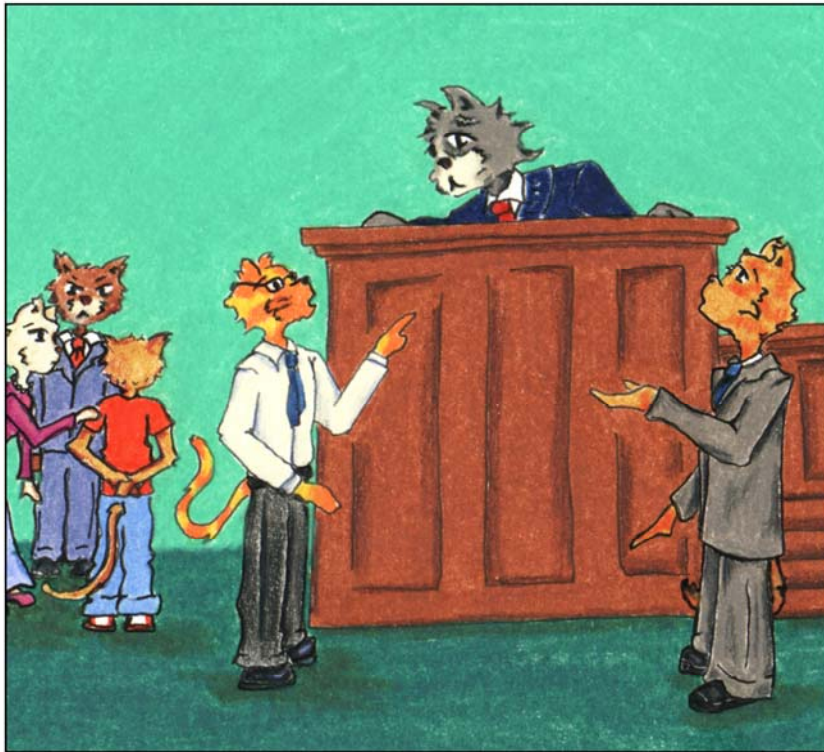


Understanding the Juvenile Court Process: A 2005 Handbook for Child Service Professionals



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Understanding the Juvenile Court Process:

A 2005 Handbook for Child Service Professionals

This publication was created through the collaborative efforts of the Youth Law T.E.A.M. of Indiana and the Children's Law Center of Indiana for the purpose of providing legally accurate and easily understandable information on the complexities of the juvenile system in Indiana to child service professionals.

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Introduction

The purpose of this Handbook is to help child service professionals understand the juvenile court system so they can work toward more positive outcomes for the children and adults whom they serve. The child service professionals for whom this Handbook is written include Department of Child Services family case managers, private agency and multi-service agency social workers and staff, child therapists and other mental health professionals, medical personnel, clergy and youth ministers, school personnel and volunteers, Court Appointed Special Advocates and Guardians ad Litem. Volunteers who work with children such as Scout leaders, and Big Brothers or Big Sisters may also find this Handbook to be helpful. The material in the parenthesis refers the reader to citations for relevant Indiana laws, which can be found at www.state.in.us/legislature/ic/code/.

I. Definitions

A. Delinquency and Status offenses

A delinquent child (I.C. 31-9-2-38) is a person under the age of eighteen (18) years who has allegedly committed a **delinquent act**. (I.C. 31-37-1-2) Unless the child's case is waived to a court with jurisdiction over adults, the juvenile court may continue jurisdiction over the child until the child reaches the age of twenty-one (21) years. A **delinquent act** includes an offense which would be a crime if committed by an adult or a **status offense** which is conduct considered unlawful because of a person's age. (I.C. 31-9-2-30) A status offense includes running away, truancy, underage drinking, and habitual disobedience. (I.C. 31-37-2-2 through 6) All **status offenses** are heard in juvenile court.

B. Participants in the Juvenile Court System

Persons with significant roles in juvenile court include the **Judge (Magistrate/Referee/Commissioner)** (I.C. 31-31-3-2; I.C. 31-31-3-3; I.C. 31-31-4-5) who rules on what evidence can be considered, makes detention and probable cause findings, determines whether a child is adjudicated to be a delinquent child, and determines the disposition and any modifications of the disposition of a child's case, including parental participation orders. Judges are elected by the voters in the county but they may be assisted by a magistrate, referee or commissioner who fulfills the same judicial functions. The **County Prosecutor** (I.C. 31-9-2-99) is a lawyer who represents the interests of the state in determining whether to request authorization from the Judge to file a delinquency petition, filing the petition, proving the allegations in the petition against the child and presenting evidence to the Judge at dispositional or modification of disposition hearings. The Prosecutor may have **Deputy Prosecutors** to assist him. The **Probation Officer** (I.C. 31-31-5-1 through 5) and **Intake Officer** (I.C. 31-9-2-62) are county staff who gather information and make recommendations to the Judge. The Intake Officer conducts Preliminary Inquiry investigations and recommends whether a child's case should be dismissed, sent to a diversion program, handled as an informal adjustment or filed as a delinquency petition. When a law enforcement officer brings a child into a detention facility, the Intake Officer decides whether the child should be released or remains in detention pending a hearing. **The Attorney for the Department of Child Services (DCS)** (I.C. 31-37-10-1) may represent the interest of the state only when the child is

alleged to be a status offender. He fulfills a similar role as the Prosecutor on the status offense cases.

The Public Defender/Private Defense Attorney (I.C. 31-32-2-2; I.C. 31-32-4-1; I.C. 31-31-4-2) is an attorney who is appointed by the Judge or hired by the child's family to represent the child who is alleged to be delinquent. The child has a right to be represented by a court appointed attorney, which is not based on the child's or parent's ability to pay. Although the law states that an attorney must be appointed by the Judge at the child's first court hearing, it is best if the child specifically requests an attorney at the earliest opportunity. The child's **Parents** are legal parties to the delinquency case. (I.C. 31-9-2-88) A parent is a biological or adoptive parent. Both of the child's parents are parties, even if the parents are divorced, separated, or were never married. The parent has all the rights of a legal party to the case, including the right to advance notice of all hearings. The parent can be represented by an attorney, present evidence, question witnesses, and review reports which have been presented to the Judge. The parent's right to review reports can be limited by the Judge. The parent does not have the right to a free court appointed attorney in his child's delinquency case. (I.C. 31-37-10-7; I.C. 31-32-4-3) The **Child** alleged to be delinquent is also a party to his delinquency case.

II. Children's Rights in Juvenile Proceedings

A. Custodial Interrogation by Law enforcement

A child who has been arrested has several important constitutional rights, including the **right to meaningful consultation** (I.C. 31-32-5-1) Meaningful consultation is the opportunity for the child to speak privately with the custodial parent, guardian, custodian or guardian ad litem before answering law enforcement's questions or making a statement to law enforcement. The child who is in law enforcement custody also has the **right to remain silent** and the **right to refrain from making incriminating statements**.

B. Child's Courtroom Rights

In the courtroom a child charged with a delinquent act has the **right to know the nature of the charge against him**, the **right to court appointed counsel**, the **right to refrain from testifying against himself**, the **right to confront and cross-examine witnesses against him**, the **right to introduce evidence on his behalf**, and the **right to obtain witnesses or evidence by subpoena**. (I.C. 31-37-12-5; I.C. 31-32-2-1; I.C. 31-32-2-4) The child also has the **right to advance notice of all hearings** and the **right to be present** at all hearings.

Delinquency proceedings are **open to the public** whenever the child is charged with an act that would be murder or a felony if committed by an adult. The juvenile court may order portions of a delinquency proceeding closed during the testimony of a child victim or witness concerning sexual matters. (I.C. 31-32-6-4; I.C. 31-32-6-5) Juveniles who are being tried in court for a status offense or a delinquency act **do not have the right to a jury trial**. All juvenile proceedings are tried before the Judge (Magistrate/ Referee/Commissioner). (I.C. 31-32-6-7) Juveniles have no right to bail in juvenile court. (I.C. 31-37-6-9)

C. Waiver of Rights

A child can give up or **waive** his custodial interrogation or courtroom rights if he does so **knowingly, voluntarily and intelligently**. In determining whether the child waived his rights during a custodial interrogation the court must consider: (1) whether the child was informed of his right to remain silent and his right to counsel; (2) whether the child and his parent had been informed of the delinquent act of which he was suspected or charged; (3) the length of time the child was held in custody before consulting with his parent; (4) whether the child, his parent or attorney understood the consequences of the child's statements; (5) whether there was coercion, force or intimidation and the child's physical, mental or emotional maturity. (I.C. 31-32-5-4) In general, a child cannot give up his own rights unless he has been emancipated. **A child's rights may be waived by his attorney or his custodial parent, guardian, custodian or guardian ad litem as long as the child knowingly and voluntarily joins with the waiver.** The custodial parent, guardian, custodian or guardian ad litem must have no interest adverse to the child, must also knowingly and voluntarily waive the child's rights, and meaningful consultation must have occurred before the waiver. (I.C. 31-32-5-1) The child may also waive the right to meaningful consultation with the custodial parent, custodian, guardian or guardian ad litem if the child is informed of the right, and waives it knowingly and voluntarily in the presence of the custodial parent, guardian, custodian, guardian ad litem or attorney. (I.C. 31-32-5-2) An effect of the child's waiver of rights is that incriminating statements he has made may be used against him. Another effect of waiver is that the child may give up the right to have an attorney to represent him.

III. Jurisdiction Over a Child's Case

A child's case must be heard in the court which has the legal authority to make valid court orders about the child. Status offenses are always tried in juvenile court, but Indiana law also provides for children to be tried in other courts if certain conditions exist.

A. Direct Filing in Adult Criminal Court

If a child is at least sixteen (16) years old at the time of the alleged delinquency act, the **criminal case against the child will be directly filed and tried in adult criminal court if the charge is: (1) murder; (2) kidnapping; (3) rape; (4) criminal deviate conduct; (5) robbery if committed while armed with a deadly weapon or which results in bodily injury; (6) carjacking; (7) criminal gang activity; (8) certain weapons charges and dealing in controlled substance charges (drugs).** The adult criminal court keeps jurisdiction over the child even if the child pleads guilty of or is convicted of a lesser included offense. (I.C. 31-30-1-4)

B. Waiver of Jurisdiction to Adult Criminal Court

The juvenile court may also waive or give up jurisdiction to the adult criminal court on an individual case if certain circumstances apply. Waiver of jurisdiction occurs when it is in the best interest of the safety and welfare of the community that the child be tried as an adult. The court must also find that the child is beyond

rehabilitation under the juvenile justice system. **Usually children who are waived to the adult criminal court are at least fourteen (14) years of age at the time when the offense occurred. An exception is that children who are charged with an act that would be murder if committed by an adult may be waived to adult criminal court if they were ten (10) years of age at the time when the offense occurred.**

If the prosecutor determines that juvenile jurisdiction should be waived and the child should be tried as adult, the prosecutor may ask the judge to waive jurisdiction to the adult criminal court. If the child has been in detention, the waiver hearing must be held within twenty (20) days, excluding weekends and holidays, of the filing of the delinquency petition. This timeline may be extended if the child or his attorney requests a continuance. If the child does not admit the juvenile court delinquency allegations at the initial hearing, the prosecutor may file a petition to waive jurisdiction to adult court at any time until the first witness is sworn at the fact-finding hearing.

The law allows waiver in some cases and favors it in others. The law requires a “full investigation and hearing” in all cases except where the child has already been convicted of a crime in adult court. **The prosecutor has the burden of proving that the case should be waived. The standard of proof is “by a preponderance of the evidence”** which means the evidence must establish that the allegations are more likely than not true. If the court grants the prosecutor’s waiver motion, the judge will order the child detained, or released on bond, pending further proceedings in adult court. If the court denies the state’s waiver motion, a fact-finding hearing must be held within ten (10) days, excluding weekends and holidays. Examples of charges for which children are usually waived are: (1) murder; (2) involuntary manslaughter; (3) reckless homicide; (4) serious felonies; (5) a second felony charge if the child has been previously convicted of a felony or a non-traffic misdemeanor; (6) drug charges; (7) heinous or aggravated acts and acts which are part of a repetitive pattern of delinquent acts. (I.C. 31-30-3-2)

C. Other Offenses Which Are Not Tried in Juvenile Court

If a child is charged with a violation of an ordinance or an infraction, these cases are not handled in juvenile court. Examples are parking tickets which are local ordinance and possession of tobacco, which is an infraction. If the child is at least sixteen years of age, misdemeanor traffic offenses are not tried in juvenile court except for the charge of driving while intoxicated. An exception to this rule applies in Lake and Marion Counties, where all children who are under the age of eighteen (18) years and who have been taken into custody for any traffic offenses have their cases tried in juvenile court.

IV. Arrest, Detention and Detention Hearing

A. Arrest

A law enforcement officer can arrest a child if the officer has probable cause to believe the child has committed a delinquent act. (I.C. 31-37-4-2) **The law enforcement officer may release the child** to the child’s parent, guardian or custodian if the parent, guardian or custodian promises in writing to bring the child to juvenile court at a specific time. (I.C. 31-37-5-3) **The law enforcement officer may**

detain the child if the officer reasonably believes that the child will not appear for court proceedings; the child has allegedly committed an act that would be murder or a Class A or Class B felony if committed by an adult; or detaining the child is necessary to protect the child or the community; or the child's parent cannot be located or is unwilling to assume custody of the child; or the child asks to be detained for a good reason. (I.C. 31-37-5-3)

B. Place and Length of Detention

If law enforcement determines that detention of the child is necessary, **the law enforcement officer will take the child to a place designated by the court, probably the local juvenile detention facility if there is one in the community.** If the community does not have a juvenile detention facility, the child will probably be taken to a law enforcement agency such as the sheriff's department or a local police department. The law enforcement officer must immediately notify the parent and an intake officer where the child is being held and why the child is being detained. The intake officer, using the same criteria as the law enforcement officer, will review the detention decision. The intake officer can reverse the law enforcement officer's decision and release the child to the parent, or the intake officer can require the child to remain in detention pending a detention hearing.

The law favors imposing the least restriction on the child's freedom and the least amount of interaction with adult offenders possible under the circumstances. If the community does not have a juvenile detention facility and the child has committed an act that would be a crime if committed by an adult, **he may be detained in a secure portion of the county jail or other adult lockup for a maximum of only six (6) hours** after arrest for the limited purposes of: identification, processing, interrogation, release to parents or transfer to a juvenile detention facility. If the child is detained for these limited purposes, he must be sight and sound separated from adult offenders. If the child has committed an act that is only a status offense, he may not be placed in a secure portion of an adult jail or lockup for any period of time. If the community has a juvenile detention facility and the child has committed an act that would be a crime, the child may be detained in the local juvenile detention center.

If the intake officer does not release the child, a detention hearing must be held by the juvenile court judge within forty-eight (48) hours, excluding weekends and holidays. If the child has committed an act that is only a status offense, he may not be detained in a juvenile detention facility pending the detention hearing. An exception is that if the offense is runaway, the child may be detained in a juvenile detention facility for not more than twenty-four (24) hours before and twenty-four (24) hours after the initial court appearance, excluding weekends and holidays. (I.C. 31-37-7-3). **While a status offender may not be detained in a juvenile detention facility pending the detention hearing, he may be detained (placed by court order) in a shelter care facility or other non-secure facility.** (I.C. 31-37-5-2 through 6)

C. Detention Hearing

At the detention hearing, the judge **advises the child of his rights** and decides whether to release the child to a parent, guardian or custodian or to detain the child

for further proceedings. If the child is detained as a result of an act that would be a crime if committed by an adult, **the child must be detained in a juvenile detention facility in the county where the child's family lives** unless the child's home county does not have an appropriate facility. (I.C. 31-37-7-1 through 4) The judge may detain the child if there is probable cause to believe that the child committed a delinquent act or a status offense and the child is unlikely to appear for further hearings; or detention is essential to protect the child or the community; or the child's parent, guardian or custodian cannot be located or is unwilling or unable to take custody of the child; or the child has requested to remain in custody and the request is reasonable. (I.C. 31-37-6-6)

The Judge may release the child to the parent, guardian or custodian unconditionally or with conditions. Conditions imposed can include a no contact order with an alleged victim or home detention, which may be electronically monitored. The court may require surrender of child's driver's license. The court may hold an additional detention hearing on the child's or on the court's own motion. (I.C. 31-37-6-7; I.C. 31-37-6-8)

V. **Preliminary Inquiry, informal Adjustment, Delinquency Petition and Initial Hearing**

A. **Preliminary Inquiry**

A person may give written information to an intake officer or the prosecutor indicating that a child is a delinquent child. If the intake officer receives the information, he shall immediately send it to the prosecutor. If the prosecutor has reason to believe that a child has committed a delinquent act, the prosecutor shall instruct the intake officer to conduct a preliminary inquiry. (I.C. 31-37-8-1) A preliminary inquiry is an informal investigation into the facts and circumstances surrounding the child and the alleged delinquent act, including the child's background, current status and school performance whenever practicable. (I.C. 31-37-8-2) The child's parent, guardian or custodian shall be notified that a preliminary inquiry is being made if the parent, guardian or custodian seeks information concerning the inquiry. (I.C. 31-37-8-3) If the child is interviewed by the intake officer, the child and his parents must be informed of the following: (1) the nature of the allegations against the child; (2) the intake officer's role in assisting the prosecutor to determine whether a delinquency petition should be filed; (3) the child has a right to remain silent, and his statements may be used against him; (4) the child has a right to a free court appointed attorney; (5) the child has a right to speak with an attorney before the interview; (6) the child can stop talking to the intake officer at any time, including stopping the interview to consult with his attorney. The intake officer must also inform the child and his parent, guardian or custodian that the **intake officer will recommend** to the prosecutor or the DCS attorney (in the event of a status offense) whether to: **(1) file a delinquency petition; (2) informally adjust the case; (3) refer the child to another agency; or (4) dismiss the case.** (I.C. 31-37-8-4)

B. **Informal Adjustment**

With the juvenile court's approval and after completing the preliminary inquiry, the intake officer can recommend that a formal delinquency petition not be filed and recommend that the child and parents be offered services and supervised for

participation in those services. **“Informal adjustments” are frequently recommended when the child has little or no prior history with the court and the charge is not serious.** The intake officer must have probable cause to believe the child is a delinquent child and the child and his parent or the child’s attorney must agree to the program. If the child successfully completes the program, there is no finding of delinquency and the case is closed. Informal adjustments can be used for both status and criminal misconduct offenders.

Informal adjustments can last for up to six (6) months and may be extended once for another six (6) months. The court can order payment of a monthly participation fee. If the child and parent do not complete the program, the prosecutor may file a petition requesting a hearing. After the hearing the court can order the child and parent to participate in the program of informal adjustment. If the child then fails to participate, the prosecutor can file a delinquency petition and begin formal delinquency proceedings. When parents fail to participate, the court can find them in contempt. Sometimes an informal adjustment is called a diversion plan. (I.C. 31-37-9-1 through 10)

C. Delinquency Petition

The final decision whether to file a delinquency petition charging the child with a delinquency act rests with the prosecutor and the juvenile court. The DCS attorney may make the decision to file a delinquency petition charging the child with a status offense in some counties. (I.C. 31-37-8-6)

Technically, the prosecutor files a petition asking the court’s authority to file a petition alleging delinquency. The court considers the preliminary inquiry report and evidence of probable cause. If the court finds that there is probable cause and that it is in the best interests of the child or the public that the delinquency petition be filed, it must approve the filing of the petition. If the child has been in detention, the delinquency petition must be filed within seven (7) days, excluding weekends and holidays, after the child is taken into custody.

If the child has not been in detention prior to the filing of the delinquency petition, the attorney filing the petition may request that the child be taken into custody. The request must be in writing and supported with sworn testimony or affidavit. To make an order authorizing detention, a judge, who has heard testimony or read sworn statements, must make written findings that **there is probable cause to believe the child is a delinquent child** and that: **(1) the child is unlikely to appear for future court dates; (2) detention is necessary to protect the child or the community; (3) the parents cannot be located or are unable or unwilling to take custody of the child; or (4) the child has asked to be detained and has a reasonable basis for the request.** The order will direct where the child is to be taken upon arrest and the judge will order that a detention hearing be held within forty-eight (48) hours of the child’s arrest. (I.C. 31-37-10-1 throughout 8)

D. Initial Hearing

After a delinquency petition has been filed, the court must hold an initial hearing. An initial hearing may take place at the same time as a detention hearing and usually does in those cases where the child is already in custody. At the initial hearing

the judge first determines whether the child has an attorney. **If the child has not given up the right to counsel, the judge must appoint an attorney to represent the child at this hearing.** Next, in cases involving an act that would be a crime if committed by an adult, the judge asks the prosecutor if the state plans to ask permission to waive, or transfer, the child's case to adult court. If the state does intend to seek waiver, the court cannot allow the child to admit or deny the charge. Instead, a waiver hearing is scheduled.

The judge next advises the parent and the child of their rights and the consequences that can be imposed upon them if the child is found to be a delinquent child. **The judge must advise the parents that, if the child is adjudicated a delinquent child: (1) the parents may be required to participate in programs designed to help the child; (2) the parents may be ordered to pay for part or all of the services provided to them and the child; (3) the parents have the right to dispute whether they should be ordered to participate in and pay for services.**

If waiver is not an issue, the judge will then ask whether the child admits or denies the allegations in the petition alleging him to be a delinquent child. If the child says nothing, the judge will assume he denies the charge. If the child admits the allegations, the court shall enter judgment and schedule a dispositional hearing. The dispositional hearing can be held immediately thereafter if everyone consents. If the child denies the allegations or says nothing, the court will schedule a fact-finding hearing, unless everyone consents to the fact-finding being held immediately after the initial hearing. (I.C. 31-37-13-1 through 5)

VI. Delinquency Fact-Finding Hearing

If the child's case is not waived to adult criminal court and he does not admit the allegations in the delinquency petition, the court must hold a fact-finding hearing. If the child has been in detention, the fact-finding hearing must be held within twenty (20) days, excluding weekends and holidays, of the filing of the delinquency petition. This timeline may be extended if the child or his attorney requests a continuance.

A fact-finding hearing is a trial. The prosecutor calls witnesses to prove the child is a delinquent child. The child's defense attorney can call witnesses to rebut the prosecutor's evidence. Witnesses could include school or social services personnel. If the judge finds that the allegations are true (beyond a reasonable doubt as to the commission of a delinquent act and by a preponderance of the evidence as to the need for intervention in the case of status offenses), he will find the child to be delinquent, order a predispositional report and schedule a dispositional hearing. If the judge finds that the allegations are not true, the child is discharged, or released from the court's jurisdiction.

Alternatively, the court can withhold judgment for up to twelve (12) months. A child held in a juvenile detention facility must be released within forty-eight (48) hours of the hearing's conclusion, excluding weekends and holidays, pending entry of judgment. A child so released may be detained in a shelter care facility. If the parent or the child requests that the judge make a ruling, a judgment must be entered within thirty (30) days of the request. (I.C. 31-37-13-1 through 5)

VII. Predispositional Reports

A. Timing and Purpose of Predispositional Reports

If the judge finds that the child is a delinquent child, he must order a probation officer or caseworker to prepare a report that states what the child's needs are in terms of care, treatment, rehabilitation, or placement, and how they can best be met. **The other parties, including the parent and the guardian ad litem, may prepare their own reports.** The purpose of the report is to provide information and recommendations for the judge's dispositional order. After a delinquency petition has been filed, the court can order the child to undergo mental or physical examinations to provide information to the court regarding the need for treatment.

The person preparing the predispositional report may, or can be court-ordered to, confer with people who have expertise in areas relevant to the child's needs. For example, representatives from the local mental health center or developmental disabilities center may be included in the process. **If a child is known to be eligible for special education services, a representative from the child's school must be included in a pre-dispositional conference if one is held.** (I.C. 31-37-17-1 through 7)

B. Considerations, Contents and Disclosure of Predispositional Reports

The predispositional report must explore which options least restrict the child's freedom and interfere least with family life. The juvenile court judge may authorize a mental or physical examination of the child as well as an examination of the parents if they consent. **If the probation officer or caseworker feels that out-of-home placement is appropriate he must consider whether the child should be placed with a suitable and willing blood or adoptive relative before considering other out-of-home placements.** (I.C. 31-37-17-2; I.C. 31-37-17-5)

The report must include a description of all dispositional options considered, an evaluation of each option as compared to the recommended plan, and information about any person who assisted in the preparation of the report. (I.C. 31-37-17-6.1)

Copies of the report must be made available, in advance, to the child's attorney and to the court appointed guardian ad litem or court appointed special advocate, as well as each attorney representing the child's parent. Copies may be given to the child and parent unless the court states, on the record, that the report contains information that should not be released to them. In that case the court may give to the child and parents a summary of the report. (I.C. 31-37-17-6)

C. Parental Participation Recommendations

The person preparing the report also studies whether and how the parent should participate in the recommended program. The parents' finances will be investigated to determine whether and to what extent the parents are able to pay for any services provided to them or their child. Each parent must provide the court with a completed child support worksheet form. The prosecutor, a probation officer or caseworker, a representative from the department of correction, or a court appointed guardian ad litem or court appointed special advocate can file a petition seeking parental participation. **The petition can request that the parent be ordered to: (1) get help in fulfilling parental obligations; (2) provide specific care, treatment or**

supervision for the child; (3) work with a person providing care, treatment or rehabilitation for the child; or (4) refrain from direct or indirect contact with the child. (I.C. 31-37-19-24)

A hearing on a Petition to Require Parental Participation may be held at the same time as a detention hearing, the dispositional hearing, or any later hearing to modify, or change, the disposition. The court must advise the parents that failure to participate as ordered can lead to the termination of the parent-child relationship, i.e. loss of parental rights, including possible adoption of the child. Willful refusal by the parent to pay for services as ordered can result in a judgment being entered against the parent for the amount owed.

VIII. Dispositional Hearing

A. Hearing Procedures

The child and the child's parent(s), guardian or custodian and attorney should be present. The prosecutor and probation officer will usually be present. Predispositional reports are reviewed by the judge. Parties may ask questions of the person who prepared the predispositional report. After reviewing the reports, **the judge will issue a dispositional order stating the following: (1) the child's needs; (2) how the child's needs can best be met; (3) where the child shall be placed and under what conditions; (4) services that will be offered to the child and parents; (5) parental participation and reimbursement orders.**

B. Factors, Advisements and Options

The judge must enter a **dispositional order that, if consistent with the safety of the community and best interests of the child, is least disruptive of family life and is the least restrictive, most family like and most appropriate setting available** for the child. (I.C. 31-37-18-6) The judge will advise the child and parent that the dispositional decree can be modified at a later date. Modification can be requested due to the child's violation of probation requirements or suspended commitment to the Department of Correction. (I.C. 31-37-22-1 through 8) In general the judge has the following options available in a juvenile delinquency disposition: (1) supervision of the child by the probation department or department of child services; (2) registration as a "sex and violent offender" if the act he committed is one of several specified by law; (3) order the child to receive outpatient treatment at a social service agency or at a psychological, psychiatric, medical or an educational facility or from an individual practitioner; (4) order the child to surrender his driver's license to the court for a specified period of time; (5) order the child to pay restitution to the victim; (6) partially or completely emancipate the child; (7) order the child to attend an alcohol and drug services program; (8) order the child to perform community service for a specified period of time; (9) award wardship to the Department of Correction (DOC) for housing in a correctional facility for children or a community based correction facility for children; (10) remove the child from his home and place him in another home or shelter care facility; (11) award wardship to a person or shelter care facility; (12) place the child in a secure private facility for children licensed by the state; (13) order a person named in a protective order to have no direct or indirect contact with the child. (I.C. 31-37-19-1 through 27)

C. Commitment to the Department of Correction

The most severe dispositional order is commitment to the Department of Correction where the child will be placed in a correctional facility such as Boys' or Girls' School. The judge can also order a suspended commitment to DOC while the child is on probation and order the child to comply with specified services and conditions. If the child does not comply, the probation department may file a violation of suspended commitment against the child. After notice of the violation and a hearing, at which the child has the right to counsel, meaningful consultation and the right against self-incrimination, the child's suspended commitment may be revoked. If the child's suspended commitment is revoked, the child will then be committed to the DOC. The judge may reinstate jurisdiction over the child after the child is released from DOC. (I.C. 31-30-2-3) Generally a child is committed to the DOC for an indefinite period with the length of confinement determined by the DOC. However, in some instances, judges can impose fixed sentences, which the DOC cannot reduce. In addition to these sentences, the judge can impose any other disposition specified for non-status offenders.

If a child who is at least thirteen (13) years of age and less than sixteen (16) years old commits an act which would be murder, kidnapping, rape, criminal deviate conduct or armed robbery causing serious bodily injury or bodily injury, and the court finds there is clear and convincing evidence that the child is likely to repeat such an act; the court can sentence the child to the DOC for a fixed period not to exceed the child's eighteenth birthday. If a child who is at least fourteen (14) years of age commits an act which would be a felony against a person; or a class A or Class B felony controlled substance offense, or burglary; and has two unrelated prior adjudications for acts that would be felonies; the court can place the child in any authorized facility for not more than two (2) years.

D. Parental Participation and Reimbursement Orders

Another part of the judge's dispositional order can involve conduct of the child's parents. The parents may be ordered to participate in a program of care, treatment or rehabilitation for the child. This order may include working with and co-operating with probation officers, private social services agencies or other treatment providers. The Judge may reinstate jurisdiction over the parents after the child has been committed to DOC to ensure compliance with parental participation orders. (I.C. 31-30-2-1)

Parents may also be required to pay for or reimburse the county for services to the delinquent child, including the cost of residential placement. Parents must provide accurate financial information to the judge so that an appropriate amount of child support can be ordered for each parent. The judge can find, depending on the circumstances, that the parent is unable to pay reimbursement or that justice would not be served by ordering payment. (I.C. 31-40-1-3) Children who are placed on probation or their parents may be ordered to pay an initial probation user's fee and an ongoing probation user's fee. (I.C. 31-40-2-1)

IX. Review of Dispositional Orders and Continued Jurisdiction

The judge must regularly review each child's case in a court hearing. The probation department or county office of the department of child services and children must prepare a report describing what, if any, progress has been made toward meeting the goals of the dispositional decree. If the probation officer or caseworker plans to recommend modifying the court's order, a modification report must be submitted and a formal hearing requested.

A. Review of Dispositional Orders

The juvenile court must hold a formal hearing every twelve (12) months from the date of the child's removal from home, or original dispositional decree, whichever is earlier. Formal hearings can be held more often, at the court's discretion. At such a hearing the judge must decide whether the decree should be changed and whether the present placement is in the child's best interest. In doing so the judge may consider: (1) what family services have been offered; (2) how much the parents have improved their parenting skills; (3) how often the parents have visited the child and reasons for infrequent visitation; (4) how well the parents have cooperated with the probation officer or caseworker; (5) the child's recovery from any injuries suffered; (6) whether additional services are required for the child or parents; (7) the extent to which the child has been rehabilitated. (I.C. 31-37-20-2)

B. Review of Continued Jurisdiction

The juvenile court must hold a formal hearing every eighteen (18) months on the question of whether the court's jurisdiction over the child and parents should continue. The time requirement for the hearing to take place runs from the date of the original dispositional decree or removal of the child from the parents, whichever occurred first. The hearing can be held more often if ordered by the court.

The prosecutor or DCS attorney has the burden of proving by a preponderance of the evidence that jurisdiction should continue. To do so it must be shown that the goals of the dispositional decree have not been met and there is a probability of success if the decree is continued, with or without modifications.

If the court does not grant the request to continue jurisdiction it may authorize a petition for termination of the parent-child relationship, or discharge the child or parent. If the court finds that the objectives of the dispositional decree have been met, the court must discharge the child and parent.

X. Modification of Dispositional Orders

A. Process for Modification

The juvenile court's jurisdiction over the delinquent child continues until the child becomes 21 years of age, unless the court discharges the child and the child's parent at an earlier time, or guardianship of the child is awarded to the Department of Correction. During the court's jurisdiction, a motion to modify any dispositional decree may be made by the court, the child, a parent, the probation officer, the caseworker, the prosecutor or DCS attorney, any person providing court-ordered services to the child or parent or the child's guardian ad litem.

Motions to modify dispositional decrees are often actually allegations that a child has violated the terms of his probation or placement and can result in the

imposition of a more severe disposition. Sometimes these are called violation of probation or violation of suspended commitment to Department of Correction hearings. If an emergency change in the child's residence is required, the judge can issue a temporary order changing the placement. If the judge does so, notice of the change must be given to all affected persons, and if any one requests a hearing, a hearing must be held.

The child and parent have the same rights at a hearing to modify disposition that apply to an original dispositional hearing, including the child's right to a court appointed defense attorney.

B. Outcomes of Dispositional Modification

The same alternatives available to the judge at the original dispositional hearing are again at his disposal, with the addition of more restrictive options in the case of certain status offenders. This includes commitment to the Department of Correction.

If the child was originally found by the judge to be delinquent because he ran away and the dispositional decree includes placement in a shelter care facility or other residence (including the parents' residence), and (1) at the dispositional hearing the child received written warning that leaving the placement without permission could result in his detention in a secure facility; (2) the court's records reflect that he was warned; (3) he is not held in a juvenile detention facility for more than twenty-four (24) hours, excluding weekends and holidays; and (4) his mental and physical condition may be endangered if he is not placed in a secure facility; and (5) he violates the court's order in the original disposition by running away again; the juvenile court may modify its disposition order and place the child in a public or private facility. The same option is available in cases where the child is adjudicated delinquent based on acts of truancy, is warned that he may be confined in a secure facility if he again misses school and he violates the court's order regarding school attendance.

Children who repeatedly run away or are truant can also be made wards of the DOC. DOC can place them in any correctional facility for children, except that runaways and truants may not be housed with children found to be delinquent for any other reasons unless the DOC determines separate space is unavailable. A child placed in a local secure public facility or local alternative facility, which includes a local juvenile detention facility, may not stay there beyond thirty (30) days and the court must order specific treatment of the child designed to rehabilitate the child's disobedience of the court's original order.

The court must review all placements of runaways and truants in the DOC or other alternative secure facilities every three (3) months to see whether placement in a secure facility is still necessary. (I.C. 31-37-22-7)

XI. Confidentiality and Expungement of Juvenile Records

A. Court Records

The juvenile code aims to avoid stigmatizing juvenile offenders by protecting their privacy, therefore, court records are available, without a court order, only to: (1) the court staff, including the judge; (2) a party or the party's attorney (except when the judge has determined that a child or parent may not see all or part of a report);

(3) authorized representatives from the Department of Correction, and state or county office of the department of child services; (4) a parent in a divorce or custody proceeding that involves the child; (5) a judge or authorized staff member in a court that needs the information for a presentence investigation in that court; or (6) a school attended by the child to serve the child's educational needs or protect the health and safety of persons at the school. Limited information, including the child's name, is available to the public without a court order when the child is charged with an act that would be murder or a felony if committed by an adult; or the child is twelve (12) years old or older and accused of committing two (2) separate acts which would be misdemeanors if committed by an adult; or the child is under twelve (12) years old and accused of committing five (5) separate acts which would be misdemeanors if committed by an adult. If a child is found to be delinquent under the three above circumstances his photograph may also be released to the public.

Information that is not to be released without a court order, such as predispositional reports, and motions concerning psychological evaluations must be placed inside an envelope marked "confidential" and placed inside the court's file. The juvenile court may grant any person providing services to the child or the child's family permission to see the court's records. The court can also grant permission to see files on a case-by-case basis to other individuals depending on the circumstances. A juvenile court must grant access to limited information if the information is to be used during cross-examination in a criminal trial or delinquency fact-finding hearing. Victims or their families may be granted access for the purpose of suing the juvenile offender or his parents. (I.C. 31-39-1-1; I.C. 31-39-1-2; I.C. 31-39-2-1 through I.C. 31-39-2-15)

B. Law Enforcement Records

Law enforcement records pertaining to the commission of status offenses are confidential. When a child is accused of conduct that would be a crime if committed by an adult the following information is open to the public: (1) the nature of the offense and circumstances surrounding it, including the time, location and property involved; (2) the identity of any victim; (3) a description of how the offender was apprehended; (4) a description of any instrument of physical force used; (5) he identity of officers involved except for undercover units; (6) the age and sex of any child apprehended or sought; (7) the identity of the child if the child is suspected of committing an offense over which a juvenile court does not have jurisdiction or the child is sixteen (16) years old and suspected of a controlled substance violation.

Law enforcement records pertaining to juveniles are available, without specific permission from the law enforcement agency's director, to: (1) police officers acting within the scope of their duties; (2) the judge or other authorized staff of juvenile court; (3) a party to a juvenile court proceeding, or his attorney; (4) a criminal court judge or authorized staff member if the record is to be used in a presentence report in that court; (5) the prosecutor or any authorized staff member; (6) the attorney for the DCS or any authorized staff member.

Permission to see law enforcement records can be granted by the agency director on a case-by-case basis depending on the circumstances. Law enforcement agencies must allow any party in a criminal trial or delinquency fact-finding hearing to

see police records if they are to be used for cross-examination or to rebut evidence of good character. A victim of a delinquent act may obtain the name of a juvenile suspect in order to pursue a civil lawsuit to recover damages. The public has a right to inspect records relating to the detention of juvenile offenders in secure facilities. (I.C. 31-39-3-1 through I.C. 31-39-3-4; I.C. 31-39-4-1 through I.C. 31-39-4-14)

C. Expungement of Juvenile Court Records

Juvenile court records are not automatically erased, or expunged when the child reaches the age of twenty-one (21) years. The juvenile law allows any person to submit a petition for expungement, asking the juvenile court to remove from court and police files, and any files maintained by a person who provided court-ordered services to a child, all records pertaining to the child's involvement in juvenile court proceedings. In deciding whether to grant the request, the judge may consider: (1) the best interests of the child; (2) the age of the child at the time the records were made; (3) the nature of the allegations; (4) whether there was an informal adjustment or a delinquency finding; (5) the disposition of the case; (6) how the child participated in any services; (7) the length of time since the child has had contact with the juvenile court or any police agency; (8) whether the child has a criminal record; and (9) the child's current status. If the court orders the records expunged, the judge must order each police agency and each person who provided court-ordered treatment for the child to send their records to the court. The records can be destroyed or given to the person to whom they pertain.

XII. Practice Tips for Child Service Professionals

A. Rights

Acquaint children and parents with the child's rights and inform them of the seriousness of waiving the child's rights.

B. Provide Requested Information to Probation and Guardian ad Litem

The parent or child may want you to share information with the probation officer and the guardian ad litem regarding the services you or your organization have been providing to the family. Obtain the child's and custodial parent's written consent to release information about the child's or family's participation in social services or other services with your agency. Send written information about the child's or family's participation to the child's probation officer and guardian ad litem (if a GAL has been appointed). Inform the probation officer and GAL about additional services your agency can provide to help the family.

C. Assist the Parent to Present a Dispositional Plan

For disposition, both parents should work together to prepare a proposed written plan to present to the judge as a predispositional report. The plan should include relatives, friends and others such as pastors or church youth leaders who can mentor and supervise the child to prevent further status offenses or delinquent acts. Remember that the judge must consider the least restrictive, most family like plan consistent with the safety of the child and community. Help the parents to provide appropriate dispositional alternatives to the judge.

D. Encourage Attendance at Hearing and Keeping in Contact with Probation

It is crucial that the parents or guardians, who should know the most about the child's needs, be present at all hearings and provide input. Parents need to provide current addresses and telephone numbers to the child's probation officer so the parents can be informed of all hearings. Since low-income families often have transportation problems, help the parent and child develop a good plan, including an alternative plan, for transportation to court hearings. Parents or guardians should also assist the child in completing the child's probation or suspended commitment requirements. Compliance may prevent the need for a stricter dispositional modification.