advocacy courses. The committee acts as a liaison with DCS, FSSA, and the Indiana Supreme Court's Office of Judicial Administration, as well as with relevant private organizations.

Public Relations/Outreach Committee

The committee develops training geared towards working with the media. The committee develops standardized public safety messaging to highlight positive contributions made by prosecutors. The committee encourages and fosters relationships with community groups, and the committee is available to assist prosecutors with procedures and policies for responding to complex or high-profile media inquiries.

Juvenile Justice Committee

The committee is comprised of prosecutors with significant juvenile law experience. The committee advises prosecutors on delinquency and related juvenile justice issues. The committee studies the juvenile system and makes legislative and policy recommendations. The committee provides oversight for manuals and forms and provides input for the development of training curriculum.

Technology/Computer Committee

The committee provides oversight and input on a number of tech related issues, including the following: reviewing contracts and proposals involving computer/tech resources; serving as prosecutor representatives in dealing with information technology vendors; identifying and promoting resource procurement to advance the use of technology by prosecutors and staff; and making budget allocation recommendations for computer/tech resources.

Please submit form expressing interest by September 30!

We greatly appreciate the "volunteer" work that prosecutors put in as members of IPAC committees that definitely go above and beyond the "job description" of serving as a prosecutor in your community. IPAC is a much stronger organization when there's broad participation from our membership.

IPAC CASE NOTES

By Glenn Johnson, Director of Research



State v. Neukam

IPAC's Director of Research Glenn Johnson summarizes another recent ruling regarding a loophole in state law regarding crimes committed by juveniles not being disclosed until the offenders is an adult.

In 2017, Anthony Neukam, who was 20 years old at the time, was charged with four counts of F3 child molesting, three counts of F3 rape, and two counts of F5 sexual misconduct with a minor. Neukam had committed these acts when he was 18 years old. In 2019, when Neukam was 22, the State filed a petition in the juvenile court alleging that he had committed "eight separate acts that would constitute Class B felony child molesting if committed by an adult." The State's petition alleged that Neukam had committed these acts when he would have been between 14-17 years old and involved the same victim. Additionally, the State petitioned to waive jurisdiction to adult court. However, after the decision in *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020), which holds that juvenile courts do not have any jurisdiction over individuals who are no longer "child[ren]" as defined by Ind. Code § 31-9-2-13(d), including for purposes of waiving a case to adult court, the State moved to dismiss Neukam's juvenile case. The court granted the motion, and then the State moved to amend the charging information in Neukam's adult case to include the eight allegations from the juvenile case that were dismissed. However, the court denied the State's motion "due to the age of [Neukam] at the time of the alleged offenses to be added to the charging information . . ." The Court of Appeals agreed with the trial court's ruling.

The Supreme Court granted transfer and has now also affirmed (with Justices Massa and Goff dissenting). "Under the governing statutes, a child's delinquent act does not ripen into a crime when the child ages out of the juvenile system. The result is that neither the juvenile court nor the circuit court has jurisdiction here. In short, this case falls within a jurisdictional gap only the legislature can close." The Court looked at the definition of "crime" under Ind. Code § 33-23-1-4 as "a felony or misdemeanor" and the definition

of a "delinquent act" under Ind. Code § 31-37-1-2(1) as "an offense if committed by an adult" and inferred that "the legislature intended 'criminal' acts to be distinct from 'delinquent acts.'" "[A] circuit court has jurisdiction over only 'criminal cases'. And a delinquent act by a juvenile cannot 'be' a crime because it 'would be' a crime only if committed by an adult. Thus, under the relevant statutes, circuit courts lack jurisdiction over conduct by juveniles." The end result is that no court has jurisdiction to hold Neukam and others like him accountable for their actions, unless and until the legislature enacts a "fix." (There is the off chance, given the 3-2 vote, that a rehearing petition could lead to a different result, but frankly it is a very small possibility.)

We at IPAC are aware that some defense attorneys are reading this case as also calling into question the whole juvenile waiver statutory scheme. The majority did say towards the end of the opinion, "[w]e also recognize our decision today raises questions about circuit court jurisdiction vis-à-vis the juvenile court's waiver statutes and the criminal court's transfer statute," and Justice Goff's dissent seemed to agree with that assessment. However, we do not believe the opinion as a whole supports such an argument, and believe that the quoted language clearly is dicta that was wholly unrelated to the case's holding. The case is based on a statutory gap where a defendant "ages out" of the juvenile system before a crime is discovered, whereas the waiver statutes appear to be quite clear on which court has jurisdiction when, and how, over juveniles who commit offenses and are still under 21 years old at the time of filing. But, these defense arguments are coming and will need to be met head on. Please contact me or Tracy Fitz if you need help responding to them.

***Glenn can be reached at GJohnson@ipac.in.gov**

***Email Zach Osowski ZOowski@ipac.in.gov to be added to the mailing list for Glenn's monthly Case Notes**

More than Lawyers

In our last newsletter, we asked you to send in tips about prosecutors and staff in your offices who have hobbies and intrests outside of their day jobs. Thanks to everyone who submitted something. This newsletter features two of those submissions. Keep the tips coming in.



Its a Marathon, not a Sprint

A lot of things in the world of prosecution and law can feel like a marathon. Law school; studying for the bar; taking the bar; waiting for a jury to reach a decision. And no doubt plenty of young lawyers have heard the phrase 'it's a marathon, not a sprint' from an older lawyer while preparing for a trial. Hancock County Deputy Prosecutor Michelle Wade knows a thing or two about marathons, in fact, she just wrapped up her 27th career marathon by taking part in the 2022 Boston Marathon.

When she's not prosecuting sex crimes in Hancock County, you can find Michelle jogging the streets of Greenfield.



When prepping for a marathon, her 18-week training regimen has her running 50 to 60 miles a week. Not bad for someone who could barely run a mile when she started her jogging journey.

"I actually was never into running until I had kids," Michelle said. "My dad and brother were the runners of the family."

Hancock County Deputy Prosecutor Michelle Wade after finishing the 2022 Boston Marathon

But Michelle decided she needed to do something to stay in shape, so she started running.

"I will say this to anyone who is thinking about starting, the first four months are terrible," Michelle joked. "You get cramps, you get shin splints, your body is not happy with you. I would jog for a few minutes and then have to walk."

But she kept at it and just three years after she started running, she finished her first marathon. Now, Michelle routinely runs two a year, the Indianapolis Monumental Marathon in November, where she has to hit a certain time to qualify for the Boston Marathon in the spring.

After completing the 2022 Boston Marathon in April, Michelle has now competed there 11 times.

"There's nothing quite like the Boston Marathon," she said. "It's a party atmosphere, the crowd support is amazing. Its my favorite place to run."

Michelle said she has lots of good memories from her runs in Boston, including a time when she got to be a guide for a blind runner. For 26.2 miles, Michelle and her running partner were joined at the hands by a tether and Michelle would call out when they were about to make a turn.

"That was a very cool experience," Michelle said. "It was incredibly inspiring to see someone push through their physical limitations and I was happy to be a part of that experience for her."

Baking Away Stress

There are a lot of ways to cope with the stress of dealing with law school, some of them helpful and healthy, some of them not so helpful. For one deputy prosecutor in Vigo County, her stress relief of choice led to a business opportunity.

"There's so much reading and listening in law school and you never really see any sort of results, there's nothing tangible for all the work you put in for months at a time," said Cynthia Fisher. "So I started baking. One evening of work and I had something to show for it. Cakes, cookies, whatever. Something I could share."

****Story continues on next page**



The Fisher Family announcing the creation of Five Cardinals Bakery

***Continued**

A love of baking goes all the way back to elementary school for Cynthia when her mom taught her how to bake. Cynthia said she can still remember coming home from school and smelling cinnamon raisin bread cooking. But she rediscovered the passion in law school and has now turned it into a small business venture with her husband, Eric. They now sell sweets and breads under the banner of Five Cardinals Bakery.

“Eric and I have talked for awhile about one day opening a bakery and running our own business,” Cynthia said. “But then we said, ‘why wait’ and just jumped into it.”

The Fishers have been selling at the Terre Haute farmers market on weekends since November of 2021. Despite the late nights and hectic weekends (the Fishers also have

three kids under the age of five) Cynthia said they are loving every minute of it.

They still cook in their family kitchen so a typical end of the week sees Eric making artisan breads on Thursday and Friday and Cynthia staying up until 4 a.m. Friday night into Saturday morning with her cookies and muffins for the farmers markets.

“When you love doing something, the other stuff doesn’t really matter,” Cynthia said. “And we love what we’re doing.”

What started as a mother giving her daughter life skills that turned into a way to get through law school has become a full-blown small business venture that has the Fishers contemplating adding an oven in their garage.

Legislative Update: Abortion Bill Tightens Restrictions, Vague Criminal Language Causes Concern

With Governor Holcomb’s signature on August 5th, Indiana’s Legislature was the first state to enact new restrictions on abortion post-Dobbs. The law goes into effect on September 15th. Below is a summary of the legislation. You can read the bill [here](#).

Requirements:

- Abortions may only be performed in cases of rape, incest, child molest, sexual misconduct with a minor, child seduction, a fatal fetal anomaly, to prevent a serious health risk to the mother, or to save the life of the mother.
- The criminal exceptions include delinquent acts that would be a crime if committed by an adult.
- All abortions must be performed in either: (1) a licensed hospital or (2) an ambulatory outpatient surgical center that is primarily owned by a licensed hospital.
- The act outlaws abortion clinics such as Planned Parenthood unless they obtain a license as an outpatient surgical center.

Criminal Provisions:

- Failure to report an abortion complication to DOH is a Class B Misdemeanor.
- A person who knowingly or intentionally performs an abortion prohibited in IC 16-34-2-1 commits a Level 5 Felony.
- A physician who knowingly or intentionally performs an abortion in violation of IC 16-34-2-1(a)(1)(D) or IC 16-34-2-4 commits a Class A Misdemeanor.
- A person who knowingly or intentionally performs an abortion in violation of IC 16-34-2-1.1 commits a Class A Infraction.
- Provides that it is a defense to any crime involving the death of or injury to a fetus that the defendant was a pregnant woman who committed the unlawful act with the intent to terminate her pregnancy.
- It is a defense to any crime involving the death of or injury to a fetus other than (1) performing an

unlawful abortion IC 16-34-2-7; and (2) feticide IC 35-42-1-6, that the mother of the fetus requested that the defendant terminate her pregnancy and that the death or injury was a result of the defendant’s termination or attempted termination of her pregnancy.

- Provides that feticide does not apply to:
 - A. The pregnant woman;
 - B. A licensed physician performing an abortion whether or not the abortion was authorized under IC 16-34-2-1; or
 - C. A person who in good faith provides medical treatment to a pregnant woman that results in the accidental or unintentional termination of the pregnancy.

Requirements for Doctors:

- Prior to an abortion resulting from a doctor’s reasonable medical judgment that it is necessary to prevent any serious health risk, to save the life of the mother, or a lethal fetal anomaly, requires the doctor to (1) certify in writing that based on reasonable medical judgment the abortion is necessary for one of the aforementioned reasons; and (2) attach all facts and reasons supporting the decision to the certification.

Other Notes:

- Provides an exception to the requirement for doctors to have the consent of a parent, legal guardian, or custodian of a minor before performing an abortion in the cases where the pregnancy was a result of a sex crime committed by a parent, legal guardian, or custodian of the minor.
- Requires the medical license board to revoke a physician’s license if the AG is able to prove by a preponderance of the evidence that the physician performed an unlawful abortion.
- Establishes a prosecutorial oversight taskforce to make recommendations to the general assembly on ways to enforce laws where a prosecutor has categorically refused or makes a blanket refusal to enforce the law. This taskforce includes the IPAC Executive Director and expires December 31, 2022.