

CHAPTER ELEVEN

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CHAPTER ELEVEN

FACT-FINDING HEARING

I. TIME PARAMETERS

A. IF CHILD IS DETAINED, HEARING HELD WITHIN 20 DAYS OF FILING PETITION

1. Hearing Held within 20 Days of Filing Petition

If: (1) a child is in detention; and (2) a petition has been filed; a fact-finding (or waiver) hearing must be commenced not later than twenty (20) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed. Ind. Code 31-37-11-2(a).

2. Home Detention Is Not Detention for Purposes of Speedy Trial

A child who is ordered detained in the home of the child's parent, guardian, or custodian or who is subject to other conditions of release under Ind. Code 31-37-6-6 may not be considered as being detained for purposes of the twenty-day time parameter. Ind. Code 31-37-11-2(c).

3. Failure to Adhere to Time Parameters Results in Release of Child

If: (1) a child is in detention; and (2) the twenty-day time parameter is not followed; the child shall be released on the child's own recognizance or to the child's parents, guardian, or custodian. Ind. Code 31-37-11-7.

B. IF CHILD IS NOT DETAINED, HEARING HELD WITHIN 60 DAYS OF FILING PETITION

If: (1) a child is not in detention; and (2) a petition has been filed; the fact-finding hearing must be commenced not later than sixty (60) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed. Ind. Code 31-37-11-2(b).

K.G. v. State, 67 N.E.3d 1147 (Ind. Ct. App. 2017) (Although section 2 uses "must" regarding the time limits for holding a hearing, that term is intended to be directory rather than mandatory in this context).

A.S. v. State, 929 N.E.2d 881, 889 (Ind. Ct. App. 2010) (Every Saturday, Sunday, and holiday during the period should be excluded from the calculation.).

A.K. v. State, 915 N.E.2d 554, 556 (Ind. Ct. App. 2009), reh'g denied, trans. denied (Dismissal of the charges when the sixty-day deadline is not met is not necessarily required; the juvenile must object to the setting of a factfinding hearing outside of the permitted sixty-day window.).

C. IF WAIVER TO CRIMINAL COURT IS DENIED, HEARING HELD WITHIN 10 DAYS OF DENIAL

If waiver is sought and denied, the fact-finding hearing must be commenced not later than 10 days, excluding Saturdays, Sundays, and legal holidays, after the denial. Ind. Code 31-37-11-3.

State v. D.R., 119 N.E.3d 1060 (Ind. Ct. App. 2019) (The requirement of Ind. Code 31-37-11-3 for factfinding within 10 days after the denial of waiver does not bar an interlocutory appeal by the State. The remedy is release of the child from custody during the interlocutory appeal.) See also, State v. J.T., 121 N.E.3d 605 (Ind. Ct. App. 2019).

D. FACT-FINDING HEARING MAY BE HELD IMMEDIATELY AFTER THE INITIAL HEARING IF THE PARTIES CONSENT

If a child denies the allegations, the juvenile court may hold the fact-finding hearing immediately after the initial hearing. Ind. Code 31-37-12-9(b).

However, pursuant to Ind. Code 31-37-12-9(c), the following people must consent to the timing of the hearing:

- The child
- The child's counsel, GAL, parent, guardian, or custodian; and
- The person representing the interests of the state.

E. DELAY IN HOLDING FACT-FINDING HEARING

1. Child Must Object to Setting Outside 60-day Deadline

J.D. v. State, 909 N.E.2d 1035, 1037 (Ind. Ct. App. 2009) (If the time period applying to the "speedy trial" provisions have not yet expired and a trial date is set beyond that period, then the juvenile must make a timely objection or else waive his rights under the rules, just as required under Indiana Criminal Rule 4(C).).

K.G. v. State, 67 N.E.3d 1147 (Ind. Ct. App. 2017), trans. denied (dismissal is not the required remedy for a violation of the 60-day requirement).

2. Due to Child's Actions

Times parameters shall be computed excluding delays resulting from continuances granted on the child's motion or the actions of the child. Ind. Code 31-37-11-6.

If the child causes the delay by act or motion, the time periods are extended by the amount of resulting delay. Ind. Code 31-37-11-10.

C.L.Y. v. State, 816 N.E.2d 894, 902 (Ind. Ct. App. 2004) (The determination of whether a delay caused by a defendant's evidence request is chargeable to the defendant for speedy trial purposes turns on whether the state was negligent, or less than diligent, in complying with the defendant's request. An evidence request was essentially a request for a continuance, causing detention beyond 20 days for a fact-finding hearing, and was charged to the child where (1) the state contacted the lab and determined that the results would not be finished within the 20-day limit, (2) the

state was ready to proceed without the evidence, and (3) the child had not shown the evidence to be exculpatory).

A.K. v. State, 915 N.E.2d 554, 556 (Ind. Ct. App. 2009), reh'g denied, transfer denied. (When the court set the fact-finding date outside of the sixty days to accommodate the large number of defense witnesses, the juvenile did not object. Analogous to the adult criminal setting, the juvenile waived the speedy trial issue by failing to object. Nothing in the juvenile code requires dismissal of the petition alleging delinquency as a remedy for a violation of Ind. Code. 31-37-11-2(b).

a. If Child's Delay in Last Thirty (30) Days, State May Request an Additional Extension

If a child causes a delay during the last thirty (30) days of a time period, the state may petition the court for an additional thirty (30) day extension. Ind. Code 31-37-11-10(b).

b. If Child Fails Informal Adjustment, Any Delay is Attributable to Child

C.W. v. State, 643 N.E.2d 915, 917 (Ind. Ct. App. 1994) (Where a child signs an informal adjustment contract and subsequently fails to comply with its conditions, any delay in the proceedings thereby caused is properly attributed to the child. Had child not chosen to participate in a six-month informal adjustment program, the state would have been required to proceed on the delinquency petition within one year, but the delay was chargeable to the child because it was clearly for the child's benefit).

3. Court Calendar Congestion

The fact-finding hearing may be delayed due to congestion of the court calendar if the prosecuting attorney moves for a continuance not later than three days before the hearing, except that a motion may be filed less than three days before the hearing if the prosecuting attorney shows that the delay was not the fault of the state. Ind. Code 31-37-11-6.

4. Delay Permitted for State to Obtain Absent Witness if Child Moves for Discharge

Pursuant to Ind. Code 31-37-11-8, if a child moves for discharge, the prosecutor may move for a continuance due to the absence of a witness if the prosecutor makes an official statement that:

- (1) Sets forth the name and address of the witness if known;
- (2) Indicates the probability of procuring the witness's testimony within a reasonable time
- (3) Shows that the absence of the witness has not been procured by the act of the prosecuting attorney;
- (4) States the facts to which the prosecuting attorney believes the witness will testify and the prosecuting attorney's belief that the facts are true; and
- (5) States that the prosecuting attorney is unable to prove the facts specified under subdivision (4) through the use of any other witness whose testimony may be as readily procured.

Upon the child's request, the court shall order that the prosecuting attorney's motion and official statement be made in writing.

a. Hearing Continued for Not More Than 90 Days

The court may continue the fact-finding hearing for not more than ninety (90) days. Ind. Code 31-37-11-9(a).

b. Hearing Not Continued for Certain Circumstances

The fact-finding hearing may not be continued if, after the prosecutor moves for continuance due to a witness's absence or the unavailability of written or documentary evidence, the child admits that the absent witness would testify to facts alleged in the prosecutor's official statement or that the written or documentary evidence exists. Ind. Code 31-37-11-9(a).

c. Child Discharged If Hearing Not Within 90 Days

If the hearing is not commenced within the ninety (90) day period, the court shall discharge the child. Ind. Code 31-37-11-8; Ind. Code 31-37-11-9(b).

F. DISMISSAL NOT MANDATED AND COURT DOES NOT LOSE JURISDICTION WHEN TIME LIMITS ARE SURPASSED

A.K. v. State, 915 N.E.2d 554, 556 (Ind. Ct. App. 2009) (The juvenile court does not mandate dismissal of the charges when the sixty-day deadline is not met).

Brown v. State, 448 N.E.2d 10, 16 (Ind. 1983) (When child is detained, failure to hold waiver or fact-finding hearing within 20 days of the filing of the petition entitles child to no more than release on his own recognizance or to his parent, guardian, or custodian. Child is not entitled to an outright dismissal of the charges nor does the juvenile court lose jurisdiction when the statutory time frame is not met.)

II. FACT-FINDING HEARING PROCEDURE

PRACTICE POINTER: Remember that much of what happens procedurally prior to and during the fact-finding hearing will be very similar to a criminal trial, including discovery, rules of evidence, and the applicable criminal and civil procedure rules. To prepare for possible appeal, ensure that a solid record is in place despite the informality of some juvenile hearings in some jurisdictions. See also the Indiana Public Defender Council manuals, on such topics as Evidence, Pretrial, and Trial.

A. HEARING REQUIRED WHEN CHILD DOES NOT ADMIT ALLEGATIONS

The court must hold a fact-finding hearing if the child does not admit the allegations in the delinquency petition. Ind. Code 31-37-13-1(a).

State v. Gorzelanny, 468 N.E.2d 589, 591 (Ind. Ct. App. 1984) (Court improperly dismissed a petition alleging delinquency following a waiver hearing at which the juvenile court denied the state's motion for waiver; the juvenile court could not dismiss the petition because no fact-finding hearing had been held).

B. TIMELY NOTICE REQUIRED

In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446 (1967) (To comply with due process requirements, notice must (1) be given sufficiently in advance of the scheduled court proceedings so that reasonable opportunity to prepare will be afforded and (2) set forth alleged misconduct with particularity. Notice of charges was given at the "initial hearing," which was also a hearing on the merits, was not timely).

1. Notice Procedure

Pursuant to Ind. Code 31-32-1-4(a), any written notice of a hearing or other court proceeding in a delinquency case under Ind. Code 31-37 shall be given to:

- (1) A party in the manner provided by Rule 5 of the Indiana Rules of Trial Procedure; or
- (2) An individual who is not a party by: (A) personal delivery to the individual; or (B) mail as provided in Rule 5(B)(2) of the Indiana Rules of Trial Procedure.

a. Notice By Mail At Least 5 Days Before Hearing

Notice by mail must be deposited in the United States mail not less than five (5) calendar days (excluding Saturdays, Sundays, and national legal holidays recognized by the federal government) before the date of the scheduled hearing or proceeding. Ind. Code 31-32-1-4(b).

b. Written Notice Format

Written notice may be given by either: (1) a copy of a court order or docket entry; or (2) a letter addressed to the individual required to be notified; that states the date, time, and purpose of the hearing or proceeding. Ind. Code 31-32-1-4(c).

c. When Written Notice Is Not Required

(1) No written notice when court gave notice during proceeding

Written notice is not required if verbal notice of the date, time, place, and purpose of the hearing or proceeding is given by the court at an earlier hearing or proceeding at which the individual to be notified is present. Ind. Code 31-32-1-4(d).

(2) No written notice if hearing within 48 hours of setting

Pursuant to Ind. Code 31-32-1-4(e), written notice is not required if:

- (1) The hearing or proceeding is scheduled to be held at a time within forty-eight (48) hours (excluding Saturdays, Sundays, and any day on which a legal holiday is observed for state employees) after the court sets the time for the hearing or proceedings; and
- (2) The individual responsible for giving the notice under this section:

- (A) Provides verbal notice of the date, time, place, and purpose of the hearing or proceeding directly to the person required to be notified; and
- (B) Verifies by affidavit or testimony at the hearing that verbal notice was given as required under this subsection.

2. Prosecutor or Probation Responsible for Notice Generally

Except as provided by Ind. Code 31-32-1-4(d), the prosecuting attorney or the probation department of the juvenile court is responsible for giving all notices of a hearing or proceeding in a delinquency case under Ind. Code 31-37. Ind. Code 31-32-1-4(f).

3. Notice to Foster Parent or Other Caregiver

If the fact-finding hearing is not held immediately after the initial hearing as provided under Ind. Code 31-37-12-9, the prosecuting attorney or probation department of the juvenile court shall provide notice of any fact-finding hearing to each foster parent or other caretaker with whom the child has been placed for temporary care. Ind. Code 31-37-13-1(b).

4. Waiver of Notice

Any person other than the child may waive service of summons if the person does so in writing. Ind. Code 31-32-5-6.

C. CHILD’S RIGHTS

For more on the child’s rights, see Chapter Four – Constitutional and Statutory Rights.

The Indiana Supreme Court has “assume[d] without deciding that juveniles are entitled to be present at fact-finding hearings on a delinquency charge.” *R.R. v. State*, 106 N.E.3d 1037, 1040 (Ind. 2018). With regard to any constitutional or statutory rights the juvenile has during delinquency proceedings, those rights can *only* be validly waived in accordance with Ind. Code 31-32-5-1. *Id.* at 1041. “[A] juvenile’s waiver of rights requires a heightened showing[.]” and the “analysis begins and ends with the juvenile-waiver statute,” found at Ind. Code 31-32-5-1. *Id.* at 1042.

1. To Be Protected from Waiver into Adult Criminal Court upon Commencement of Fact-Finding

When the first witness is sworn in at the fact-finding hearing the child may no longer be waived to the criminal court. Ind. Code 31-30-3-7. Further, if the child admitted the allegations in the delinquency petition at the initial hearing, a motion to waive jurisdiction may not be made or granted thereafter. Ind. Code 31-30-3-7.

PRACTICE POINTER: If there is a concern that the State may plan to seek waiver into adult criminal court but is unprepared to make that decision at the initial hearing, consider whether it would be in the client’s best interest to enter admissions during the initial hearing.

2. To Consent to the State's Additional Evidence after the State Rests

Swisher v. Brady, 438 U.S. 204, 216, 98 S. Ct. 2699, 2706 (1978) (Applying the federal Double Jeopardy Clause to a Maryland court rule, the Supreme Court wrote that once the state presents its evidence, the case is closed, and additional evidence can be received by court only with the child's consent.).

3. No Right to Jury at Fact-finding Hearing

All matters in the juvenile court shall be tried by court. Exceptions to this are when an adult has been charged with a crime and has not requested a bench trial, or the adult waives the right to a jury trial under the Indiana Rules of Criminal Procedure. Ind. Code 31-32-6-7.

Bible v. State, 253 Ind. 373, 389, 254 N.E.2d 319, 327 (1970) (A juvenile is not constitutionally entitled to a jury trial at a delinquency hearing.).

A.S. v. State, 929 N.E.2d 881, 891-92 (Ind. Ct. App. 2010) (Upholds finding in *Bible* that juvenile is not entitled to a jury trial at a delinquency hearing under the Indiana Constitution).

McKeiver v. Pennsylvania, 403 U.S. 528, 545, 91 S.Ct. 1976, 1986 (1971) (Jury trials are not essential for accurate fact-finding and are not constitutionally required in the juvenile court.).

PRACTICE POINTER: In McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976 (1971), the U.S. Supreme Court rejected the argument that jury trials were constitutionally required in the juvenile court. Court reasoned that jury trials were not essential for accurate fact-finding. However, the right to present evidence is clearly required for accurate fact-finding. Consequently, the reasoning of the Court in McKeiver supports the extension of the Sixth Amendment right to present evidence to a child in a delinquency proceeding as an essential element of due process and fair treatment guaranteed by Fourteenth Amendment. Many states are now affording juveniles the right to a jury trial.

4. Record of Fact-finding Hearing

The United States Supreme Court has not yet determined whether children in delinquency proceedings are constitutionally entitled to a transcript of the proceedings in juvenile court. The Court specifically reserved the issue in Gault. In re Gault, 387 U.S. 1, 58-59, 87 S.Ct. 1428, 1459-60 (1967). However, Gault dealt with Arizona law, which did not at that time provide a right to appellate review of juvenile court orders. In contrast, final orders issued by Indiana juvenile courts are appealable under Indiana Appellate Rule 5(A), and the court reporter is required under Indiana Appellate Rule 11 to prepare, certify, and file any transcript designated in the Notice of Appeal.

Summers v. State, 248 Ind. 551, 560, 230 N.E.2d 320, 325 (1967) (Record of the waiver proceeding should be made for the criminal court and appellate court in determining justification for the transfer and waiver).

a. Statute Does Not Specify Which Proceedings Are to be Reported

Ind. Code 31-31-6-1 does not specify which hearings must be reported by the court reporter, other than that the reporter shall report proceedings in the same manner and under the same laws as governing reporters for other courts of record.

b. Duty is on Child to Request Record for Appeal

State ex rel. Armstrong v. Juvenile Court of Marion County, 242 Ind. 532, 535, 180 N.E.2d 373, 374 (1962) *citing* Gilkinson et al. v. Darlington et al., 123 Ind. App. 637, 641, 85 N.E.2d 651 (1953) (Counsel has the duty and responsibility to prepare or cause to be prepared a transcript for an appeal in the manner and form which counsel believes will properly present the questions being raised.).

PRACTICE POINTER: In all proceedings, including preliminary matters, counsel is advised to make sure the hearing is recorded. When in doubt, counsel should file a motion with the court to prepare a transcript of any recorded hearing that may need to be preserved. Counsel may direct the court's attention to the duties the court reporter will have under Indiana Appellate Rules 10 and 11, in the event an appeal is ultimately pursued by either party.

D. BURDEN OF PROOF STANDARD

A finding by the court that the child committed a delinquent act must be based upon proof beyond a reasonable doubt. Ind. Code 31-37-14-1.

D.P. v. State, 80 N.E.3d 913, 915 (Ind. Ct. App. 2017) (“Though juvenile adjudications are not criminal matters, when the State petitions to have a child adjudicated delinquent for an act that would be a crime if committed by an adult, due process requires the State to prove its case beyond a reasonable doubt.”).

1. Proof Beyond Reasonable Doubt Required for Every Element

Al-Saud v. State, 658 N.E.2d 907, 908 (Ind. 1995) *citing* In re Winship, 397 U.S. 358, 368, 90 S.Ct. 1068 (1970) (A child alleged to have committed a delinquent act that would be crime if committed by an adult is entitled to have every element of the charged crime proved beyond a reasonable doubt.).

Where the State fails to prove each element beyond a reasonable doubt, reversal of the delinquency adjudication is required. See, e.g., A.V. v. State, 193 N.E.3d 1031, 1035 (Ind. Ct. App. 2022) B.R. v. State, 162 N.E.3d 1173, 1176-79 (Ind. Ct. App. 2021); but see T.H. v. State, 92 N.E.3d 624 (Ind. 2018) (where evidence was insufficient to prove the adjudicated allegation but sufficient to prove a lesser-included offense, the Court affirmed the delinquency adjudication but remanded for modification of adjudication order).

E. OPPORTUNITY TO BE HEARD

The court shall provide a person required to be notified under Ind. Code 31-37-13-1(b) [foster parent or other caregiver] an opportunity to be heard at the fact-finding hearing. Ind. Code 31-37-13-1(b).

F. EVIDENTIARY ISSUES RELATED TO FACT-FINDING HEARING

1. Criminal Rules of Procedure Apply to Matters Not Covered by Juvenile Law

Rules governing criminal trials apply in all matters not covered by juvenile law. Ind. Code 31-32-1-1.

2. Discovery Rules for Criminal Cases Apply to Delinquency Proceedings

In a case where a child is alleged to be delinquent, the law of discovery for criminal cases applies. Ind. Code 31-32-10-1. The discovery rules contained within the Indiana Rules of Trial Procedure apply to criminal cases. Crawford v. State, 948 N.E.2d 1165, 1167 (Ind. 2011) (*citing* Ind. Crim. R. 21) (“The Indiana Rules of Trial Procedure apply in criminal proceedings in the absence of a conflicting criminal rule.”).

3. Criminal Rules of Evidence Apply to Delinquency Proceedings

J.R.T. v. State, 783 N.E.2d 300, 306 (Ind. Ct. App. 2003) (While juvenile proceedings are civil in nature, the criminal rules of evidence are applicable.)

N.L. v. State, 989 N.E.2d 773, 778-79 (Ind. 2013) (explaining the distinction between informal juvenile hearings—which “are not strictly governed by the rules of evidence—and “other juvenile matters ... of such gravity that formal evidentiary hearings are required” (including fact-finding hearings held pursuant to Ind. Code 31-37-13), during which Indiana’s evidence rules apply).

4. Protected Person Statute

D.G.B. v. State, 833 N.E.2d 519, 525 (Ind. Ct. App. 2005); J.V. v. State, 766 N.E.2d 412, 414-415 (Ind. Ct. App. 2002) (Protected person statute, IC 35-37-4-6, is applicable in a delinquency case.).

A Protected Person Statute hearing in a juvenile case has been determined to be a “preliminary juvenile matter” during which the rules of evidence do not apply. N.L. v. State, 989 N.E.2d 773, 779 (Ind. 2013).

5. Admission of Polygraph Evidence

J.R.T. v. State, 783 N.E.2d 300, 306 (Ind. Ct. App. 2003) (The prerequisites established for the admission of polygraph evidence in a criminal proceeding, including that stipulations must be in writing and signed by prosecutor, defendant, and defense attorney, are applicable in juvenile delinquency proceedings.).

6. Hearsay Rules Apply in Adjudication Hearings

Matter of L.J.M., 473 N.E.2d 637, 642-43 (Ind. Ct. App. 1985) (The hearsay rules apply in a hearing to determine if a child is a delinquent child.). D.G.B. v. State, 833 N.E.2d 519, 526 (Ind. Ct. App. 2005) (The court found a child victim’s statement to his mother after a victim suffered a flashback during treatment at the hospital was an excited utterance and admissible as a hearsay exception).

Hearsay is not prohibited in dispositional hearings or subsequent modification hearings. N.L. v. State, 989 N.E.2d 773, 779 (Ind. 2013).

7. Privileges Apply in Delinquency Proceedings

Matter of L.J.M., 473 N.E.2d 637, 642 n.5 (Ind. Ct. App. 1985) (The following privileges apply in delinquency proceedings: marital; clerical; newspaper source; physician-patient; attorney-client; accountant-client; psychologist-client; and school-counselor-student. Indiana's psychologist-patient privilege applies only to certified psychologists and does not extend to youth counselors/caseworkers.).

Matter of C.P., 563 N.E.2d 1275, 1278-79 (Ind. 1990) (A child's communications to a social worker were not communications to a physician and were not protected by the physician-patient privilege; the social worker was not a physician's assistant as he was the true caregiver, operating independently with little intervention by the supervising psychiatrist).

a. Mental Health Evaluation Privilege

Notwithstanding Ind. Code 31-37-8-4(5) and except as provided in Ind. Code 31-37-8-4.5(d) and except for the purposes of: (1) a probation revocation proceeding; or (2) a modification of a dispositional decree under Ind. Code 31-37-22; a statement communicated to an evaluator in the evaluator's official capacity may not be admitted as evidence against the child on the issue of whether the child committed a delinquent act or a crime. Ind. Code 31-37-8-4.5(b).

(1) Covered mental health communications

Privileged communications to mental health evaluators applies only to a court ordered or voluntary mental health: (1) screening; (2) assessment; (3) evaluation; or (4) treatment; provided by or under the direction of an evaluator, as defined in Ind. Code 31-9-2-43.8, in conjunction with proceedings under this chapter. Ind. Code 31-37-8-4.5(a).

(2) Exception to privileges

(a) Insanity defense

Ind. Code 31-37-8-4.5 does not affect the admissibility of evidence when a juvenile interposes the defense of insanity. Ind. Code 31-37-8-4.5(c).

(b) Disclosure required of homicide or criminal intentions

Ind. Code 31-37-8-4.5 does not affect a disclosure or reporting requirement in effect on July 1, 2007, under statute or in case law regarding a statement that: (1) relates directly to the facts or immediate circumstances of a homicide; or (2) reveals that the child may intend to commit a crime. Ind. Code 31-37-8-4.5(d).

(3) Privilege provides use and derivative use immunity

State v. I.T., 4 N.E.3d 1139, 1145-47 (Ind. 2014) (State was prohibited from using child's statements to the evaluator or evidence derived from those statements because Ind. Code 31-32-2-2.5 and Ind. Code 31-37-8-4.5 provide both use and derivative use immunity as a safe harbor against jeopardizing its constitutionality.)

8. School Attendance Record Admissible As Business Records

J.L. v. State, 789 N.E.2d 961, 964-65 (Ind. Ct. App. 2003) (Evidence that teachers take attendance and convey findings to the main office, where data is entered into the computer and compiled, is sufficient to infer that school attendance records are regularly made, as required by Rule 803(6), the business record exception to hearsay rule.).

L.H. v. State, 682 N.E.2d 795, 798 (Ind. Ct. App. 1997) (Admitting a computer printout report of an attendance record with an affidavit from the custodian of the report under the business record exception to the hearsay rule did not violate the confrontation clause.).

9. Opinion Testimony

Fendley v. Ford, 458 N.E.2d 1167, n.3 (Ind. Ct. App. 1984) (Expressions of opinion within medical or hospital records historically have not been admissible under the business records exception to the hearsay rule because their accuracy cannot be evaluated without the safeguard of cross-examination of the person offering the opinion.).

But see N.W. v. Madison County Dept. of Public Welfare, 493 N.E.2d 1256, 1261 (Ind. Ct. App. 1986) (Harmless error to admit expression of opinion in medical records under the business records exception to the hearsay rule because the opinion in the medical records was similar to and cumulative of other evidence not objected to at the fact-finding hearing).

10. Suggestive Photo Array

J.Y. v. State, 816 N.E.2d 909, 912 (Ind. Ct. App. 2004), *trans. denied* (Due process of law under the Fourteenth Amendment requires the suppression of testimony about a pre-trial identification when the procedure employed is unnecessarily suggestive. Photo array was impermissibly suggestive where there were remarkable differences in appearance between the suspects and the other set of boys, including their clothing, demeanor, and the quality and composition of the two sets of photographs).

G. COURT MUST BASE DECISION ON EVIDENCE PRESENTED, NOT ON INDEPENDENT INVESTIGATION

In re Gault, 387 U.S. 1, 9, 87 S.Ct. 1428 (1967) (The lower court improperly based its findings on a court referral from two years prior that was not part of the pending case.).

Riley v. Wegner, 404 N.E.2d 1189, 1190 (Ind. Ct. App. 1980) *citing* Kessler v. Williston, 117 Ind.App. 690, 692, 75 N.E.2d 676, 677 (1947) (The general rule is that it is reversible error for a court to base a judgment upon information obtained by extra-judicial inquiry, either by the judge or someone on his behalf.).

H. COURT MAY CONTINUE CASE AT CLOSE OF EVIDENCE FOR UP TO TWELVE (12) MONTHS

At the close of all the evidence, and before judgment is entered, the court may continue the case for not more than twelve (12) months. Ind. Code 31-37-13-4(a).

1. Exception to 12-month Continuance: If Child Requests Judgment

If the child or the child's parent, guardian, or custodian requests that the judgment be entered, the judgment shall be entered not later than thirty (30) days after the request is made. Ind. Code 31-37-13-4(b).

PRACTICE POINTER: In deciding whether to request that judgment be entered, counsel's actions at the close of the evidence may turn on whether (1) the child is detained and in need of a speedy decision or (2) the child is doing well and can benefit from prolonging the ultimate decision.

2. Detained Child Released within 48 Hours Pending Judgment

If the child is in a juvenile detention facility, the child shall be released not later than forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, pending the entry of judgment. A child released from a juvenile detention facility pending the entry of the judgment may be detained in a shelter care facility. Ind. Code 31-37-13-4(c).

I. COURT DUTIES IF IT FINDS CHILD DELINQUENT

1. Enter Judgment

If the court finds that a child is a delinquent child, the court must enter judgment accordingly. Ind. Code 31-37-13-2.

R.S. v. State, 435 N.E.2d 1019, 1020 (Ind. Ct. App. 1982) (Merely finding that the respondent did or did not commit certain acts is not an adequate factual basis for a judgment of delinquency or adequate for meaningful review by the appellate courts.).

a. Judgment accompanied by findings for act that would be felony

Pursuant to Ind. Code 31-37-13-5, if a finding of delinquency is based upon a delinquent act that would be a felony if committed by an adult, the court shall state in its findings:

- (1) The specific statute that was violated.
- (2) The class or level of the felony if the violation had been committed by an adult.

2. Order Predispositional Report

If the court finds that a child is a delinquent child, the court shall order a predispositional report. Ind. Code 31-37-13-2.

3. Schedule a Dispositional Hearing

If the court finds that a child is a delinquent child, the court shall schedule a dispositional hearing. Ind. Code 31-37-13-2.

4. Complete a Dual Status Screening and May Make Referral

Pursuant to Ind. Code 31-37-13-2(a), if the court finds that a child is a delinquent child, the court shall complete a dual status screening tool on the child, as described in Ind. Code 31-41-1-3, and determine whether the child is a dual status child as described in Ind. Code 31-41-1-2.

Pursuant to Ind. Code 31-37-13-2(c), if a child is determined to be a dual status child, the court may refer the child for an assessment by a dual status assessment team as described in Ind. Code 31-41.

K.S. v. State, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018), trans. denied (A court’s failure to make a specific finding in a modification order as to whether a juvenile was a dual status child was a procedural deficiency but did “not rise to the level of a constitutional violation because K.S. was given notice of the charges against him alleged to warrant modification of his placement, had counsel, and was afforded an evidentiary hearing at which no evidence was adduced that would clearly support a finding that he was a dual status child.”).

J. COURT DISCHARGES CHILD IF IT DOES NOT FIND CHILD DELINQUENT

If the court finds that a child is not a delinquent child, the court shall discharge the child. Ind. Code 31-37-13-3.