

CHAPTER TWELVE DISPOSITION

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CHAPTER TWELVE

DISPOSITION

I. PRE-DISPOSITION REPORT

A. PROBATION OFFICER RESPONSIBLE FOR PREPARATION OF PRE-DISPOSITION REPORT

1. Statute in Effect until July 1, 2023

Pursuant to Ind. Code 31-37-17-1(a), upon the finding that a child is a delinquent child, the juvenile court shall order a probation officer to prepare a pre-dispositional report that contains:

- (1) A statement of the needs of the child for care, treatment, rehabilitation, or placement;
- (2) A recommendation for the care, treatment, rehabilitation, or placement of the child;
- (3) If the recommendation includes an out-of-home placement other than a secure detention facility, information that the department requires to determine whether the child is eligible for assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.);
- (4) A statement of the department's concurrence with or its alternative proposal to the probation officer's pre-dispositional report, as provided by Ind. Code 31-37-17-1.4 [review by department]; and
- (5) A statement of whether the child received Medicaid.

PRACTICE POINTER: Defense counsel should seize the opportunity to consult with the probation officer preparing the Pre-dispositional report in an effort to obtain a recommendation that strictly adheres to the requirements of Ind. Code 31-37-17-4. If the defense counsel does not agree with the probation officer's assessment or if there is additional information for the court, counsel should submit an alternate Pre-dispositional report pursuant to Ind. Code 31-37-17-1(b).

2. Statute in Effect after July 1, 2023

Pursuant to Ind. Code 31-37-17-1(a), upon finding that a child is a delinquent child, the juvenile court shall order a probation officer to prepare a pre-dispositional report that contains:

- (1) A statement of the needs of the child for care, treatment, rehabilitation, or placement;
- (2) A recommendation for the care, treatment, rehabilitation, or placement of the child;
- (3) If the recommendation includes an out-of-home placement other than a secure detention facility, information that the department requires to determine whether the child is eligible for assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.);

- (4) A statement of the department's concurrence with or its alternative proposal to the probation officer's pre-dispositional report, as provided by Ind. Code 31-37-17-1.4 [review by department]; and
- (5) A statement of whether the child received Medicaid; and
- (6) the results of the validated risk and needs assessment tool the probation officer conducted on the child.

3. Probation Officer May Confer with Individuals with Expertise during Report Preparation

The person preparing the pre-dispositional report may (or if directed by the court, shall) confer with individuals who have expertise in the professional areas related to the child's needs in the areas of appropriate care, treatment, rehabilitation, or placement for a delinquent child. Ind. Code 31-37-17-1.1(a).

a. Conference may be held

(1) Optional participants

A conference may be held to gather data for the pre-dispositional report and may include representatives of the following: (1) the child's school; (2) the probation department; (3) the department; (4) a community mental health center located in child's county of residence; (5) a community intellectual disability and other developmental disabilities center located in child's county of residence; (6) other persons as the court may direct. Ind. Code 31-37-17-1.1(b).

(2) Mandatory participants

If a delinquent child is known to be eligible for special education services or placement under Ind. Code 20-35-2 or 511 IAC 7, the conference must include a representative from the child's school. Ind. Code 31-37-17-1.2.

b. Conference participants make recommendations

The conference participants in a meeting described in Ind. Code 31-37-17-1.1 [consultation with experts] shall assist the person preparing the report in recommending the care, treatment, rehabilitation, or placement of the child. Ind. Code 31-37-17-1.3(a).

c. Conference participants inform probation officer about program availability

The individuals shall inform the person preparing the report of resources and programs that are available for the child. Ind. Code 31-37-17-1.3(b).

4. Probation Department May Exchange Information to Use in Report

Pursuant to Ind. Code 31-37-17-8, unless prohibited by federal law, a probation department and;

- (1) The division of family resources;

- (2) A local office; and
- (3) The department of child services;

may exchange information for use in preparing a report under this chapter.

5. Probation Officer Must Gather Financial Information

Pursuant to Ind. Code 31-37-17-1.3(c), the probation officer shall:

- (1) Collect and maintain all information relevant to a determination of eligibility under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.); and
- (2) Complete financial eligibility forms designated by the department director to assist in obtaining federal reimbursement and other reimbursement.

6. Probation Officer Must Consider Whether Parent, Guardian, or Custodian Needs Services

In addition to providing the court with a recommendation for the care, treatment, or rehabilitation of the child, the person preparing the report shall consider the necessity, nature, and extent of the participation by a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child. Ind. Code 31-37-17-2(a).

7. Probation Officer May Consider Alternative Family Caregivers

If a probation officer believes that an out-of-home placement would be appropriate for a delinquent child, the probation officer shall consider whether the child should be placed with a suitable and willing relative before considering other out-of-home placements for the child. Ind. Code 31-37-17-2(b).

8. Probation Officer Must Notify the Victim of a Sex Offense

In the case of a child who commits a delinquent act that would be a sex offense (as defined by Ind. Code 11-13-6-5.5(b)) if the child were an adult, the person preparing the pre-dispositional report shall, before the pre-dispositional report is prepared, notify each victim (as defined by Ind. Code 11-13-6-5.5) in the proceeding of the victim's rights under Ind. Code 11-13-6-5.5 and the procedures related to the exercises of those rights. Ind. Code 31-37-17-7.

B. PRE-DISPOSITIONAL REPORT CONTENTS

1. Statement of Need for Care, Treatment, Rehabilitation, or Placement

A pre-dispositional report contains a statement of the needs of the child for care, treatment, rehabilitation, or placement. Ind. Code 31-37-17-1(a)(1).

2. Risk and Needs Assessment (after July 1, 2023)

Pursuant to Ind. Code 31-37-17-1(a)(6) and 31-37-17-6.5 [effective July 1, 2023], a pre-dispositional report must contain the results of the validated risk and needs assessment tool the probation officer conducted on the child.

If the juvenile court waives the preparation of a predispositional report under this section, the results of the validated risk and needs assessment tool shall still be provided to the juvenile court and any legal party to the case. Ind. Code 31-37-17-1(a)(6) [effective July 1, 2023].

3. Recommendation for Care, Treatment, Rehabilitation, or Placement

A pre-dispositional report contains a recommendation for the care, treatment, rehabilitation, or placement of the child. Ind. Code 31-37-17-1(a)(2).

Pursuant to Ind. Code 31-37-17-4(a), if consistent with the safety and best interest of the child and the community, the probation officer preparing the report shall recommend care, treatment, rehabilitation, or placement that:

- (1) Is:
 - (A) In the least restrictive (most family like) and most appropriate setting available; and
 - (B) Close to the parent's home, consistent with the best interest and special needs of the child;
- (2) Least interferes with family autonomy;
- (3) Is least disruptive of family life;
- (4) Imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian
- (5) Provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

After July 1, 2023, a probation officer will also be required to make his recommendation based on the results of a validated risk and needs assessment tool. Ind. Code 31-37-17-4(a)(1) [effective July 1, 2023].

4. Financial Information

a. Title IV-E information, if DCS will be required to pay for services

If the recommendation includes an out-of-home placement other than a secure detention facility, a pre-dispositional report contains information that the department requires to determine whether the child is eligible for assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq). Ind. Code 31-37-17-1(a)(3).

b. Parent's or the estate of the child's financial information

The probation officer shall collect information and prepare a financial report, in the form prescribed by the department, on the parent or the estate of the child to assist the juvenile court and the department in (1) determining the person's financial responsibility; and (2) obtaining federal reimbursement for services provided for the child or the person. Ind. Code 31-37-17-3.

5. Risk Assessment and Needs Assessment of Child If Recommending Services for Which DCS Will Pay

If the report recommends a placement or services for which the department will be responsible for payment under Ind. Code 31-40-1 [cost of services], the report must include a risk assessment and needs assessment for the child. The probation officer shall submit to the department a copy of the report and the financial report prepared by the probation officer. Ind. Code 31-37-17-4(b).

a. Failure to provide information will be reported to the office of judicial administration

Pursuant to Ind. Code 31-37-17-4(c), if the report does not include the:

- (1) Risk assessment and needs assessment required in Ind. Code 31-37-17-4(b);
or
- (2) Information required to be provided under Ind. Code 31-37-17-1(a)(3);

the department shall file a notice with the office of judicial administration.

6. Statement of DCS Concurrence with, or Alternative Proposal to, Recommendation, If Required

A pre-dispositional report contains a statement of the department's concurrence with or its alternative proposal to the probation officer's pre-dispositional report, as provided by Ind. Code 31-37-17-1.4 [review by department]. Ind. Code 31-37-17-1(a)(4).

7. Description and Evaluation of Options Considered and Names of Individuals Conferred with During Preparation

Pursuant to Ind. Code 31-37-17-6.1(a), the pre-dispositional report prepared by the probation officer must include the following information:

- (1) A description of all dispositional options considered in preparing the report;
- (2) An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines in Ind. Code 31-37-17-4 [recommendation; factors; risk assessment]; and
- (3) The name, occupation, position, and any relationship to the child of each person with whom the preparer of the report conferred as provided by Ind. Code 31-37-17-1.1 [consultation with experts].
- (4) The items required by Ind. Code 31-37-17-1 [contents].
- (5) The results of a dual status screening tool to determine whether the child is a dual status child as described in Ind. Code 31-41-1-2.

J.B. v. State, 849 N.E.2d 714, 717 (Ind. 2006) (Even though the pre-dispositional report did not cite other dispositional options, the court did not err in ordering that the child be placed in the Department of Correction. The report met the requirements of Ind. Code 31-37-17-6.1 because the probation officer testified that given the juvenile's history of juvenile delinquency and substance abuse, she did not consider any other placement adequate and the trial court was not required to impose a less-

restrictive alternative because it was clear that if it had done so, the community's safety needs would not be met.).

K.S. v. State, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018) (child not denied due process when the probation department failed to complete a dual status screening tool in the modification report).

PRACTICE POINTER: If the child's legal history is included in the pre-dispositional report, ensure that the information is accurate and clearly distinguishes between arrests and dispositions, and that dispositions are correctly stated. Some probation officers include every contact with law enforcement, which can be prejudicial if not closely read by the judge.

8. Criminal History Check

a. Required for anyone residing in out-of-home placement that is a residence

If a probation officer is considering an out-of-home placement, including placement with a relative, the probation officer must conduct a criminal history check (as defined in Ind. Code 31-9-2-22.5) for each person who is currently residing in the location designated as the out-of-home placement. The results of the criminal history check must be included in the pre-dispositional report. Ind. Code 31-37-17-6.1(b).

b. Criminal history check not required if placement is not a residence or is licensed by the state or if placement is undetermined at time report written

Pursuant to Ind. Code 31-37-17-6.1(c), a probation officer is not required to conduct a criminal history check if:

- (1) The probation officer is considering only an out-of-home placement to an entity or a facility that:
 - (A) Is not a residence (as defined by Ind. Code 3-5-2-42.5); or
 - (B) Is licensed by the state; or
- (2) Placement is undetermined at the time the pre-dispositional report is prepared.

C. PRE-DISPOSITIONAL REPORT DISTRIBUTION

1. Probation Officer Shall Submit Pre-Dispositional Report To DCS, If DCS Will Be Required to Pay for Services or Placement.

If the report recommends a placement or services for which the department will be responsible for payment under Ind. Code 31-40-1 [cost of services], the probation officer shall submit to the department a copy of the pre-dispositional report and financial report prepared by the probation officer. Ind. Code 31-37-17-4(b).

2. Court Shall Provide Copy of Pre-dispositional Report to Certain People

Pursuant to Ind. Code 31-37-17-6(b), the court shall provide a copy of the report to:

- (1) Each attorney, guardian ad litem, or court appointed special advocate representing the child; and

(2) Each attorney representing the child's parent, guardian, or custodian.

3. Court May Provide a Factual Summary of the Report to Certain People

The court may provide a factual summary of the report to: (1) the child; or (2) the child's parent, guardian, or custodian. Ind. Code 31-37-17-6(c).

4. Report Must Be Available within a Reasonable Time Before Dispositional Hearing

Pre-dispositional reports shall be made available within a reasonable time before the dispositional hearing, unless the juvenile court determines on the record that the reports contain information that should not be released to the child or the child's parent, guardian, or custodian. Ind. Code 31-37-17-6(a).

5. Distribution as Soon as Practicable after July 1, 2023

To ensure that the safety and best interest of the child and the community are addressed, the results of the pre-dispositional report shall, as soon as practicable, be shared with

- (1) the juvenile court
- (2) the prosecuting attorney
- (3) the defense attorney; and
- (4) any other party to the case

Ind. Code 31-37-17-1(c) [effective July 1, 2023].

D. DCS REVIEW OF PRE-DISPOSITIONAL REPORT

Pursuant to Ind. Code 31-37-17-1.4(a), if the pre-dispositional report includes a recommended placement, program, or services that would be payable by the department under Ind. Code 31-40-1-2 [obligation of department for cost of services], a probation officer shall refer the officer's completed pre-dispositional report, except for the statement required under Ind. Code 31-37-17-1(a)(4) [DCS' concurrence or alternative recommendation] to the department within a reasonable time before its required disclosure under Ind. Code 31-37-17-6 to allow the department time to:

- (1) Review; and
- (2) Either concur with or offer an alternative proposal to the recommendations in;

the pre-dispositional report.

1. DCS Will Either Concur with Recommendation or Propose an Alternative

Pursuant to Ind. Code 31-37-17-1.4(b), the department shall, after review of the pre-dispositional report and any attachments necessary to verify the pre-dispositional report, and within a reasonable time before the dispositional hearing, either:

- (1) Concur with the pre-dispositional report; or
- (2) Communicate to the probation officer an alternative proposal regarding programs and services.

A.B. v. State, 949 N.E.2d 1204, 1213-14 (Ind. 2011) (Ind. Code 31-37-17-1.4 does not violate the separation of powers provided by Article III, Section 1 of the Indiana Constitution, as it does not usurp the power of the judiciary or promotes interference by one branch of government with another.).

PRACTICE POINTER: Learn the identity of the DCS regional service consultant assigned to review the pre-dispositional report and be prepared to call them as a witness to testify about their reasoning and DCS procedures. Be prepared for DCS to file a motion to quash the subpoena, as it is not DCS practice that their workers face questioning in delinquency court. Inquire as to the DCS standards that are used to evaluate the child based solely on the submitted documentation.

Explore the use of plea agreements, in cases that can be resolved by agreement, in an effort to “force” DCS to approve the requested services. The deputy prosecutor and the DCS worker are both representatives of the State and if the deputy prosecutor has stated in writing in the plea agreement that the services are appropriate, it should be more difficult for another state representative to disregard the plea agreement. Sample written plea agreements are available. These plea agreements should be forwarded to the probation officer for submission with the pre-dispositional report, if possible. See T.K. v. State, 899 N.E.2d 686, 688 (Ind. Ct. App. 2009), concerning juvenile court bound by terms of plea agreement.

II. ALTERNATIVE PRE-DISPOSITIONAL REPORT

Pursuant to Ind. Code 31-37-17-1(b), any of the following may prepare an alternative pre-dispositional report for consideration by the court:

- (1) The child.
- (2) The child’s: (A) parent; (B) guardian; (C) guardian ad litem; (D) court appointed special advocate; or (E) custodian.

PRACTICE POINTER: Alternative pre-dispositional reports can be critical with the requirement that DCS approve certain placements and services. If the probation officer who prepared the pre-disposition report is not recommending any services that require payment by DCS, the pre-dispositional report will not be sent to DCS. Evaluate if the client wants to request services for which DCS would be required to pay. An alternative pre-dispositional report may be one of the best ways to lay a record for the juvenile court justifying a rejection of any recommendations in probation's pre-dispositional report and adoption of the child's request for services and/or placement in a residential treatment facility.

PRACTICE POINTER: There was nothing in the law that specifically allows an alternative pre-dispositional report to be submitted to DCS. DCS' policy is that only the pre-dispositional report prepared by probation will be reviewed. Some courts have allowed the child's counsel to motion for the child's recommendation to be submitted to DCS by the probation officer as an alternative in order to save time by not requiring a second disposition hearing or continuances. That allows the court to know what services DCS is willing to pay for as the court makes its disposition decision.

PRACTICE POINTER: If a child requires in-depth counseling, counsel should have the child examined by an independent, private psychiatrist or psychologist and attach the medical professional's report to the alternative pre-dispositional report. Similarly, attach any letters of support, honors, or awards from school or extracurricular activities, and any other records necessary to give the judge a fuller picture of the child's needs and strengths.

PRACTICE POINTER: If the child is requesting a residential treatment facility placement or other services, remember that counsel can obtain acceptance into the program pending a court order by the contacting the provider directly. This may be key for a judge who may not consider alternative services unless there is solid evidence that a placement is available.

PRACTICE POINTER: Counsel should ascertain local practice as to whether an alternative predisposition report must contain all of the information required in the predisposition report, including the financial information and risk assessment.

PRACTICE POINTER: Be aware that preparation of an alternative pre-dispositional report should never substitute for counsel contacting the assigned probation officer responsible for the pre-dispositional report. Since the judge may appoint probation officers and view them as court staff, the judge may be more likely to trust and rely upon their recommendations. Try to get a favorable recommendation from the probation officer in the pre-dispositional report.

III. PRE-DISPOSITION EXAMINATION

Pursuant to Ind. Code 31-37-17-5, the juvenile court may do the following:

- (1) Authorize an examination of the child under Ind. Code 31-32-12 [mental and physical examinations].
- (2) Make provision for a similar examination of the parent, guardian, or custodian if the person gives consent.

IV. IYAS RISK ASSESSMENT TOOL

The Indiana Youth Assessment System ("IYAS") was implemented on October 1, 2010 as an evidenced-base tool to measure the child's risk and need factors during supervision and to ascertain the appropriate allocation of resources and programs. The IYAS was developed at the Center for Criminal Justice Research at the University of Cincinnati. A similar tool has been

used in Ohio. The use of such tools was endorsed in Malenchik v. State, 928 N.E.2d 564 (Ind. 2010).

There are various IYAS tools that must be administered along the path of a case, including prior to disposition. The interview tool and accompanying guide is available through the Indiana Public Defender Council at <http://www.in.gov/ipdc>. An overview of the IYAS history and process is available at <https://www.in.gov/courts/iocs/justice-services/risk-assessment/>.

The probation officer who administers the IYAS must be certified by completing a training and passing an examination.

PRACTICE POINTER – Counsel should be aware that the disposition tool requires the juvenile to discuss the delinquent acts. Therefore, the disposition tool should never be administered prior to adjudication, which was noted in the initial policy and procedures distributed through the Indiana Judicial Center prior to implementation of the IYAS.

PRACTICE POINTER -- Counsel should consider whether to accompany the child to the IYAS interview to assist with the process and evaluate whether there were language or cognitive issues with the administration.

PRACTICE POINTER -- Counsel should exam the IYAS results carefully. Typically, a summary sheet will be attached to or referenced in the Predisposition Report. There is an interview packet that is more exhaustive and is used to determine the scores on the summary sheet. Consider whether to subpoena the probation officer's reports, scoring sheets, and notes.

PRACTICE POINTER -- Counsel should note whether the probation officer overrode the risk score. As the IYAS tool was being implemented, the researchers allowed the probation departments to decide on categorical overrides, such as every sex offender would be changed to high risk no matter what their actual score. Be mindful of whether the probation officer is overriding individual juveniles because of their own opinions rather than a standard established by the probation department, the Judicial Center, or the researchers.

PRACTICE POINTER – There is no statutory requirement that the IYAS be used as a factor when the court is determining the appropriate disposition. If the Court specifically notes the IYAS score as a factor, counsel should consider objecting to the use of the IYAS as a factor to preserve the issue for appeal.

V. DISPOSITIONAL HEARING PROCEDURE

Also see separate sections on Parental Participation and Financial Responsibility of Parent or Guardian

A. PURPOSE OF DISPOSITIONAL HEARING

Pursuant to Ind. Code 31-37-18-1, the juvenile court shall hold a dispositional hearing to consider the following:

- (1) Alternatives for the care, treatment, rehabilitation, or placement of the child;
- (2) The necessity, nature, and extent of the participation by a parent, a guardian, or a custodian in the program of care, treatment, or rehabilitation for the child; and
- (3) The financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child.

B. TIME PARAMETERS OF DISPOSITIONAL HEARING

1. Dispositional Hearing May Be Held Immediately After Initial Hearing

If a child admitted the allegations of a petition, the juvenile court may hold the dispositional hearing immediately after the initial hearing. Ind. Code 31-37-12-9(a).

a. Consent of certain parties required

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

- (1) the child's
- (2) the child's counsel
- (3) guardian ad litem
- (4) parent, guardian, or custodian
- (5) the person representing the interests of the state.

b. Exception for emancipated child

Pursuant to Ind. Code 31-37-12-10, it is only necessary for the child to consent to the fact-finding hearing or the dispositional hearing if a child is emancipated:

- (1) under Ind. Code 31-37-19-27 [Emancipation of Child];
- (2) by virtue of having married; or
- (3) in accordance with the laws of another state or jurisdiction.

2. No Time Requirement for Dispositional Hearing After Fact-Finding

If the court finds that a child is a delinquent child [after a fact-finding hearing], the court shall schedule a dispositional hearing. Ind. Code 31-37-13-2(3). There is no specified time requirement within which the hearing shall occur.

C. NOTICE OF DISPOSITIONAL HEARING

Pursuant to Ind. Code 31-37-18-1.3, at the time the dispositional hearing is scheduled the prosecuting attorney or probation department of the juvenile court shall provide notice of the date, time, place, and purpose of the dispositional hearing to each:

- (1) Party or person for whom a summons is required to be issued under Ind. Code 31-37-12-2 [summons for initial hearing]; and
- (2) Foster parent or other caretaker with whom the child is placed for temporary care.

D. DUE PROCESS STANDARD

S.L.B. v. State, 434 N.E.2d 155, 156 (Ind. Ct. App. 1982) (The standard for determining what due process requires in a particular juvenile proceeding is "fundamental fairness.").

E. RIGHT TO COUNSEL

D.H. v. State, 688 N.E.2d 221, 223-24 (Ind. Ct. App. 1997) (Disposition was invalid where juvenile had no attorney at the disposition hearing and had not waived his right to counsel. Juvenile has right to assistance of counsel at every stage of juvenile proceedings, including disposition hearing.).

F. REMOTE PARTICIPATION

C.S. v. State, 131 N.E.3d 592 (Ind. 2019) (remote participation of juvenile at disposition modification hearing was error where parties did not expressly agree, and juvenile court did not make a finding of good cause as required by Administration Rule 14(B). However, no fundamental error occurred.)

C.S. v. State, 131 N.E.3d 592 (Ind. 2019) (The Supreme Court provided advice to courts and parties faced in complying with Administrative Rule 14(B) - court must base its good cause determination on the factors listed in the rule and issue a written order complying with the rule's deadlines. Further, in making a Rule 14(B)(2) good-cause determination in a juvenile case, a trial court will necessarily need to consider the unique aspects of the juvenile justice system. Thus, the child's best interests will generally constitute a relevant factor under Rule 14(B)(2)(f) in a juvenile court's good-cause determination. Finally, when a party is confronted with potential noncompliance with an applicable rule, the party should object.).

G. EVIDENTIARY MATTERS

1. Pre-dispositional Report

Any pre-dispositional report may be admitted into evidence to the extent that the report contains evidence of probative value, even if the report would otherwise be excluded. Ind. Code 31-37-18-2(a).

a. Report preparer or probation officer must attend dispositional hearing

Pursuant to Ind. Code 31-37-18-1.1(a), at a dispositional hearing, the person that prepared the pre-dispositional report or a probation officer [who has knowledge of the report and recommendations]:

- (1) Must be present; and
- (2) Must present testimony when requested to explain how the individuals participating in the conference described in Ind. Code 31-37-17:
 - (A) Examined the available options; and
 - (B) Recommended the options that most closely coincide with the guidelines provided in Ind. Code 31-37-17-4.

b. A different probation officer may attend dispositional hearing, if knowledgeable of facts

Pursuant to Ind. Code 31-37-18-1.1(b), a probation officer other than the person who prepared the pre-dispositional report may satisfy the requirements in Ind. Code 31-37-18-1.1(a) if the probation officer has knowledge of:

- (1) A conference held under Ind. Code 31-37-17-1.1; and
- (2) The report and recommendations made under Ind. Code 31-37-17.1.

c. Factual summary may be admitted instead

If a report contains information that should not be released to the child or the child's parent, guardian, or custodian, a factual summary of the report may be admitted. Ind. Code 31-37-18-2(b).

d. Parties may controvert pre-dispositional report

Pursuant to Ind. Code 31-37-18-2(c), the following shall be given a fair opportunity to controvert any part of the report admitted into evidence:

- (1) The child.
- (2) The child's parent, guardian, or custodian.
- (3) The person representing the interests of the state.
- (4) A foster parent or other caretaker who is entitled to notice of the dispositional hearing under Ind. Code 31-37-18-1.3.

Kent v. United States, 383 U.S. 541, 563, 86 S.Ct. 1045, 1058 (1966) (There is no irrebuttable presumption of accuracy attached to staff reports.).

PRACTICE POINTER: Ind. Code 31-37-18-2 provides that not only does the child, through defense counsel, have an opportunity to call to the court's attention prejudicial, non-probative information, but the child also has the right to present evidence contradicting or controverting the facts contained in the report. Counsel should move to strike statements in the pre-dispositional report that are not accurate and should make certain that prejudicial material is removed from the report before it is sent to any person or agency receiving placement or wardship of child.

2. Hearsay Evidence Is Admissible

C.C. v. State, 826 N.E.2d 106, 111 (Ind. Ct. App. 2005) (The hearsay rule applies to a hearing to determine if the child is delinquent but does not apply in juvenile dispositional hearings.).

Matter of L.J.M., 473 N.E.2d 637, 643 (Ind. Ct. App. 1985) (While hearsay evidence is inadmissible at fact-finding hearings where the issue is whether the child committed the alleged delinquent act, such evidence is admissible at disposition or post-disposition hearings where the focus is on the specific needs of the child to determine the type of disposition that serves the child's best interests and the best interests of the community. Excluding hearsay evidence in a disposition hearing would, in many cases, disserve the child by excluding relevant information that might support a less restrictive disposition.).

H. ADVISEMENT OF RIGHTS

The juvenile court shall advise the child and the child's parent, guardian, or custodian of the procedures under Ind. Code 31-37-22 [modification of dispositional decrees]. Ind. Code 31-37-18-8.

PRACTICE POINTER: There is no specific requirement in the Juvenile Code for the court to advise the child at the disposition hearing of the child's right to appeal. However, the judge's bench book calls for the judge to advise the child of the rights to modify, review, and appeal the disposition. Counsel should be aware of the child's right to appeal and advise the child and child's parent, guardian, or custodian if the court fails to do so. There is no provision in the Juvenile Code for tolling of critical appellate deadlines if a modification of the disposition decree is sought. Be sure that the right to appeal is preserved, even if a modification is requested.

I. ADMISSION AGREEMENT

1. Proper Term in Juvenile Court is Admission Agreement, Not Plea Agreement

D.C. v. State, 958 N.E.2d 757, 758 n. 1 (Ind. 2011) (In juvenile court proceedings, juvenile do not plead guilty or not guilty but rather admit or deny allegations. Use of a document titled "plea agreement" should yield in favor of a document titled "admission agreement" or something similar.).

2. If Agreement Accepted, Court Is Bound as To Disposition

T.K. v. State, 899 N.E.2d 686, 688 (Ind. Ct. App. 2009); *citing* In re J.A.W. 504 N.E.2d 334, 335 (Ind. Ct. App. 1987) (If the court is presented with a plea agreement and the court accepts the plea agreement in a juvenile proceeding, the court is bound by the terms of that agreement.).

3. Parent Does Not Have to Sign Agreement

D.E. v. State, 962 N.E.2d 94, 96 (Ind. Ct. App. 2011) (Child and his counsel signed the plea agreement. Parent was present at plea hearing but did not agree with child's acceptance of plea agreement and would not sign plea agreement. The plea agreement was valid, as the child's and counsel's signatures are enough to satisfy Ind. Code 31-32-5-1).

J. OPPORTUNITY TO BE HEARD

Pursuant to Ind. Code 31-37-18-1.3(b), the court shall:

- (1) Provide a person who is required to be notified under Ind. Code 31-37-18-1.3(a) [party and foster parent or caretaker of child] an opportunity to be heard; and
- (2) Allow a person described in Ind. Code 31-37-18-1.3(b)(1) to make recommendations to the court;

at the dispositional hearing.

D.M. v. State, 108 N.E.3d 393 (Ind. Ct. App. 2018) (Although better practice is for trial court to specifically ask juvenile if he wants to make a statement before pronouncing disposition, failure to do so did not deny D.M. fundamental fairness where attorney vigorously argued on D.M.'s behalf and D.M.'s extensive juvenile record made it highly unlikely the court would have ordered a less restrictive placement than the DOC.).

K. COURT MAY INITIATE CIVIL COMMITMENT PROCEEDING FOR MENTALLY ILL CHILD

See also Chapter 5 -- Competency and Mental Health

If it appears to the juvenile court that a child has a mental illness, the court may (1) refer the matter to the court having probate jurisdiction for civil commitment proceedings under Ind. Code 12-26 or (2) initiate a civil commitment proceeding under Ind. Code 12-26. Ind. Code 31-37-18-3.

VI. DISPOSITIONAL DECREE

A. FACTORS TO BE CONSIDERED IN THE DISPOSITIONAL DECREE

Pursuant to Ind. Code 31-37-18-6, if consistent with the safety of the community and best interest of the child, the juvenile court shall enter a dispositional decree that:

- (1) Is:
 - (A) In the least restrictive (most family like) and the most appropriate setting available; and
 - (B) Close to the parents' home, consistent with the best interest and special needs of the child;
- (2) Least interferes with family autonomy;
- (3) Is least disruptive of family life;
- (4) Imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
- (5) Provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

R.H. v. State, 937 N.E.2d 386, 391 (Ind. Ct. App. 2010) (Defense argued against placement due to sexual abuse report by U.S. Dept. of Justice. Guardianship to DOC was in child's best interest where child had violated home detention, smoked marijuana, drank alcohol, had a history of inappropriate sexual conduct with siblings, and parents did little to control the child.).

R.A. v. State, 936 N.E.2d 1289, 1291-92 (Ind. Ct. App. 2010) (DOC commitment reversed where child had no prior contacts with the delinquency system and the child had several medical and psychological issues. Given the circumstances of the case and the statutory policy favoring the least-harsh disposition, the juvenile court was instructed to place the child in an appropriate rehabilitative setting.).

D.P. v. State, 783 N.E.2d 767, 771 (Ind. Ct. App. 2003) (Because the child's crime did not rise to the level of repetitive and serious misconduct and the trial court did not adequately consider the circumstances surrounding the child's diminished cognitive capacity and impulsive behavior, public policy of favoring the least harsh disposition should have been followed, and until child demonstrates that he will not respond positively to probation, the trial court should institute a less harsh disposition of suspending the child's confinement with the DOC.).

E.H. v. State, 764 N.E.2d 681, 686 (Ind. Ct. App. 2002) (Where child's (1) involvement with the juvenile justice system resulted, in part, from his parents' abuse and neglect; (2) the record contains no evidence that the child's a threat to community; and (3) the offense was a nonviolent offense, commitment to the DOC for one year was not in the child's best interests or community's best interest when a less restrictive alternative of continuing in foster care under the Dawn Project was available. Said commitment conflicts with the rehabilitative goals of the juvenile justice system.).

S.C. v. State, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002) (The choice of a specific disposition is within the sound discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community's safety, and the Indiana Code's policy of favoring the least harsh disposition. The one-year commitment to the DOC was proper to ensure that the child received, in a secure environment, the extended rehabilitative counseling that she needs to address mental health and substance abuse issues.).

A.D. v. State, 736 N.E.2d 1274, 1278 (Ind. Ct. App. 2000) (A juvenile court is vested with flexibility in determining the appropriate dispositional alternative to impose on a delinquent juvenile, and although options other than commitment to an institution are available, there are times when commitment to a suitable public institution is in the best interest of the juvenile and of society.).

J.S. v. State, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008) (Although juvenile was a Mexican national in the United States illegally and argued that he should be returned to Mexico, placement at the DOC was proper considering the serious nature of the drug-related offense, the likelihood of reoffending, the trial court's findings regarding best interests, that the child had previously been deported to Mexico after crime in Kentucky, and the child had chosen to leave family in Mexico and reentered the United States.).

B. FINDINGS IN DISPOSITIONAL DECREE

1. Specific Findings That Must Be in Every Dispositional Decree

Pursuant to Ind. Code 31-37-18-9(a), the juvenile court shall accompany its dispositional decree with written findings and conclusions upon the record concerning approval, modification, or rejection of dispositional recommendations submitted in the pre-dispositional report, including the following specific findings:

- (1) The needs of the child for care, treatment, rehabilitation, or placement.
- (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
- (3) Efforts made if the child is removed from the child's parent, guardian, or custodian to:
 - (A) Prevent the child's removal from; or
 - (B) Reunite the child with;
the child's parent, guardian, or custodian.
- (4) Family services that were offered and provided to:
 - (A) The child; or
 - (B) The child's parent, guardian, or custodian.

- (5) The court's reasons for the disposition.
- (6) Whether the child is a dual status child under Ind. Code 31-41.

Madaras v. State, 425 N.E.2d 670, 672 (Ind. Ct. App. 1981) (Juvenile court's failure to accompany its disposition decree with findings of fact was waived where the disposition ordered was proper and the child had already completed disposition prior to appeal. However, the court noted that its holding was not meant to diminish the important function of findings of fact in appellate review or to imply that the requirement of findings of fact in the code are in any way discretionary.).

K.A. v. State, 775 N.E.2d 382, 389-90 (Ind. Ct. App. 2002) (The court referenced the pre-dispositional report as the basis for its findings of fact even though the juvenile waived the filing of a pre-dispositional report, and none was prepared. However, the court also referenced information found in other reports, including a preliminary inquiry report, past review summaries, and past disposition reports, which provided a basis for finding that a more restrictive placement was required.).

A.B. v. State, 949 N.E.2d 1204, 1213-14 (Ind. 2011), *rehearing denied* (Statute requiring the juvenile court to accompany the court's dispositional decree with written findings does not violate the separation of powers provision of Article III, Section 1 of the Indiana Constitution where the executive branch (DCS) proposes juvenile court placement recommendations.).

2. Findings if the Child Is Removed from the Child's Home

a. Permanency plan, probation department responsibility, and justification for removal

Pursuant to Ind. Code 31-37-19-1(b), if the child is removed from the child's home and placed in a foster family home or another facility, the juvenile court shall:

- (1) Approve a permanency plan for the child;
- (2) Find whether or not reasonable efforts were made to prevent or eliminate the need for the removal;
- (3) Designate responsibility for the placement and care of the child with the probation department; and
- (4) Find whether it:
 - (A) Serves the best interests of the child to be removed; and
 - (B) Would be contrary to the health and welfare of the child for the child to remain in the home.

b. Additional findings if dispositional order is first order authorizing removal of child

Pursuant to Ind. Code 31-37-19-1(c) and 31-37-19-6(c), the court shall include in the decree the appropriate findings and conclusions described in Ind. Code 31-37-6-6(f) [Ind. Code 31-37-6-6(g) after July 1, 2023] and Ind. Code 31-37-6-6(g) [Ind. Code 31-37-6-6(h) after July 1, 2023] if a dispositional decree under Ind. Code 31-37-19-1 or 31-37-19-6:

- (1) Orders or approves removal of a child from the child's home or awards wardship of the child to a:
 - (A) Person other than the department; or
 - (B) Shelter care facility; and
- (2) Is the first order in the delinquent child proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;

c. Risk and Needs Assessment after July 1, 2023

The juvenile court shall make a written finding that includes the results of the risk and needs assessment if the court orders an out-of-home placement. Ind. Code 31-37-17-1(d) [effective July 1, 2023].

d. Pre-disposition credit time

D.S. v. State, 829 N.E.2d 1081, 1084 (Ind. Ct. App. 2005); *citing* Molden v. State, 750 N.E.2d 448, 451 (Ind. Ct. App. 2001) (The juvenile court did not abuse its discretion in refusing to give D.S. credit for the time he spent on electronic detention. Time spent in pretrial home detention is not equivalent to pretrial time served in a prison or jail and pretrial home detainees are not entitled as a matter of law to receive credit time for time served on home detention toward an eventual sentence.).

C.T.S. v. State, 781 N.E.2d 1193, 1204 (Ind. Ct. App. 2003) (Where the trial court erred by detaining the child pre-adjudication for over four months, the child should be given credit for the period of detention towards his recommended period of commitment to the DOC.).

J.D. v. State, 853 N.E.2d 945, 947-49 (Ind. 2006) (The inherent differences between the juvenile delinquency and adult criminal justice systems dictate that a juvenile offender is not entitled to credit for time served in detention prior to sentencing. This case is distinguished from C.T.S. v. State, noting C.T.S. involved an extraordinary period of months awaiting disposition, more akin to the constitutional right to speedy trial.).

3. Findings If the Juvenile Court Does Not Follow DCS' Alternative Recommendation

Pursuant to Ind. Code 31-37-18-9(b), if the department does not concur with the probation officer's recommendations in the pre-dispositional report and the juvenile court does not follow the department's alternative recommendations, the juvenile court shall:

- (1) Accompany the court's dispositional decree with written findings that the department's recommendations contained in the pre-dispositional report are:
 - (A) Unreasonable based on the facts and circumstances of the case; or
 - (B) Contrary to the welfare and best interests of the child; and
- (2) Incorporate all documents referenced in the report submitted to the probation officer or to the court by the department into the order so that the documents are part of the record for any appeal the department may pursue under Ind. Code 31-37-18-9(d).

PRACTICE POINTER: When the juvenile court veers away from the DCS alternative recommendation, DCS may choose to accept the court's order or file for an expedited appeal. See Chapter 14, Appeals.

4. Court May Incorporate Finding or Conclusion from Pre-dispositional Report

The juvenile court may incorporate a finding or conclusion from a pre-dispositional report as a written finding or conclusion upon the record in the court's dispositional decree. Ind. Code 31-37-18-9(c).

5. Determination of Legal Settlement for Certain Placements

a. When legal settlement determination must be made

Pursuant to Ind. Code 31-37-19-26(a), this section applies if a juvenile court:

- (1) Places a child;
- (2) Changes the placement of a child; or
- (3) Reviews the implementation of a decree under Ind. Code 31-37-20 [review of dispositional decree] of a child placed;

in a state licensed private or public health care facility, child care facility, foster family home, or the home of a relative or other unlicensed caretaker.

b. Specific findings

Pursuant to Ind. Code 31-37-19-26(b), the juvenile court shall do the following:

- (1) Make findings of fact concerning the legal settlement of the child.
- (2) Apply Ind. Code 20-26-11-2(a)(1) through Ind. Code 20-26-11-2(a)(8) to determine where the child has legal settlement.
- (3) Include the findings of fact required by this section in the: (A) dispositional order; (B) modification order; or (C) other decree; making or changing the placement of a child.

c. Legal settlement may be where school is located

The juvenile court may determine that the legal settlement of the child is in the school corporation in which the child will attend school under Ind. Code 20-26-11-8(d). Ind. Code 31-37-19-26(c).

d. Court must comply with reporting requirements of legal settlement

The juvenile court shall comply with the reporting requirements under Ind. Code 20-26-11-9 concerning the legal settlement of the child. Ind. Code 31-37-19-26(d).

e. Child may be placed in a specific public school

The juvenile court may place a child in a public school, regardless of whether the public school has a waiting list for admissions, if the court determines that the

school's program meets the child's educational needs, and the school agrees to the placement. A placement under this subsection does not affect the legal settlement of the child. Ind. Code 31-37-19-26(e).

C. DISPOSITION MUST BE BASED ON INDIVIDUAL EVALUATION OF CHILD AND NOT STANDING POLICY

Anton v. State, 140 Ind.App. 574, 224 N.E.2d 516 (1967) (The court must impose a disposition based on an evaluation of each child in question, rather than impose the same disposition for all children adjudicated delinquent for having committed a specific offense.).

E.L. v. State, 783 N.E.2d 360, 366-69 (Ind. Ct. App. 2003) (Juvenile court's presumption of recommitment of juvenile offenders who had previously been committed to the DOC resulted in an abuse of discretion when applied to a young person who had made remarkable strides in the nearly three years between detentions but became involved in a family argument that led to a disorderly conduct charge. The court's duty was to devise a disposition that would serve rehabilitative purposes.).

D. DISPOSITION CHALLENGES

[For a comprehensive list of Indiana appellate decisions both affirming and reversing the juvenile court's disposition order, please see Chapter Fourteen, Appeals and Other Challenges.]

1. Child Development

The three cases below have language about child development that may be useful when arguing for leniency.

Roper v. Simmons, 543 U.S. 551, 569-570 (2005) (The Eighth Amendment to the United States Constitution forbids the imposition of the death penalty for juvenile offenders under the age of eighteen, in part, because (1) impetuous and ill-considered actions and decisions are more likely with juveniles due to a lack of maturity; (2) juveniles are more vulnerable or susceptible to negative influences and outside pressure and often lack the freedom that adults have to extricate themselves from criminal situations; and (3) the character of the juvenile is not as well formed as an adult and thus his personality traits are more transitory and less fixed.).

Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 2030 (2010) (Eighth Amendment prohibits life without parole for a juvenile convicted of any offense except murder.).

Miller v. Alabama, 567 U.S. 460 132 S.Ct. 2455 (2012) (Prohibits mandatory life sentences for juvenile murderers.).

Montgomery v. Louisiana, --- U.S. ---, 136 S.Ct. 718 (2016) (Provides retroactive application of Miller v. Alabama prohibition of mandatory life sentences for juvenile murderers.).

2. Cruel and Unusual Punishment

M.C. v. State, 134 N.E.3d 453 (Ind. Ct. App. 2019) (Juvenile proceedings are not criminal in nature and do not amount to direct action by the State to inflict punishment.

Therefore, neither the cruel and unusual punishment clause under the U.S. Constitution nor the proportionate penalties clause under the Indiana Constitution is implicated by a juvenile's disposition.).

D.A. v. State, 967 N.E.2d 59, 65 (Ind. Ct. App. 2012) (Juvenile's placement in sex offender treatment program was not cruel and unusual punishment under federal or state law where placement was consistent with the goals of juvenile's rehabilitation, despite juvenile admitting to battery, but submitting a conditional plea to child molesting.).

3. Equal Protection

M.C. v. State, 134 N.E.3d 453 (Ind. Ct. App. 2019) (Juvenile's commitment to DOC for possession of marijuana and theft did not violate the Equal Protection clause of the U.S. Constitution or the Privileges and Immunities clause of the Indiana Constitution even though an adult's sentence for the same conduct would not have been as severe.).

4. Consideration of Non-Adjudicated Conduct

J.S. v. State, 110 N.E.3d 1173 (Ind. Ct. App. 2018) (trial court could consider overall narrative of referrals against juvenile, and therefore trial court didn't err in considering evidence of involvement of a firearm that was beyond what formed the factual basis for admission).

5. Bad Grades Alone Are Not Enough

Matter of L.J.M., 473 N.E.2d 637, 641 (Ind. Ct. App. 1985) (Poor grades alone cannot support a finding of uncooperativeness that will justify imposing a harsher disposition without evidence of the child's potential and that the grades were merely symptomatic of the general failure to cooperate with a rehabilitation program.).

E. MULTIPLE DISPOSITIONS MAY BE IMPOSED

With some limitations, the juvenile court may enter one (1) or more dispositional decrees. Ind. Code 31-37-19-1; Ind. Code 31-37-19-5.

1. Probation May Follow Wardship to the Department of Correction

R.J.G. v. State, 902 N.E.2d 804, 805 (Ind. 2009) (Ind. Code 31-37-19-5 and Ind. Code 31-37-19-6 allow a juvenile court to order "at least one," i.e., potentially multiple, dispositions. The juvenile court has jurisdiction over the person and the subject matter at the time it makes dispositional decree and therefore has jurisdiction at that time to order both probation and commitment to the DOC.).

2. Imposition of Multiple Dispositions Does Not Violate Double Jeopardy Clause

R.L. v. State, 437 N.E.2d 482, 486 (Ind. Ct. App. 1982) *citing* Price v. Georgia, 398 U.S. 323, 329, 90 S.Ct. 1757, 1761 (1970) (It is not a violation of the Double Jeopardy Clause of the Fifth Amendment to impose multiple dispositions under the Juvenile Code. The Double Jeopardy Clause is written in terms of potential or risk of trial and conviction, not punishment.).

F. DISTRIBUTION OF DISPOSITIONAL ORDER

The juvenile court shall send a copy of the dispositional order described in Ind. Code 31-37-18-10 to each person who received placement or wardship of the child. Ind. Code 31-37-18-7.

1. Copy of Dispositional Order to DFR If Child Receives Medicaid

If a pre-dispositional report indicates that a child receives Medicaid, and a court places the child in: (1) a juvenile detention facility; or (2) a secure facility, not including a facility licensed as a child caring institution under Ind. Code 31-27, the court shall immediately provide a copy of the dispositional decree to the division of family resources. Ind. Code 31-37-19-28.

VII. DISPOSITIONAL ALTERNATIVES THAT APPLY TO STATUS OFFENDERS

The dispositional alternatives available to the juvenile court are dependent on which type of delinquent act the child is adjudicated for, either a status offense (offenses under Ind. Code 31-37-2) or an act that would be an offense if committed by an adult (offenses under Ind. Code 31-37-1). The following are dispositional alternatives that apply to status offenders.

A. SUPERVISION BY PROBATION DEPARTMENT

The court may order supervision of the child by the probation department. Ind. Code 31-37-19-1(a)(1).

B. OUTPATIENT TREATMENT

See also *Chapter Five – Competency and Mental Health*

Pursuant to Ind. Code 31-37-19-1(a)(2), the court may order the child to receive outpatient treatment

- (A) At a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
- (B) From an individual practitioner.

C. PLACEMENT OR WARDSHIP OUTSIDE OF THE HOME

1. Placement in Another Home or Facility

Pursuant to Ind. Code 31-37-19-1(a)(3), the court may remove the child from the child's home and place the child in:

- (A) Another home,
- (B) A shelter care facility,
- (C) Child caring institution,
- (D) Group home, or
- (E) Secure private facility.

Placement under Ind. Code 31-37-19-1(a)(3) includes the authorization to control and discipline the child.

2. Wardship to a Person or Shelter Care Facility

Pursuant to Ind. Code 31-37-19-1(a)(4), the court may award wardship to a:

- (A) Person, other than the department (referring to the DOC); or
- (B) Shelter care facility.

3. Cannot Place or Award Wardship if a Person Has a Substantiated Abuse or Neglect Report or Certain Criminal Convictions

Pursuant to Ind. Code 31-37-19-6.5(a), except as provided for in Ind. Code 31-37-19-6.5(d), the juvenile court may not enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-1(a)(3) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-1(a)(4) if a person who is currently residing in the home in which the child would be placed under Ind. Code 31-37-19-1(a)(3) or (4) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a non-waivable offense, as described in Ind. Code 31-9-2-84.8.

a. Offenses that preclude placement or wardship

The following offenses enumerated in Ind. Code 31-9-2-84.8 preclude placement pursuant to Ind. Code 31-37-19-6.5(a):

- (1) Murder (Ind. Code 35-42-1-1)
- (2) Causing Suicide (Ind. Code 35-42-1-2)
- (3) Assisting Suicide (Ind. Code 35-42-1-2.5)
- (4) Voluntary Manslaughter (Ind. Code 35-42-1-3)
- (5) Involuntary Manslaughter (Ind. Code 35-42-1-4)
- (6) Reckless Homicide (Ind. Code 35-42-1-5)
- (7) Feticide (Ind. Code 35-42-1-6)
- (8) Battery (Ind. Code 35-52-2-1) within the past five (5) years
- (9) Domestic Battery (Ind. Code 35-42-2-1.3)
- (10) Aggravated Battery (Ind. Code 35-42-2-1.5)
- (11) Criminal Recklessness (Ind. Code 35-42-2-2) within the past five (5) years
- (12) Strangulation (Ind. Code 35-42-2-9)
- (13) Kidnapping (Ind. Code 35-42-3-2)
- (14) Criminal Confinement (Ind. Code 35-42-3-3) within the past five (5) years
- (15) Human and Sexual Trafficking (Ind. Code 35-42-3.5)
- (16) A felony sex offense under Ind. Code 35-42-4
- (17) Arson (Ind. Code 35-43-1-1) within the past five (5) years

- (18) Incest (Ind. Code 35-46-1-3)
- (19) Neglect of Dependent (Ind. Code 35-46-1-4(a)(1) and (2))
- (20) Child Selling (Ind. Code 35-46-1-4(d))
- (21) Reckless Supervision (Ind. Code 35-46-1-4.1)
- (22) Nonsupport of a dependent child (Ind. Code 35-46-1-5) within the past five (5) years
- (23) Operating a motorboat while intoxicated (Ind. Code 35-46-9-6) within the past five (5) years
- (24) A felony involving a weapon under Ind. Code 35-47 within the past five (5) years
- (25) A felony relating to controlled substances under Ind. Code 35-48-4 within the past five (5) years
- (26) An offense relating to the material or a performance that is harmful to minors or obscene under Ind. Code 35-49-3
- (27) A felony under Ind. Code 9-30-5 [Operating a Vehicle While Intoxicated] within the past five (5) years
- (28) A felony related to the health or safety of a child (as defined in Ind. Code 31-9-2-13(h)) or an endangered adults (as defined in Ind. Code 12-10-3-)

4. Probation Must Conduct a Criminal History Check

The probation officer who prepared the pre-dispositional report shall conduct a criminal history check (as defined in Ind. Code 31-9-2-22.5) to determine if a person described in Ind. Code 31-37-19-6.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-37-19-6.5(b).

a. When criminal history check is not required

The probation officer is not required to conduct a criminal history check under this section if criminal history information obtained under Ind. Code 31-37-17-6.1 [Pre-dispositional report] establishes whether a person described in Ind. Code 31-37-19-6.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-37-19-6.5(b).

Pursuant to Ind. Code 31-37-19-6.5(c), the probation officer is not required to conduct a criminal history check under this section if:

- (1) The probation officer is considering only an out-of-home placement to an entity or a facility that: (A) is not a residence (as defined in Ind. Code 3-5-2-42.5); or (B) is licensed by the state; or
- (2) Placement under this section is undetermined at the time the pre-dispositional report is prepared.

5. Exceptions to Bar on Placement or Wardship Due to a Substantiated Abuse or Neglect Report or Certain Criminal Convictions

Pursuant to Ind. Code 31-37-19-6.5(d), the juvenile court may enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-1(a)(3) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-1(a)(4) if:

- (1) A person described in Ind. Code 31-37-19-6.5(a) has:
 - (A) Committed an act resulting in a substantiated report of child abuse or neglect;
 - (B) Been convicted of:
 - (i) A felony under Ind. Code 9-30-5 (operating a vehicle while intoxicated);
 - (ii) battery (Ind. Code 35-42-2-1);
 - (iii) criminal recklessness (Ind. Code 35-42-2-2) as a felony;
 - (iv) Criminal confinement (Ind. Code 35-42-3-3) as a felony;
 - (v) Arson (Ind. Code 35-43-1-1) as a felony;
 - (vi) nonsupport of a dependent child (Ind. Code 35-46-1-5)
 - (vii) operating a motorboat while intoxicated (Ind. Code 35-46-9-6) as a felony;
 - (viii) A felony involving a weapon under Ind. Code 35-47; or
 - (vi) A felony relating to controlled substances under Ind. Code 35-48-4; orif the conviction did not occur within the past five (5) years; or
 - (C) Had a juvenile adjudication for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 that, if committed by an adult would be a felony; and
- (2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in Ind. Code 31-37-19-6.5(d)(1) is not relevant to the person's present ability to care for a child and placing the child in another home is in the best interest of the child.

a. No placement if felony that is not excluded offense

Pursuant to Ind. Code 31-37-19-6.5(d)(2), a court may not enter a dispositional decree placing a child in another home under Ind. Code 31-37-19-1(a)(3) or awarding wardship to a person or facility under this subdivision if a person with whom the child is or will be placed has been convicted of a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 that is not specifically excluded under Ind. Code 31-37-19-6.5(d)(1)(B).

b. Court considerations for exceptions

Pursuant to Ind. Code 31-37-19-6.5(e), in considering the placement under Ind. Code 31-37-16-6.5(d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.

- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

6. Shelter Care Facility Must Be in the Child's County of Residence Unless Certain Conditions Apply

Pursuant to Ind. Code 31-37-19-3(a), a juvenile court may not place a child who is a delinquent child under Ind. Code 31-37-2 [status offender] in a shelter care facility that is located outside the child's county of residence unless:

- (1) Placement of the child in a shelter care facility with adequate services located in the child's county of residence is unavailable; or
- (2) The child's county of residence does not have an appropriate shelter care facility with adequate services.

a. Home or Shelter Care Facility Must Be in the State of Indiana Unless Certain Conditions Apply

Pursuant to Ind. Code 31-37-19-3(b), a juvenile court may not place a child in a home or facility that is not a secure detention facility and that is located outside Indiana unless:

- (1) The placement is recommended or approved by the department director or director's designee; or
- (2) The court makes written findings based on clear and convincing evidence that:
 - (A) The out-of-state placement is appropriate because there is not an equivalent facility with adequate services located in Indiana;
 - (B) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship; or
 - (C) The location of the home or facility is within a distance not more than fifty (50) miles from the county of residence of the child.

In re D.S., 910 N.E.2d 837, 840-41 (Ind. Ct. App. 2009), *transfer denied*. (If the court does not agree with the DCS recommendation, the trial court shall accompany its disposition decree with written findings that the DCS recommendation is "unreasonable" based on the circumstances of the case or that they are "contrary to the welfare and best interests of the child." Out-of-state placement upheld where probation was unable to find a comparable facility in Indiana and stated that placement of the child in the DCS recommended facilities would threaten the safety of surrounding communities and would be a "dramatic setback" for the child.).

In re D.M., 907 N.E.2d 582, 585-86 (Ind. Ct. App. 2009) (Court considered the child's prior failure in in-state placements and that the academic, vocational, and athletic programs available through the out-of-state placement where there were not comparable programs in-state. Placement was supported by clear and convincing evidence.).

In re T.D., 912 N.E.2d 393, 397-98 (Ind. Ct. App. 2009) (Court considered the out-of-state treatment facility's rural setting, success rate with adolescent girls, *per diem* fee, a substance abuse treatment program including aftercare services, family counseling services, year-round educational opportunities, and current bed space availability. All participants and parties advocated for the out-of-state placement, except DCS. The court did not commit clear error in placing child.).

D. EMANCIPATION

The court may partially or completely emancipate the child under Ind. Code 31-37-19-27. Ind. Code 31-37-19-1(a)(5).

1. Child's Petition in the County in which a Child Resides

Pursuant to Ind. Code 31-37-19-27(a), the juvenile court for a county in which a child resides may emancipate a child under Ind. Code 31-37-19-1(a)(5) upon a petition brought by the child.

2. Guardian Ad Litem and Report Required

The court in which a petition is filed under Ind. Code 31-37-19-27(a) shall appoint an attorney to serve as guardian ad litem for the child. The guardian ad litem shall investigate the statements contained in the petition and file a report of the investigation with the court. Ind. Code 31-37-19-27(b).

3. Hearing and Findings Required

Pursuant to Ind. Code 31-37-19-27(c), after receiving the report of the guardian ad litem under Ind. Code 31-37-19-27(b) and holding a hearing, the court may grant the petition if the court finds that the child:

- (1) Wishes to be free from parental control and protection and no longer needs that control and protection;
- (2) Has sufficient money for the child's own support;
- (3) Understands the consequences of being free from parental control and protection; and
- (4) Has an acceptable plan for independent living.

4. Terms of Emancipation

Pursuant to Ind. Code 31-37-19-27(d), if the juvenile court completely emancipates the child, the child has all the rights and responsibilities of an adult.

If the juvenile court partially emancipates the child, the court shall specify the terms of the emancipation, which may include the following:

- (1) Suspension of the parent's or guardian's duties to support the child. In this case the judgment of emancipation supersedes the support order of a court.
- (2) Suspension of:
 - (A) The parent's or guardian's right to the control or custody of the child; and

- (B) The parent's right to the child's earnings.
- (3) Empowering the child to consent to military enlistment.
- (4) Empowering the child to consent to: (A) medical; (B) psychological; (C) psychiatric; (D) educational; or (E) social services.
- (5) Empowering the child to contract.
- (6) Empowering the child to own property.

5. Continuing Obligations of the Child

Pursuant to Ind. Code 31-37-19-27(e), an emancipated child remains subject to the following:

- (1) Ind. Code 20-33-2 concerning compulsory school attendance.
- (2) The continuing jurisdiction of the court.
- (3) Ind. Code 31-11-1-4 concerning minimum age for marriage.
- (4) Other specific constitutional and statutory age requirements applicable to the emancipated child because of the emancipated child's age, including requirements relating voting, use of alcoholic beverages or tobacco products, and other health and safety regulations.

E. ORDER THE CHILD OR FAMILY TO RECEIVE FAMILY SERVICES

Pursuant to Ind. Code 31-37-19-1(a)(6), the court may order:

- (1) The child; or
- (2) The child's parent, guardian, or custodian;

to receive family services.

F. ORDER A PERSON TO REFRAIN FROM CONTACT

See also the No Contact Order section under Dispositional Alternatives for Acts that Would Be an Offense If Committed by an Adult for additional information.

The court may order a person who is a party to refrain from direct or indirect contact with the child. Ind. Code 31-37-19-1(a)(7).

1. Clerk of Court Shall Comply With the Law Related to Protective Order Depositories

Pursuant to Ind. Code 31-37-19-2(1), if a court enters a dispositional decree that includes a no contact order under Ind. Code 31-37-19-1(a)(7) the clerk of the court that enters a dispositional decree that includes a no contact order under Ind. Code 31-37-19-1(a)(7) shall comply with Ind. Code 5-2-9 [protective order depositories].

2. Petitioner Shall File a Confidential Form with the Clerk.

Pursuant to Ind. Code 31-37-19-2(2), if a court enters a dispositional decree that includes a no contact order under Ind. Code 31-37-19-1(a)(7) the petitioner shall file a confidential form prescribed or approved by the office of judicial administration with the clerk.

G. INVALIDATE DRIVER'S LICENSE OR PERMIT FOR VIOLATION OF COMPULSORY SCHOOL ATTENDANCE LAW

1. Child Must Have Prior Adjudication for Violation of Compulsory School Attendance Law Before License or Permit Invalidated

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

- (1) Is a delinquent child under Ind. Code 31-37-2 [status offense] due to the commission of a delinquent act under Ind. Code 31-37-2-3 [violation of compulsory school attendance law] (or Ind. Code 31-6-4-1(b)(2) before its repeal); and
- (2) Has been previously determined to be a delinquent child under Ind. Code 31-37-2 (or Ind. Code 31-6-4-1(b)(2) before its repeal) due to the commission of a delinquent act under Ind. Code 31-37-2-3 (or Ind. Code 31-6-4-1(a)(3) before its appeal).

2. Suspension of Ninety (90) Days to One (1) Year

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

VIII. DISPOSITIONAL ALTERNATIVES FOR ACTS THAT WOULD BE OFFENSE IF COMMITTED BY AN ADULT

The dispositional alternatives available to the court are dependent on which type of delinquent act the child is adjudicated for, either a status offense (offenses under Ind. Code 31-37-2) or an act that would be an offense if committed by an adult (offenses under Ind. Code 31-37-1). The following are dispositional alternatives that apply only to acts that would be an offense if committed by an adult.

A. PLACEMENT IN STATE MENTAL OR ADDICTION PSYCHIATRIC HOSPITAL NOT AUTHORIZED

In re R.L.H., 831 N.E.2d 250, 255-56 (Ind. Ct. App. 2005) (Ind. Code 31-37-19-5 and Ind. Code 31-37-19-6 permit various juvenile placement options; however, a state psychiatric hospital does not fall within statutory definitions of "juvenile detention facility," "shelter care facility," or "secure private facility." A juvenile court may order psychiatric treatment only on an outpatient basis. The probate court was not authorized by Ind. Code 31-32-12-1 to commit a child.).

B. WARDSHIP TO DCS NOT AUTHORIZED

Lake County Office of Family and Children v. Odisho, 656 N.E.2d 536, 537-38 (Ind. Ct. App. 1995) (In a delinquency proceeding, a wardship may only be awarded to DOC or a community-based correctional facility for children. The court was not authorized to make the juvenile a ward of DCS.).

C. SUPERVISION OF CHILD BY PROBATION DEPARTMENT

The court may order supervision of the child by the probation department as a condition of probation. Ind. Code 31-37-19-5(b)(1).

R.J.G. v. State, 902 N.E.2d 804, 807 (Ind. 2009) (Juvenile court may impose multiple dispositions, including wardship to DOC followed by probation upon release.).

1. Home Detention as a Condition of Probation

L.W. v. State, 798 N.E.2d 904, 907-08 (Ind. Ct. App. 2003) (Informal home detention is authorized as part of probation in delinquency cases unless specifically excluded by plea agreement. A requirement that the child remain at home unless at school or accompanied by a parent or guardian does not add to the punitive obligation but instead assists the juvenile's parents in ensuring that their child does not commit further delinquent acts.).

But see S.S. v. State, 827 N.E.2d 1168, 1171 (Ind. Ct. App. 2005) (Juvenile court erred by imposing home detention as a term of probation where the plea agreement did not provide the juvenile court with discretion to impose punitive conditions. Distinguishes facts from those in L.W., primarily the differences in family circumstances, when finding that informal home detention was an impermissible punitive condition outside of the terms on the plea.)

D. COUNSELING OR THERAPY SERVICES

See also Chapter Five – Competency and Mental Health

1. For All Acts That Would Be an Offense If Committed by an Adult

Pursuant to Ind. Code 31-37-19-5(b)(2), the court may order the child to receive outpatient treatment:

- (1) At a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
- (2) From an individual practitioner.

2. For Criminal Sexual Act Cases

Pursuant to Ind. Code 31-37-19-17.4, if a child is a delinquent child under Ind. Code 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be an offense related to a criminal sexual act (as defined in Ind. Code 33-31.5-2-216) the juvenile court may, in addition to any other order or decree the court makes under Ind. Code 31-37-19, order:

- (1) the child; or
- (2) the child's parent or guardian;

to receive psychological counseling as directed by the court, subject to the applicable provisions of Ind. Code 31-37-17-1.4 and Ind. Code 31-37-18-9. Ind. Code 31-37-19-17.4(b).

E. SURRENDER OR INVALIDATE DRIVER'S LICENSE OR PERMIT

1. Discretionary for Any Act That Would Be Offense If Committed by an Adult

The court may order the child to surrender the child's driver's license to the court for a specified period of time. Ind. Code 31-37-19-5(b)(3).

2. License Suspension for Controlled Substances, Counterfeit Substances, or Prescription Drugs

a. Invalidate license or permit due to dealing, possession, or conspiracy to deal or possess

(1) Specific acts

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

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

(2) Suspension of six (6) months to one (1) year

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

b. Invalidate license if child has a prior adjudication for dealing, possession, or conspiracy to deal or possess or the current allegation took place on or near school property

(1) Specific acts

Pursuant to Ind. Code 31-37-19-14(a), Ind. Code 31-37-19-14 applies if:

1. A child has been previously determined to be a delinquent child under Ind. Code 31-37-1 due to the commission of a delinquent act under Ind.

Code 31-37-19-13(a)(1) [dealing in a controlled or counterfeit substance], Ind. Code 31-37-19-13(a)(2) [possessing a controlled substance or a prescription drug without a prescription], or Ind. Code 31-37-19-13(a)(3) [conspiracy to deal or possess]; or

2. The delinquent act under Ind. Code 31-37-19-13(a)(1) [dealing in a controlled or counterfeit substance], Ind. Code 31-37-19-13(a)(2) [possessing a controlled substance or a prescription drug without a prescription], or Ind. Code 31-37-19-13(a)(3) [conspiracy to deal or possess] was committed:

(A) On school property;

(B) Within one thousand (1,000) feet of school property; or

(C) On a school bus.

(2) Suspension of six (6) months to two (2) years

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

c. Order BMV not to issue learner's permit due to dealing or possession

(1) Specific Acts

Pursuant to Ind. Code 31-37-19-15(a), Ind. Code 31-37-19-15 applies if a child is a delinquent child under Ind. Code 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

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

(2) No learner's permit issued for six (6) months to one (1) year

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

d. Order BMV not to issue learner's permit if previous adjudication for dealing, possession, or conspiracy to deal or possess or the current allegation took place on or near school property

(1) Acts

Pursuant to Ind. Code 31-37-19-16(a), Ind. Code 31-37-19-16 applies if:

1. The child has been previously determined to be a delinquent child under Ind. Code 31-37-1 due to the commission of a delinquent act under Ind. Code 31-37-19-15(a)(1) [dealing in a controlled or counterfeit substance], Ind. Code 31-37-19-15(a)(2) [possessing a controlled substance or a prescription drug without a prescription], or Ind. Code 31-37-19-15(a)(3) [conspiracy to deal or possess]; or
2. The delinquent act under Ind. Code 31-37-19-15(a)(1) [dealing in a controlled or counterfeit substance], Ind. Code 31-37-19-15(a)(2) [possessing a controlled substance or a prescription drug without a prescription], or Ind. Code 31-37-19-15(a)(3) [conspiracy to deal or possess] was committed:
 - (A) On school property;
 - (B) Within one thousand (1,000) feet of school property; or
 - (C) On a school bus.

(2) No learner's permit issued for six (6) months to two (2) years

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

e. Court may order that license or permit be reinstated early

Pursuant to Ind. Code 31-37-19-19, the juvenile court may:

- (1) Enter an order for the maximum period of invalidation or denial of issuance under Ind. Code 31-37-19-13, -14, -15, and -16; and
- (2) Following a determination that the child has committed no further delinquent acts,

enter an order to allow the child to receive a license or permit before the period of invalidation or denial is completed.

3. License Suspension for Criminal Mischief with Graffiti

a. Specific act

Ind. Code 31-37-19-17(a) applies if a child is a delinquent child under Ind. Code 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would

be criminal mischief or institutional criminal mischief under Ind. Code 35-43-1-2 that involves the use of graffiti.

b. Suspension of license or invalidate permit for one (1) year

Pursuant to Ind. Code 31-37-19-17(b), the juvenile court may, in addition to any other order or decree the court makes under Ind. Code 31-37-19, order the bureau of motor vehicles to:

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

for one (1) year beginning the date of the order.

c. Court may rescind license suspension if restitution made

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

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

4. License Suspension for Fuel Theft

a. Specific Act

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

b. Same suspension as adult convicted of fuel theft

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

- (1) Suspend the child's driving privileges; or
- (2) Invalidate the child's driving privileges;

under Ind. Code 9-30-13-8 in the same manner as the bureau of motor vehicles is required to suspend the driving privileges of a person convicted of fuel theft.

5. License Suspension for Operating While Intoxicated

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

a. Court may order same suspension as an adult would receive under Ind. Code 9-30-5.

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

(1) BMV must comply with court recommended suspension

If a court recommends suspension of a child's driving privileges, the bureau of motor vehicles shall comply with the recommendation of suspension as provided by Ind. Code 9-30-6-12. Ind. Code 31-37-19-17.3(b).

If a court recommends suspension of driving privileges under Ind. Code 9-30-6 [Implied Consent], Ind. Code 9-30-5 [OVWI], or Ind. Code 9-30-9 [Alcohol Abuse Deterrent Programs], the bureau shall fix the period of suspension in accordance with the recommendation of the court. If the court fails to recommend a fixed period of suspension or recommends a fixed term that is less than the minimum term required by the statute, the bureau shall impose the minimum period of suspension required by statute. Ind. Code 9-30-6-12(a).

(2) Credit for time suspended if there was no violation of implied consent

A child whose driving privileges are suspended under Ind. Code 31-37-19-17.3 is entitled to credit for any days during which the license was suspended under Ind. Code 31-37-5-7 [immediate suspension by court at time of allegation], if the child did not refuse to submit to a chemical test offered as provided under Ind. Code 9-30-6-2 during the investigation of the delinquent act that would be an offense under Ind. Code 9-30-5 if committed by an adult. Ind. Code 31-37-19-17.3(g).

(3) Consecutive to suspension at detention

Pursuant to Ind. Code 31-37-19-17.3(h), a period of suspension of driving privileges imposed under Ind. Code 31-37-19-17.3 must be consecutive to any period of suspension imposed under Ind. Code 31-37-5-7 [license suspension for allegation under Ind. Code 9-30-5 when child taken into custody]. However, if the juvenile court finds in the sentencing order that it is in the best interest of society, the juvenile court may terminate all or any part of the remaining suspension under Ind. Code 31-37-5-7.

b. Probationary and specialized driving privileges

(1) Court may stay suspension if there was no violation of implied consent and order probationary driving privileges

Pursuant to Ind. Code 31-37-19-17.3(e), if:

1. A juvenile court recommends suspension of a child's driving privileges under Ind. Code 31-37-19-17.3; and

2. The child did not refuse to submit to a chemical test offered as provided under Ind. Code 9-30-6-2 [Implied Consent] during the investigation of the delinquent act that would be an offense under Ind. Code 9-30-5 [OVWI] if committed by an adult;

the juvenile court may stay the execution of the suspension of the child's driving privileges and grant the child probationary driving privileges for one hundred eighty (180) days.

(2) Court may order specialized driving privileges

Pursuant to Ind. Code 31-37-19-17.3(f), if a juvenile court orders a suspension under Ind. Code 31-37-19-17.3 and the child did not refuse to submit to a chemical test offered under Ind. Code 9-30-6-2 [Implied Consent] during the investigation of the delinquent act that would have been an offense under Ind. Code 9-30-5 [OVWI] if committed by an adult, the juvenile court may grant the child specialized driving privileges in conformity with the procedures in Ind. Code 9-30-16 [Specialized Driving Privileges].

c. Court May Order Driving Privileges Reinstated

If a court recommends suspension of a child's driving privileges under Ind. Code 31-37-19, the court may order the bureau of motor vehicles to reinstate the child's driving privileges as provided in Ind. Code 9-30-6-11 [Reinstatement of Driving Privileges]. Ind. Code 31-37-19-17.3(c).

(1) BMV must comply with the court's order to reinstate driving privileges

If a juvenile court orders the bureau of motor vehicles to reinstate the child's driving privileges under Ind. Code 31-37-19-17.3(c), the bureau shall comply with the order. Ind. Code 31-37-19-17.3(d).

(2) Remove record of suspension and reinstate privileges at no cost

Pursuant to Ind. Code 31-37-19-17.3(d), unless the order for reinstatement is issued as provided under Ind. Code 9-30-6-11(a)(2) because of a violation of the speedy trial provisions applicable to the juvenile court, the bureau shall also do the following:

1. Remove any record of the suspension from the bureau's record keeping system.
2. Reinstate the privileges without cost to the person.

d. Proof of Financial Responsibility Will Be Required for Three Years Following Termination of Suspension

If a juvenile court recommends suspension of driving privileges under Ind. Code 31-37-19-17.3 [due to operating while intoxicated], Ind. Code 9-30-6-12(b), Ind. Code 31-30-6-12(c), Ind. Code 9-30-6-12(d), and Ind. Code 9-30-6-12(e) apply to the child's driving privileges. Ind. Code 31-37-19-18.

(1) Child must provide proof of financial responsibility

Except as provided by Ind. Code 9-30-6-12(c), during the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of future financial responsibility in force under Ind. Code 9-25 [Financial Responsibility]. Ind. Code 9-30-6-12(b).

If a court recommends suspension of a person's driving privileges for a conviction under Ind. Code 9-30-5 [OVWI], during the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of future financial responsibility in force under Ind. Code 9-25 [Financial Responsibility]. However, if a court recommends suspension of the driving privileges of a person who is arrested for or charged with an offense committed under Ind. Code 9-30-5, the person is not required to provide proof of future financial responsibility under Ind. Code 9-25 unless and until the person is convicted under Ind. Code 9-30-5. Ind. Code 9-30-6-12(c).

(2) Failure to maintain proof of financial responsibility

If at any time during the three (3) years following the termination of the suspension imposed under Ind. Code 9-30-6-12(a) a person who has provided proof of future financial responsibility under Ind. Code 9-25 [Financial Responsibility] fails to maintain the proof, the bureau shall suspend the person's driving privileges until the person again provides proof of future financial responsibility under Ind. Code 9-25. Ind. Code 9-30-6-12(d).

F. PAY RESTITUTION

1. Court Authority to Order Restitution

The court may order the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing. Ind. Code 31-37-19-5(b)(4).

J.H. v. State, 950 N.E.3d 731, 734 (Ind. Ct. App. 2011) (An order of restitution is a matter within the juvenile courts discretion and will be reversed only upon a showing of abuse of that discretion.)

A.H. v. State, 10 N.E.3d 37, 40 (Ind. Ct. App. 2014) (Even though no restitution was mentioned in child's admission agreement, court properly ordered restitution because disposition of the case was left open to the court.)

W.L. v. State, 707 N.E.2d 812, 814 (Ind. Ct. App. 1999) (Where state failed to request a restitution order at disposition and the court discharged the child, the court erred in granting the state's motion to reopen for restitution due to lack of jurisdiction and failure to reacquire jurisdiction through any manner authorized by statute.)

PRACTICE POINTER: Counsel should determine how the court views the parameters of the restitution section of the Juvenile Code before advising children to enter an admission to a charge where restitution is likely to result. This is especially true if the child has already admitted to police officers a series of delinquent acts, each resulting in damage or theft of property that has since been disposed of or destroyed. Since the juvenile court retains jurisdiction until the child is 21 years old, a restitution order may require the child to pay restitution over many years. The court must make a finding of the child's ability to pay. The parameters of restitution orders have been the subject of extensive litigation in adult criminal cases. Counsel should consult criminal case law as well when challenging the scope of and liability for restitution.

2. Evidence of Child's Responsibility for Loss Required to Support Restitution Order

J.P.B. v. State, 705 N.E.2d 1075, 1077 (Ind. Ct. App. 1999) (Restitution for damage to vehicle was proper even though charges of property damage against the child were dismissed because the child admitted in a plea bargain to causing the accident that resulted in damage to the vehicle.).

In re J.L.T., 712 N.E.2d 7, 12 (Ind. Ct. App. 1999) (Restitution to property owner to replace headstones damaged when child went on graveyard rampage was proper as replacing headstones was directly linked to act of criminal mischief.).

M.C. v. State, 817 N.E.2d 606 (Ind. Ct. App. 2004) (Defendant's admission to leaving the scene of an accident did not include an admission of fault for the accident or damages to victims. A restitution order to victims to leaving the scene of an accident was error as the victims' injuries were not a direct and immediate result of the criminal acts to which M.C. plead guilty.).

a. Victim Is Any Person Who Suffered Injury

In re J.L.T., 712 N.E.2d 7, 12 (Ind. Ct. App. 1999) ("Victim" includes any person who is shown to have suffered an injury, harm, or loss as the direct and immediate result of defendant's criminal acts.).

J.P.B. v. State, 705 N.E.2d 1075, 1077 (Ind. Ct. App. 1999); *citing* Reinbold v. State, 555 N.E.2d 463, 470 (Ind. 1990) (A victim is not limited to the person or entity actually subjected to the crime's commission.).

3. Court Must Hold Hearing to Determine Child's Ability to Pay If Restitution Condition of Probation

T.C. v. State, 839 N.E.2d 1222, 1224 (Ind. Ct. App. 2005) (There is no statutory requirement that the trial court inquire into whether the juvenile has the ability to pay restitution, unlike Ind. Code 35-38-2-2.3 in criminal case, but equal protection and fundamental fairness dictate that such an inquiry be made when restitution is a condition of probation.).

Bearden v. Georgia, 461 U.S. 660, 665, 103 S.Ct. 2064, 76 L.Ed. 2d 221 (1983) (Due process and fundamental fairness concerns converge with equal protection principles in cases involving financial obligations imposed on criminal defendants as conditions of probation.).

a. Inquiry into ability to pay required when amount at discretion of the court

M.L. v. State, 838 N.E.2d 525, 530 (Ind. Ct. App. 2005) (When the trial court had the discretion to set the amount of restitution under the terms of a plea agreement, it was constrained by principles of equal protection and fundamental fairness to set the amount within the child's ability to pay because restitution was made a condition of probation.).

b. No inquiry into ability to pay required if amount of restitution is set as part of plea agreement

P.J. v. State, 955 N.E.2d 234, 235 (Ind. Ct. App. 2011) (The child waived his right to have the juvenile court inquire into his ability to pay, as he has acknowledged such ability in his plea agreement when he agreed to pay a specific amount of restitution. The juvenile court by accepting the plea is strictly bound by the plea's sentencing provisions and precluded from exercising discretion to determine the amount of restitution.).

c. No inquiry into ability to pay required if restitution is not a condition of probation

M.L. v. State, 838 N.E.2d 525, 529 (Ind. Ct. App. 2005); *citing* Ladd v. State, 710 N.E.2d 188, 192 (Ind. Ct. App. 1999) (When restitution is not a condition of probation, but rather a part of an executed sentence, an inquiry into the defendant's ability to pay is not required. In such a situation, restitution is merely a money judgment, and a defendant cannot be confined for non-payment.).

d. No inquiry into ability to pay required if restitution is ordered as community service work

A.H. v. State, 10 N.E.3d 37, 41 (Ind. Ct. App. 2014) (Inquiry into ability to pay is not relevant where restitution is imposed as community service work and not a monetary payment.)

4. Evidence Regarding Ability to Pay

T.C. v. State, 839 N.E.2d 1222, n. 2 (Ind. Ct. App. 2005) (Information in the Pre-dispositional report regarding Mother's place of employment and child's desire to get a job does not satisfy the requirement that the trial court determine a child's ability to pay.)

T.H. v. State, 33 N.E.3d 374, 376 (Ind. Ct. App. 2015) (Court abused its discretion in ordering restitution as a condition of probation when evidence established that child was fifteen years old, did not have a work permit, did not have a job, did not have a bank account, did not have any money in savings, owned no property, did not have anything else in his name and had numerous disabilities. No evidence established that child had any ability to pay any amount of restitution.)

a. Parent's ability to pay is not relevant to restitution order

J.H. v. State, 950 N.E.3d 731, 735 (Ind. Ct. App. 2011) (It is the juvenile's ability to pay restitution rather than the ability of a relative of the juvenile to pay that determines the propriety of a restitution order.)

5. Amount of Restitution

a. Amount of restitution must only be amount of damages pertaining to offense

R.L.H. v. State, 738 N.E.2d 312 (Ind. Ct. App. 2000) (The juvenile court's order requiring the juvenile to pay the total damages was erroneous and should be reduced so as to reflect only the amount of damages pertaining to the offense, which was sufficiently supported by evidence.).

J.H. v. State, 950 N.E.2d 731, 734 (Ind. Ct. App. 2011) (The State has the burden to establish the validity of the estimates for restitution. Restitutions claims cannot be mere speculation or conjecture.).

S.G. v. State, 956 N.E.2d 668, 683 (Ind. Ct. App. 2011) (The adult restitution statute (Ind. Code 35-50-5-3) requires that a restitution order for property damages be based on the actual cost of repair or replacement if repair is inappropriate. The adult statute is instructive when the juvenile statute is silent. The amount of actual loss is a factual matter which can be determined only upon presentation of evidence.).

b. Level of offense immaterial

In re J.L.T., 712 N.E.2d 7, 12 (Ind. Ct. App. 1999) (The pecuniary loss a victim suffers as a result of criminal mischief determines the level of the offense for which the offending party may be charged. However, the level of the offense has no bearing on the amount of restitution the court may impose.).

c. Court may order retail value

T.C. v. State, 839 N.E.2d 1222, 1228 (Ind. Ct. App. 2005) (Depending on the evidence presented at the restitution hearing, the trial court may award restitution based upon the retail value of the unsalable stolen merchandise. However, the retail value is not necessarily the appropriate measure of damage in every case. Evidence from victim that loss exceeded the wholesale cost of the stolen merchandise supported an award in an amount more than the wholesale value of any unrecovered and/or unsalable items.).

6. Restitution Order Following Discharge from Probation

M.M. v. State, 31 N.E.3d 516, 521-22 (Ind. Ct. App. 2015) (When restitution is a condition of juvenile's probation, Indiana law does not require that the restitution obligation terminate upon the juvenile's discharge from probation.)

But see J.B. v. State, 55 N.E.3d 831, 834 (Ind. Ct. App. 2016) (There is no judgment lien provision in the juvenile statute. The court may not order a juvenile to pay restitution as a civil judgment.)

7. Reinstating Jurisdiction Upon Release from DOC for Restitution

If any part of an order of restitution remains unpaid at the time a child is released by the department of correction, the court may reinstate jurisdiction over the child and place the child under the supervision of the probation department until the restitution order is satisfied. Ind. Code 31-30-2-5.

G. PARTIALLY OR COMPLETELY EMANCIPATE THE CHILD

The court may partially or completely emancipate the child under Ind. Code 31-37-19-27. Ind. Code 31-37-19-5(b)(5).

1. Child's Petition in the County in which a Child Resides

Pursuant to Ind. Code 31-37-19-27(a), the juvenile court for a county in which a child resides may emancipate a child under Ind. Code 31-37-19-1(a)(5) upon a petition brought by the child.

2. Guardian Ad Litem and Report Required

The court in which a petition is filed under Ind. Code 31-37-19-27(a) shall appoint an attorney to serve as guardian ad litem for the child. The guardian ad litem shall investigate the statements contained in the petition and file a report of the investigation with the court. Ind. Code 31-37-19-27(b).

3. Hearing and Findings Required

Pursuant to Ind. Code 31-37-19-27(c), after receiving the report of the guardian ad litem under Ind. Code 31-37-19-27(b) and holding a hearing, the court may grant the petition if the court finds that the child:

- (1) Wishes to be free from parental control and protection and no longer needs that control and protection;
- (2) Has sufficient money for the child's own support;
- (3) Understands the consequences of being free from parental control and protection; and
- (4) Has an acceptable plan for independent living.

4. Terms of Emancipation

Pursuant to Ind. Code 31-37-19-27(d), if the juvenile court completely emancipates the child, the child has all the rights and responsibilities of an adult.

If the juvenile court partially emancipates the child, the court shall specify the terms of the emancipation, which may include the following:

- (1) Suspension of the parent's or guardian's duties to support the child. In this case the judgment of emancipation supersedes the support order of a court.
- (2) Suspension of:
 - (A) The parent's or guardian's right to the control or custody of the child; and
 - (B) The parent's right to the child's earnings.
- (3) Empowering the child to consent to military enlistment.
- (4) Empowering the child to consent to: (A) medical; (B) psychological; (C) psychiatric; (D) educational; or (E) social services.
- (5) Empowering the child to contract.

(6) Empowering the child to own property.

5. Continuing Obligations of the Child

Pursuant to Ind. Code 31-37-19-27(e), an emancipated child remains subject to the following:

- (1) Ind. Code 20-33-2 concerning compulsory school attendance.
- (2) The continuing jurisdiction of the court.
- (3) Ind. Code 31-11-1-4 concerning minimum age for marriage.
- (4) Other specific constitutional and statutory age requirements applicable to the emancipated child because of the emancipated child's age, including requirements relating voting, use of alcoholic beverages or tobacco products, and other health and safety regulations.

H. ALCOHOL AND DRUG SERVICES PROGRAM

The court may order the child to attend an alcohol and drug services program established under Ind. Code 12-23-14 [court established drug and alcohol programs]. Ind. Code 31-37-19-5(b)(6).

I. COMMUNITY SERVICE

The court may order the child to perform community restitution or service for a specified period of time. Ind. Code 31-37-19-5(b)(7).

J. WARDSHIP OF THE CHILD TO DOC OR A COMMUNITY-BASED CORRECTIONAL FACILITY FOR CHILDREN

1. In General

Pursuant to Ind. Code 31-37-19-6(b)(2)(A), the court may award wardship to:

- (i) The department of correction for housing in a correctional facility for children;
or
- (ii) A community based correctional facility for children.

2. Age Limits for Wardship to DOC

a. In general, child must be 12-17 years old

Pursuant to Ind. Code 31-37-19-7, a child may not be awarded to DOC, if the child:

- (1) Except as provided by Ind. Code 31-37-19-7(b), is
 - (A) Less than twelve (12) years of age; or
 - (B) At least eighteen (18) years of age;

at the time of the dispositional decree; or

- (2) Is determined to be a delinquent because the child violated Ind. Code 7.1-5-7 [alcohol and minors].

b. Exception if child is 10-11 years old and committed murder

Pursuant to Ind. Code 31-37-19-7(b), a wardship may be awarded to DOC if the child:

- (1) Is ten (10) or eleven (11) years of age; and
- (2) Is found to have committed an act that would have been murder if committed by an adult.

[But see I.C. 11-10-2-2(2), concerning commitment of juvenile offenders: “No offender under twelve (12) years of age or eighteen (18) years of age or older may be committed to the department.”]

3. Generally, DOC Commitment Is of Indeterminate Length

E.H. v. State, 764 N.E.2d 681, 686-687 (Ind. Ct. App. 2002) (The court merely makes a recommendation. DOC has ultimate authority to determine the child’s sentence in correctional facility.).

A.T. v. State, 960 N.E.2d 117 (Ind. 2012) (Trial court erred in imposing both determinate and indeterminate sentencing where juvenile was adjudicated for committing what would be felony murder if committed by an adult, but where the trial court made no finding under Ind. Code 11-8-8-5 that the juvenile was a sex or violent offender, which would have made juvenile eligible for determinate sentencing. Thus, juvenile was eligible only for indeterminate sentencing).

4. Suspended Sentence not Required for DOC Commitment Following Probation Violation

A.C. v. State, 144 N.E.3d 810 (Ind. Ct. App. 2020) (trial court has authority to commit a juvenile to the Department of Correction for a probation violation even without having suspended a portion of the juvenile’s “sentence” in its original disposition order.).

5. Determinate Sentencing in Limited Cases – Fixed Period of Commitment

J.D. v. State, 853 N.E.2d 945, 949 (Ind. 2006) (The court has the authority to decide whether to employ determinate sentencing as one of the court’s dispositional alternatives, but the court is not required to utilize the determinate sentencing provision.).

F.H. v. State, 141 N.E.3d 65 (Ind. Ct. App. 2020) (A juvenile is not subject to a determinate term in the Department of Correction absent a specific determination by the juvenile court that statutory criteria have been satisfied).

a. Murder, Kidnapping, Rape, Criminal Deviate Conduct, and Robbery if Child is 13-16 Years Old

The court may order wardship of the child as provided by Ind. Code 31-37-19-9. Ind. Code 31-37-19-5(b)(8).

Pursuant to Ind. Code 31-37-19-9(b), after a juvenile court makes a determination under Ind. Code 11-8-8-5 [sex and violent offender], the juvenile court may, in addition to an order under Ind. Code 31-37-6, and if the child:

- (1) Is at least thirteen (13) years of age and less than sixteen (16) years of age; and
- (2) Committed an act that, if committed by an adult, would be:
 - (A) Murder (Ind. Code 35-42-1-1);
 - (B) Kidnapping (Ind. Code 35-42-3-2);
 - (C) Rape (Ind. Code 35-42-4-1);
 - (D) Criminal Deviate Conduct (Ind. Code 35-42-4-2) (repealed); or
 - (E) Robbery (Ind. Code 35-42-5-1) if the robbery was committed while armed with a deadly weapon or if the robbery resulted in bodily injury or serious bodily injury;

order wardship of the child to the department of correction for a fixed period that is not longer than the date the child becomes eighteen (18) years of age, subject to Ind. Code 11-10-2-10 [transfer to adult facility or program].

A.T. v. State, 960 N.E. 117, 118 (Ind. 2012) (Juvenile court must first make a determination that the child is a sex and violent offender before this statute for determinate sentencing may be used.).

(1) DOC may not reduce fixed term

Notwithstanding Ind. Code 11-10-2-5 [child is mentally or physically incapacitated or pregnant and cannot stay at DOC], the department of correction may not reduce the period ordered. Ind. Code 31-37-19-9(c).

b. Felony Against a Person, Level 1, 2, 3, or 4 Controlled Substances Felony, or Burglary and Two Prior Unrelated Felony Adjudications, if Child is at least 14 Years Old

Pursuant to Ind. Code 31-37-19-10(a), this section applies to a child who:

- (1) Is adjudicated a delinquent child for an act that if committed by an adult would be:
 - (A) A felony against a person;
 - (B) A Level 1, Level 2, Level 3, or Level 4 felony that is a controlled substance offense under Ind. Code 35-48-4-1 through Ind. Code 35-48-4-5; or
 - (C) Burglary as a Level 1, Level 2, Level 3, or Level 4 felony under Ind. Code 35-43-2-1;
- (2) Is at least fourteen (14) years of age at the time the child committed the act for which the child is being placed; and
- (3) Has two (2) unrelated prior adjudications of delinquency for acts that would be felonies if committed by an adult.

(1) Prior unrelated adjudications defined

W.T.J. v. State, 713 N.E.2d 938, 941 (Ind. Ct. App. 1999) (Although Ind. Code 31-37-19-10(a) does not define “unrelated prior adjudications of delinquency,” this language is similar to language in Ind. Code 35-50-2-8, and the court therefore could look to the habitual offender statute for guidance in its interpretation of the determinate sentence statute. By requiring two unrelated prior determinations, the legislature intended to afford the juvenile two opportunities for reform.).

N.D.F. v. State, 775 N.E.2d 1085, 1090 (Ind. 2002) (“Two unrelated prior adjudications of delinquency” simply means that the earlier adjudications of delinquency are independent of the offense that is currently charged.).

(2) Placement for not more than two (2) years

A court may place the child in a facility authorized under Ind. Code 31-37-19 for not more than two (2) years. Ind. Code 31-37-19-10(b).

(3) DOC may not reduce fixed term

Notwithstanding Ind. Code 11-10-2-5, the department of correction may not reduce the period ordered. Ind. Code 31-37-19-10(c).

c. Court may not order both determinate and indeterminate sentence

D.C. v. State, 958 N.E.2d 757, 764 (Ind. 2011) (Court erred by imposing both a determinate and indeterminate sentence. It is within the juvenile court’s discretion to decide between the two options.).

d. No credit for time served in detention

J.D. v. State, 853 N.E.2d 945, 948 (Ind. 2006); A.E. v. State, 853 N.E.2d 950, 951 (Ind. 2006) (Law does not require that a juvenile offender be provided credit for time served in pre-disposition detention. The authority to determine dispositional alternatives extends to discretion over how much, if any, credit time to award. Requiring credit would impinge upon a juvenile court’s broad authority to fashion dispositional alternatives.).

6. New Classification System May Not Increase Length of Commitment

Pursuant to Ind. Code 31-37-19-11, if a child:

- (1) Is adjudicated a delinquent child for a delinquent act; and
- (2) Becomes a ward of the department of correction under Ind. Code 31-37-19;

the department of correction may not at any time during the child’s confinement impose a departmental classification system on the child that would cause the child to be confined in a correctional facility for longer than the period of confinement under a departmental classification system that existed on the date that the child committed the delinquent act.

7. Child May Not Be Confined with Adults

Pursuant to Ind. Code 31-37-19-7(c), DOC may not confine a delinquent child, except as provided in Ind. Code 11-10-2-10, at:

- (1) An adult correctional facility; or
- (2) A shelter care facility;

that houses persons charged with, imprisoned for, or incarcerated for crimes unless the child is restricted to an area of the facility where the child may have not more than haphazard or incidental sight or sound contact with persons charged with, imprisoned for, or incarcerated for crimes.

a. Exception -- Child may be transferred to adult DOC facility if incorrigible or for child's physical safety

Pursuant to Ind. Code 11-10-2-10(a), the DOC commissioner may transfer a committed delinquent offender to an adult facility or program according to the following requirements:

- (1) The offender must be seventeen (17) years of age or older at the time of transfer.
- (2) The department must determine that:
 - (A) Either the offender is incorrigible to the degree that his presence at a facility or program for delinquent offenders is seriously detrimental to the welfare of other offenders, or the transfer is necessary for the offender's own physical safety or the physical safety of others; and
 - (B) There is no other action reasonably available to alleviate the problem.
- (3) No offender may be transferred to the Indiana state prison or the Pendleton Correctional Facility.

Aikens v. Lash, 547 F.2d 372, 373 (C.A. Ind. 1976) (Inmates transferred from the Indiana Reformatory to the Indiana State Prison and subjected to disciplinary confinement or segregation were entitled to a disciplinary transfer hearing which satisfies the minimum standards of due process.).

8. Wardship Not a Sentence or Penalty

M.C. v. State, 134 N.E.3d 453 (Ind. Ct. App. 2019) (Because the goal in Indiana is rehabilitation for juvenile offenders, wardship to the Department of Correction was not a sentence or penalty but based upon principles of rehabilitation and therefore not within the meaning of the Eighth Amendment to the United States Constitution and did not violate the proportionality provision of Article I, Section 16 of the Indiana Constitution.

9. Wardship Does Not Include Right to Consent to Adoption

Wardship under Ind. Code 31-37-19-6(b)(2)(A) does not include the right to consent to the child's adoption. Ind. Code 31-37-19-6(b)(2)(A).

K. ORDER CONFINEMENT IN A JUVENILE DETENTION FACILITY

1. Juvenile Detention Facility Must Meet Legal Standards

A child may not be sent to a juvenile detention facility that fails to meet standards established by law. Ind. Code 31-37-19-8(b).

a. Specific facility requirements if child detained more than 30 days

Pursuant to Ind. Code 31-37-19-21, as part of a dispositional decree, a child may only be confined in a juvenile detention facility for more than thirty (30) days if the facility meets the following criteria:

- (1) The facility provides to delinquent children a program that includes recreation, education, counseling, and health care.
- (2) The program provides services and treatment to:
 - (A) Meet the individual needs of the delinquent child;
 - (B) Involve the delinquent child's family if possible; and
 - (C) Provide transitional services for delinquent children returning to community placement.
- (3) The program must be administered and operated by staff who are qualified through education and training to provide rehabilitation and treatment.
- (4) The juvenile detention facility must meet the state standards and licensing requirements established by 210 IAC 6.

2. If the Child is Less Than Seventeen (17) Years of Age

Pursuant to Ind. Code 31-37-19-6(b)(2)(B), if the child is less than seventeen (17) years of age, the court may order confinement in a juvenile detention facility for not more than the lesser of:

- (i) Ninety (90) days; or
- (ii) The maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under Ind. Code 31-37-1.

a. Confinement may be continuous or intermittent

Confinement under Ind. Code 31-37-19-6(b)(2)(B) may be continuous or intermittent, including confinement at nights or on weekends. Ind. Code 31-37-19-8(a).

3. If the Child Is At Least Seventeen (17) Years of Age

Pursuant to Ind. Code 31-37-19-6(b)(2)(C), if the child is at least seventeen (17) years of age, the court may order confinement in a juvenile detention facility for not more than the lesser of:

- (1) One hundred twenty (120) days; or

- (2) The maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under Ind. Code 31-37-1.

4. Time May Not Expanded for Contempt Finding

K.L.N. v. State, 881 N.E.2d 39, 45-46 (Ind. Ct. App. 2008) (Court had no authority to impose a sentence longer than 120 days and it should not be permitted to bootstrap an additional term of detention by finding the juvenile in contempt for misbehaving at the detention center.).

L. PLACEMENT OR WARDSHIP OUTSIDE OF THE HOME

1. Placement of Child in Another Home or Shelter Care Facility

The court may remove the child from the child's home and place the child in another home or shelter care facility. Placement includes the authorization to control and discipline the child. Ind. Code 31-37-19-6(b)(2)(D).

2. Wardship to a Person Other Than DCS or to a Shelter Care Facility

Pursuant to Ind. Code 31-37-19-6(b)(2)(E), the court may award wardship to a:

- (1) Person, other than the department; or
- (2) Shelter care facility.

Wardship does not include the right to consent to the child's adoption.

3. Cannot Place If a Person Has a Substantiated Abuse or Neglect Report or Certain Criminal Convictions

Pursuant to Ind. Code 31-37-19-6.5(a), except as provided for in Ind. Code 31-37-19-6.5(d), the juvenile court may not enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-6(b)(2)(E) if a person who is currently residing in the home in which the child would be placed under Ind. Code 31-37-19-6(b)(2)(D) or (E) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 [enumerated offenses resulting in denial of foster care licenses] if committed by an adult, or has a conviction for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8.

a. Offenses that preclude placement or wardship

The following offenses enumerated in Ind. Code 31-9-2-84.8 preclude placement pursuant to Ind. Code 31-37-19-6.5(a):

- (1) Murder (Ind. Code 35-42-1-1)
- (2) Causing Suicide (Ind. Code 35-42-1-2)
- (3) Assisting Suicide (Ind. Code 35-42-1-2.5)
- (4) Voluntary Manslaughter (Ind. Code 35-42-1-3)

- (5) Involuntary Manslaughter (Ind. Code 35-42-1-4)
- (6) Reckless Homicide (Ind. Code 35-42-1-5)
- (7) Feticide (Ind. Code 35-42-1-6)
- (8) Battery (Ind. Code 35-52-2-1) within the past five (5) years
- (9) Domestic Battery (Ind. Code 35-42-2-1.3)
- (10) Aggravated Battery (Ind. Code 35-42-2-1.5)
- (11) Criminal Recklessness (Ind. Code 35-42-2-2) within the past five (5) years
- (12) Strangulation (Ind. Code 35-42-2-9)
- (13) Kidnapping (Ind. Code 35-42-3-2)
- (14) Criminal Confinement (Ind. Code 35-42-3-3) within the past five (5) years
- (15) Human and Sexual Trafficking (Ind. Code 35-42-3.5)
- (16) A felony sex offense under Ind. Code 35-42-4
- (17) Arson (Ind. Code 35-43-1-1) within the past five (5) years
- (18) Incest (Ind. Code 35-46-1-3)
- (19) Neglect of Dependent (Ind. Code 35-46-1-4(a)(1) and (2))
- (20) Child Selling (Ind. Code 35-46-1-4(d))
- (21) Reckless Supervision (Ind. Code 35-46-1-4.1)
- (22) Nonsupport of a dependent child (Ind. Code 35-46-1-5) within the past five (5) years
- (23) Operating a motorboat while intoxicated (Ind. Code 35-46-9-6) within the past five (5) years
- (24) A felony involving a weapon under Ind. Code 35-47 within the past five (5) years
- (25) A felony relating to controlled substances under Ind. Code 35-48-4 within the past five (5) years
- (26) An offense relating to the material or a performance that is harmful to minors or obscene under Ind. Code 35-49-3
- (27) A felony under Ind. Code 9-30-5 [Operating a Vehicle While Intoxicated] within the past five (5) years
- (28) A felony related to the health or safety of a child (as defined in Ind. Code 31-9-2-13(h)) or an endangered adults (as defined in Ind. Code 12-10-3-2)

4. Probation Must Conduct a Criminal History Check

The probation officer who prepared the pre-dispositional report shall conduct a criminal history check (as defined in Ind. Code 31-9-2-22.5) to determine if a person described in Ind. Code 31-37-19-6.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-37-19-6.5(b).

a. When criminal history check is not required

The probation officer is not required to conduct a criminal history check under this section if criminal history information obtained under Ind. Code 31-37-17-6.1 [Pre-dispositional report] establishes whether a person described in Ind. Code 31-37-19-6.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 if committed by an adult, or has a conviction for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8. Ind. Code 31-37-19-6.5(b).

Pursuant to Ind. Code 31-37-19-6.5(c), the probation officer is not required to conduct a criminal history check under this section if:

- (1) The probation officer is considering only an out-of-home placement to an entity or a facility that: (A) is not a residence (as defined in Ind. Code 3-5-2-42.5); or (B) is licensed by the state; or
- (2) Placement under this section is undetermined at the time the pre-dispositional report is prepared.

5. Exceptions to Bar on Placement or Wardship Due to a Substantiated Abuse or Neglect Report or Certain Criminal Convictions

Pursuant to Ind. Code 31-37-19-6.5(d), the juvenile court may enter a dispositional decree approving placement of a child in another home under Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility that results in a placement with a person under Ind. Code 31-37-19-6(b)(2)(E) if:

- (1) A person described in Ind. Code 31-37-19-6.5(a) has:
 - (A) Committed an act resulting in a substantiated report of child abuse or neglect;
 - (B) Been convicted of:
 - (i) A felony under Ind. Code 9-30-5 (operating a vehicle while intoxicated);
 - (ii) battery (Ind. Code 35-42-2-1);
 - (iii) criminal recklessness (Ind. Code 35-42-2-2) as a felony;
 - (iv) Criminal confinement (Ind. Code 35-42-3-3) as a felony;
 - (v) Arson (Ind. Code 35-43-1-1) as a felony;
 - (vi) nonsupport of a dependent child (Ind. Code 35-46-1-5)
 - (vii) operating a motorboat while intoxicated (Ind. Code 35-46-9-6) as a felony;
 - (viii) A felony involving a weapon under Ind. Code 35-47; or
 - (vi) A felony relating to controlled substances under Ind. Code 35-48-4; or
- if the conviction did not occur within the past five (5) years; or
- (C) Had a juvenile adjudication for a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 that, if committed by an adult would be a felony; and

- (2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in Ind. Code 31-37-19-6.5(d)(1) is not relevant to the person's present ability to care for a child and placing the child in another home is in the best interest of the child.

a. No placement if felony that is not excluded offense

Pursuant to Ind. Code 31-37-19-6.5(d)(2), a court may not enter a dispositional decree placing a child in another home under Ind. Code 31-37-19-6(b)(2)(D) or awarding wardship to a person or facility under this subdivision if a person with whom the child is or will be placed has been convicted of a non-waivable offense, as defined in Ind. Code 31-9-2-84.8 that is not specifically excluded under Ind. Code 31-37-19-6.5(d)(1)(B).

b. Court considerations for exceptions

Pursuant to Ind. Code 31-37-19-6.5(e), in considering the placement under Ind. Code 31-37-16-6.5(d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

M. PLACE CHILD IN SECURE PRIVATE FACILITY FOR CHILDREN

The court may place the child in a secure private facility for children licensed under the laws of a state. Placement under this subdivision includes authorization to control and discipline the child. Ind. Code 31-37-19-6(b)(2)(F).

N. LIMITATIONS TO OUT OF COUNTY AND STATE PLACEMENT

Pursuant to Ind. Code 31-37-19-23, a court may not place a child who is a delinquent child under Ind. Code 31-37-1 in:

- (1) A community based correctional facility for children;
- (2) A juvenile detention facility;
- (3) A secure facility;
- (4) A secure private facility; or
- (5) A shelter care facility;

that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services.

1. Placement Out of County

D.J. v. State, 798 N.E.2d 535, 536-37 (Ind. Ct. App. 2003) (Court did not abuse its discretion in placing juvenile in a secure facility, out-of-county, where juvenile would not be attending public school, given the child's need for accountability and structure. Furthermore, since facility in the child's county of residence was non-secure therapeutic group home, they were not comparable, and the "least harsh disposition" requirement of Ind. Code 31-37-18-6 was not violated.).

M.Q.M. v. State, 840 N.E.2d 441, 448 (Ind. Ct. App. 2006) (Trial court was under no duty to revisit failed strategies before placing the juvenile in a highly structured environment outside his community.).

2. Placement Out of State

In re D.S., 910 N.E.2d 837, 842 (Ind. Ct. App. 2009); *transf. denied* 919 N.E.2d 550. (Placement in an out-of-state residential facility was supported by the evidence given child's history and the wishes of the child, mother, and probation department.).

E.M.W. v. State, 762 N.E.2d 1283, 1286 (Ind. Ct. App. 2002) (Trial court properly placed defendant in a juvenile facility in Arizona rather than in Indiana, because the Arizona facility had a higher success rate, and it better suited defendant's structural needs and the community's best interest.).

PRACTICE POINTER: Remember that the child can submit an alternative pre-dispositional report, pursuant to Ind. Code 31-37-17-1(b), including a recommendation for placement in a residential treatment facility. Counsel, with child/client's permission, can contact appropriate private facilities and seek acceptance to the facility, subject to court approval. Counsel should ensure that appropriate releases of information are obtained before beginning the application process. Counsel will need to present evidence to the court at the dispositional hearing establishing the child's treatment needs and how the placement facility will meet these needs.

O. NO CONTACT ORDER

The court may order a person who is a respondent in a proceeding under Ind. Code 31-37-16 (before its repeal) or Ind. Code 34-26-5 [Indiana civil protection order act] to refrain from direct or indirect contact with the child. Ind. Code 31-37-19-6(b)(2)(G).

1. Who May File Petition for No Contact Order

Pursuant to Ind. Code 31-37-25-1, any of the following may sign and file a petition for the juvenile court to require a person to refrain from direct or indirect contact with a child: (1) the prosecuting attorney; (2) a probation officer; (3) the department of correction; (4) the guardian ad litem or court appointed special advocate.

2. Petition Requirements

Pursuant to Ind. Code 31-37-25-3, a petition seeking to restrain a person from contact must be entitled "In the Matter of a No Contact Order for ____." The petition must allege the following:

- (1) That the respondent is likely to have direct or indirect contact with the child in the absence of an order under this chapter.
- (2) That the child has been adjudicated a delinquent child.
- (3) That the best interests of the child will be served if the person refrains from direct or indirect contact with the child.

3. Petition Must Be Verified

A petition filed under Ind. Code 31-37-25-1 must be verified. Ind. Code 31-37-25-2.

4. Hearing on Petition May Be Held

The court may hold a hearing on a petition concurrently with a dispositional hearing or with a hearing to modify a dispositional decree. Ind. Code 31-37-25-4(a).

5. Findings by Court

If the court finds that the allegations under Ind. Code 31-37-25-3 are true, the court shall enter a decree. Ind. Code 31-37-25-4(b).

6. Procedures with Clerk of Court

a. Clerk of Court shall comply with Protective Order Depository Rules

Pursuant to Ind. Code 31-37-19-22, if a court issues a dispositional decree that includes a no contact order under Ind. Code 31-37-19-6(b)(2)(G):

- (1) The clerk of the court shall comply with Ind. Code 5-2-9; and
- (2) The petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

If a court enters a decree that requires a person to refrain from direct or indirect contact with a child, the clerk of court shall comply with Ind. Code 5-2-9. Ind. Code 31-37-25-5.

b. Clerk of Court shall provide copies of the protective order

The clerk of court that enters a dispositional decree under Ind. Code 31-37 that requires a person to refrain from direct or indirect contact with a child shall provide a copy of the decree to the following: (1) each party; (2) the sheriff; (3) the law enforcement agency of the municipality, if any, in which the child resides. Ind. Code 31-37-19-25(a).

7. Law Enforcement Must Maintain Copy of Order

Pursuant to Ind. Code 31-37-19-25(b), each sheriff and law enforcement agency that receives a decree under Ind. Code 31-37-19-25(a) shall maintain a copy of the decree in the depository established by Ind. Code 5-2-9. The decree may be removed from the depository after the later of the following occurs: (1) the lapse of one (1) year after the decree is entered; (2) the date specified in the decree if any.

P. HIV TESTING

1. HIV Testing Only Applies to Criminal Sexual Act or Certain Controlled Substance-Related Acts

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

- (1) An offense related to a criminal sexual act (as defined by Ind. Code 35-31.5-2-216) and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or
- (2) An offense relating to controlled substances (as defined by Ind. Code 35-31.5-2-217) if the offense involved:

(A) The delivery by a person to another person; or

(B) The use by a person on another person;

of a contaminated sharp (as defined in Ind. Code 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

2. Screening HIV Test Shall Be Ordered

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

3. Confirmatory Test Required If Screening Test Is Positive

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

4. Positive Confirmatory Test Must Be Reported To State Department of Health

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

5. State Department of Health Shall Notify and Provide Counseling To Potential Victims

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

- (1) Notify potentially affected victims of the offense relating to a criminal sexual act (as defined by Ind. Code 35-31.5-2-216) or offense relating to controlled substances (as defined in Ind. Code 35-31.5-2-217) of the HIV screening results.
- (2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

Q. SEX OFFENDER REGISTRY

The child cannot be ordered onto the sex offender registry as part of the original disposition. See Chapter 13 – Post-Disposition.

IX. PARENTAL PARTICIPATION

A. STANDING TO FILE PETITION FOR PARENTAL PARTICIPATION

Pursuant to Ind. Code 31-37-15-1, any of the following may sign and file a petition for the juvenile court to require the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child:

- (1) The prosecuting attorney.
- (2) A probation officer.
- (3) The department of correction.
- (4) The guardian ad litem or court appointed special advocate.

1. Child Has Standing to Challenge Parental Participation Order

A.E.B. v. State, 756 N.E.2d 536, 542 (Ind. Ct. App. 2001); *citing* L.B. v. State, 675 N.E.2d 1104, 1107 (Ind. Ct. App. 1996) (Because a parental participation order can direct the parent-child relationship and affect their mutual interests, it follows that a child can challenge a parental participation order.).

B. CONTENTS OF PETITION FOR PARENTAL PARTICIPATION

Pursuant to Ind. Code 31-37-15-3, a petition seeking participation of a parent, guardian, or custodian must be entitled “In the Matter of the Participation of _____ the Parent, Guardian, or Custodian of _____”. The petition must allege the following:

- (1) That the respondent is the child’s parent, guardian, or custodian.
- (2) That the child has been adjudicated a delinquent child.
- (3) That the parent, guardian, or custodian should:
 - (A) Obtain assistance in fulfilling obligations as a parent, guardian, or custodian;
 - (B) Provide specified care, treatment, or supervision for the child;
 - (C) Work with a person providing care, treatment, or rehabilitation for the child; or
 - (D) Refrain from direct or indirect contact with the child.

M.T. v. State, 787 N.E.2d 509, 515 (Ind. Ct. App. 2003) (Since a proper verified petition for parental participation was not filed, the trial court did not have jurisdiction over the juvenile’s mother and could not order parental participation.).

J.S. v. State, 843 N.E.2d 1013, 1018 (Ind. Ct. App. 2006) (Order requiring a father’s participation was reversed because, while the participation order referred to both the father and mother, the petition only named the mother, and therefore wasn’t binding on the father.).

A.E.B. v. State, 756 N.E.2d 536, 542 (Ind. Ct. App. 2001) (A petition for parental participation must be filed before a juvenile court can issue the participation order as part of a delinquency disposition.).

C. PETITION FOR PARENTAL PARTICIPATION MUST BE VERIFIED

A petition filed under Ind. Code 31-37-15-1 must be verified. Ind. Code 31-37-15-2.

D. COURT MAY HOLD HEARING ON PETITION FOR PARENTAL PARTICIPATION

The court may hold a hearing on a petition concurrently with any dispositional hearing or with any hearing to modify a dispositional decree. Ind. Code 31-37-15-4(a).

S.S. v. State, 827 N.E.2d 1168, 1172 (Ind. Ct. App. 2005) (Parent participation order was reversed, even though the mother agreed to participate in the probation, because the court did not inform the mother that she had a right to contest an allegation regarding her participation).

E. PARENT MUST BE ADVISED OF POSSIBILITY OF TERMINATION OF PARENTAL RIGHTS

If the order concerns participation of a parent, the juvenile court shall advise the parent that failure to participate as required by an order issued under Ind. Code 31-37-19-24 [order for parental participation] can lead to the termination of the parent-child relationship under Ind. Code 31-35. Ind. Code 31-37-15-4(b).

F. IF THE ALLEGATIONS ARE TRUE, COURT SHALL ENTER DECREE

If the court find that the allegations under Ind. Code 31-37-15-3 [petition for parental participation] are true, the court shall enter a decree. Ind. Code 31-37-15-4(c).

1. Contents of Decree

Pursuant to Ind. Code 31-37-19-24, if the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment or rehabilitation for the child, the court may order the parent, guardian, or custodian to:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian;
- (2) Provide specified care, treatment, or supervision for the child;
- (3) Work with a person providing care, treatment, or rehabilitation for the child; and
- (4) Participate in a program operated by or through the department of correction.

X. FINANCIAL RESPONSIBILITY OF PARENT OR GUARDIAN OF ESTATE

M.Q.M. v. State, 840 N.E.2d 441, 449 (Ind. Ct. App. 2006) (The juvenile court is required to inquire as to the parent's ability to pay fees and costs before ordering payment.).

A. BEST PRACTICE IS TO FILE PETITION FOR REIMBURSEMENT

In re M.L.K., 751 N.E.2d 293, 297 (Ind. Ct. App. 2001) (The preferable procedure to obtain a parental participation order is for the seeking party to file a petition specific to reimbursement.).

1. Parents Must Receive Notice That Reimbursement Will Be Litigated at A Particular Hearing

In re M.L.K., 751 N.E.2d 293, 296 (Ind. Ct. App. 2001) (Due process requires that parents receive notice that reimbursement will be litigated at a particular hearing.).

Carnahan v. State, 558 N.E.2d 845, 848 (Ind. Ct. App. 1990) (County was precluded from recovering costs of incarceration where no affirmative record existed of any attempt to give notice for any of the proceedings.).

B. FINANCIAL RESPONSIBILITY FOR SERVICES PROVIDED BY DCS

A parent or guardian of the estate of: (1) a child adjudicated a delinquent child or a child in need of services; or (2) a participant in a program of informal adjustment approved by a juvenile court under Ind. Code 31-37-9; is financially responsible for any services provided by or through the department. Ind. Code 31-40-1-3(a).

1. Court Shall Order Payment at Certain Hearings Unless Finding of Inability to Pay or Justice Would Not Be Served

Pursuant to Ind. Code 31-40-1-3(c): at:

- (1) A detention hearing;
- (2) A hearing that is held after the payment of costs by the department under Ind. Code 31-40-1-2;
- (3) The dispositional hearing; or
- (4) Any other hearing to consider modification of a dispositional decree;

the juvenile court shall order the child's parents or guardian of the child's estate to pay for, or reimburse the department for the cost of services provided to the child or the parent or guardian unless the court makes a specific finding that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian.

a. Child support worksheet required

Each person described in Ind. Code 31-40-1-3(a) shall, before a hearing under Ind. Code 31-40-1-3(c) concerning payment or reimbursement of costs, furnish the court and the department with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana supreme court for child support orders. Ind. Code 31-40-1-3(b).

b. Record must show court made inquiry into ability to pay

M.Q.M. v. State, 840 N.E.2d 441, 449 (Ind. Ct. App. 2006) (Court remanded case for indigency hearing to determine the child's ability to pay fees after court failed to inquire as to his or his parents' ability to pay.).

Matter of C.K., 695 N.E.2d 601, 605 (Ind. Ct. App. 1998) (Court's reimbursement order was reversed where nothing in the record indicated that the court considered parents' ability to pay or whether justice would be served by reimbursement order.).

But see J.T. v. State, 111 N.E.3d 1019 (Ind. Ct. App. 2019) (In ordering J.T.'s parents to reimburse county for \$8,363 in costs and fees, the juvenile court did not abuse its discretion by failing to make explicit inquiries and findings regarding whether the parents were unable to pay or that justice would not be served by ordering them to pay, in part because the amount parents were ordered to pay was smaller than the amounts in J.W., 697 N.E.2d 480 and Matter of C.K., 695 N.E.2d 601.), trans. denied 116 N.E.3d 459 (David, J. and Goff, J. dissenting).

E.M. v. State, 128 N.E.3d 1 (Ind. Ct. App. 2019) (The Court of Appeals declined to follow J.T., 111 N.E.3d 1019 in finding the trial court abused its discretion when it ordered juvenile's parents to reimburse costs totaling \$7997 without a hearing and without considering any statutory factors. Brief inquiry more than eighteen months prior and when costs were nearly half of the final total did not provide a sufficient basis on which to consider the statutory requirements to support a final order on costs.).

c. Burden on parent to prove they are unable to pay or that justice would not be served by ordering payment

J.W. v. Hendricks County Office of Family and Children, 697 N.E.2d 480, 482 (Ind. Ct. App. 1998) (Under Ind. Trial Rule 8(C), which governs affirmative defenses, a party raising "any . . . matter constituting an avoidance" carries the burden of proof on that matter. The relevant statutory scheme in this section mandates that parents reimburse the county for the cost of services provided to the child, unless the court finds: (1) that the parents are unable to pay or (2) that justice would not be served by ordering payment from the parents. Therefore, these statutory exceptions constitute affirmative defenses. Consequently, the party seeking to avoid the obligation must first raise the defense(s) and then present sufficient evidence to meet the burden of proof. Juvenile court's judgment against parents for approximately \$40,000 in costs of a child's private placement in CHINS case was proper, although record reflected that parents had annual income of about \$20,000, as parents did not satisfy the burden of showing that they could not pay or that justice would not be served by the reimbursement order.).

d. Standard is preponderance of evidence

Goad v. State, 516 N.E.2d 26 (Ind. 1987) (The court's findings (1) that the parents are unable to pay or (2) that justice would not be served by ordering payment from the parents must be based upon the preponderance of the evidence.).

2. Reimbursement Paid Directly To DCS

Any parental reimbursement obligation under Ind. Code 31-40-1-3 shall be paid directly to the department and not to the local court clerk so long as the juvenile delinquency case is open. The department shall keep track of all payments made by each parent and shall provide a receipt for each payment received. Ind. Code 31-40-1-3(d).

3. Unpaid Reimbursement

a. If judgment unpaid, court may enter judgment

At the end of the juvenile delinquency action, the department shall provide an accounting of payments received, and the court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligation that remains unpaid. The court shall reduce the unpaid balance to a final judgment that may be enforced in any court having jurisdiction over such matters. Ind. Code 31-40-1-3(d).

b. If judgment unpaid, court may find parent in contempt

Pursuant to Ind. Code 31-40-4-1, if the parent or guardian of the estate:

- (1) Defaults in reimbursing the county or the department, as ordered by the juvenile court; or
- (2) Fails to pay a fee authorized by Ind. Code 31-40;

the juvenile court may find the parent or guardian in contempt and enter judgment for the amount due.

c. If judgment for unpaid obligation made, payment to clerk

After a judgment for unpaid parental reimbursement obligation is rendered, payments made toward satisfaction of the judgment shall be made to the clerk of the court in the county where the enforcement action is filed and shall be promptly forwarded to the department in the same manner as any other judgment payment. Ind. Code 31-40-1-3(e).

4. Child Cannot Be Ordered to Pay Costs

F.A. v. State, 148 N.E.3d 328 (Ind. Ct. App. 2020) (Trial court abused its discretion when it ordered child to pay more than \$11,000 for secure detention costs. Regardless of whether DCS or the county is responsible for paying the services, the reimbursement statutes do not allow juvenile courts to order the child to pay the costs of secure detention.).

C. FINANCIAL RESPONSIBILITY FOR SERVICES PROVIDED BY DOC

1. Court May Conduct a Hearing on Ability to Pay

If a juvenile court: (1) adjudicates a child to be a delinquent child; and (2) awards wardship of the child to the department of correction; the juvenile court may conduct a hearing. Ind. Code 31-40-1-3.5(a).

a. Parents Must Have Ability to Pay

A juvenile court may not order a parent to pay or reimburse the department of correction if the juvenile court makes a specific finding that the parent is unable to pay or that justice would not be served by ordering payment from the parent. Ind. Code 31-40-1-3.5(c).

b. Hearing may be held before or after commitment

The hearing may be conducted before or after the department of correction incurs costs for a child. Ind. Code 31-40-1-3.5(a).

c. Parent responsible for costs if ordered

If, after a hearing, the juvenile court orders a parent to pay or reimburse costs, the parent is financially responsible for the costs of treatment services incurred by the department of correction. Ind. Code 31-40-1-3.5(d).

2. Child Support Rules and Guidelines Apply

The juvenile court shall use the Child Support Rules and Guidelines of the Indiana supreme court and the child support obligation worksheet developed by the Indiana supreme court to determine what each parent should pay for the services provided for the child under this section. Ind. Code 31-40-1-3.5(a).

a. Parent Must Provide Child Support Worksheet

Each parent shall, before a hearing under Ind. Code 31-40-1-3.5(a), furnish the juvenile court and the department of correction with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana supreme court for child support orders. Ind. Code 31-40-1-3.5(b).

b. Parent Receives Credit for Participating in Treatment

If the parent participates with the treatment plans developed by the department of correction, the parent or parents are entitled to receive a parenting time credit under the Child Support Rules and Guidelines. Ind. Code 31-40-1-3.5(a).

3. Payment to Clerk of Court

Any parental reimbursement obligation under Ind. Code 31-40-1-3.5 shall be paid directly to the clerk of the court so long as the juvenile delinquency case is open. The clerk of the court shall keep track of all payments made by each parent and shall provide a receipt for each payment received. Ind. Code 31-40-1-3.5(e).

4. Unpaid Reimbursement

a. Final judgment possible if outstanding payments at end of case

At the end of the juvenile delinquency action, the clerk of the court shall provide an accounting of payments received, and the juvenile court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligations that remains unpaid. The juvenile court shall reduce the unpaid balance to a final judgment that may be enforced in any court having jurisdiction over such matters. Ind. Code 31-40-1-3.5(e).

b. If judgment for unpaid obligation made, payment to clerk

After a judgment for unpaid parental reimbursement obligation is rendered, payments made toward satisfaction of the judgment shall be made to the clerk of the court in the county where the enforcement action is filed and shall be forwarded promptly to the department of correction in the same manner as any other judgment payment. Ind. Code 31-40-1-3.5(f).

c. DOC may notify court of unpaid obligation

The department of correction may compromise a claim owed by a parent under this section. The department of correction, after obtaining the advice of the attorney general, may notify the court of a parental reimbursement obligation that is willfully ignored. Ind. Code 31-40-1-3.5(g).

5. Reimbursement Obligation Ends with Child's Release

Upon release from the department of correction, the parental reimbursement obligation payment to the department of correction ends. Ind. Code 31-40-1-3.5(h).

6. Child Support Obligation Reassigned upon Child's Release

If there was a child support order for the child adjudicated delinquent, it reverts to the most recent child support order in effect before the child's adjudication. If the child is placed with a person other than a custodial parent, the juvenile court shall establish a new support order for the benefit of the child being released from the department of correction. Ind. Code 31-40-1-3.5(h).

7. Payments Deposited into Youth Services Transitional Services Fund

The department of correction shall deposit money collected under Ind. Code 31-40-1-3.5 in the division of youth services transitional services fund established by Ind. Code 11-10-2-11. Ind. Code 31-40-1-3.5(i).

D. PARENT REIMBURSEMENT FOR SERVICES PROVIDED BY COUNTY

1. Court May Conduct a Hearing on Ability to Pay

If a county is responsible for the payment of: (1) any costs or expenses of services for or the placement of a child in need of services; or (2) the costs or expenses of services for or

the placement of a delinquent child under Ind. Code 31-40-1-2; the juvenile court ordering the services that the county is responsible for may hold a hearing. Ind. Code 31-40-1-3.8(a).

a. Parents Must Have Ability to Pay

At: (1) a detention hearing; (2) a hearing that is held after the payment of costs by the county; (3) the dispositional hearing; or (4) any other hearing to consider modification of a dispositional decree; the juvenile court shall order the child's parents to pay for, or reimburse the county for, the costs of services provided to the child or the parent unless the court makes a specific finding that the parent is unable to pay or that justice would not be served by ordering payment from the parent. Ind. Code 31-40-1-3.8(c).

2. Child Support Rules and Guidelines Apply

The juvenile court shall use the Child Support Rules and Guidelines of the Indiana supreme court and the child support obligation worksheet developed by the Indiana supreme court to determine what each parent should pay for the services provided for the child under Ind. Code 31-30-1-3.8. Ind. Code 31-40-1-3.8(a).

a. Parent Must Provide Child Support Worksheet

Each person described in Ind. Code 31-40-1-3.8(a) shall, before a hearing under Ind. Code 31-40-1-3.8(c) concerning the payment or reimbursement of costs, furnish the court with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana supreme court for child support orders. Ind. Code 31-40-1-3.8(b).

b. Parent Receives Credit for Participating in Treatment

If the parent participates with the treatment plans developed by the department or court, the parent or parents are entitled to receive a parenting time credit under the Child Support Rules and Guidelines. Ind. Code 31-40-1-3.8(a).

3. Payment to Clerk of Court

Any parental reimbursement obligation under this section shall be paid directly to the clerk of the court so long as the juvenile delinquency case is open. The clerk of the court shall keep track of all payments made by each parent and shall provide a receipt for each payment received. Ind. Code 31-40-1-3.8(d).

4. Unpaid Obligation

a. Final judgment possible if outstanding payments at end of case

At the end of the juvenile delinquency action, the clerk of the court shall provide an accounting of payments received, and the court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligations that remains unpaid. The court shall reduce the unpaid balance to a final judgment

that may be enforced in any court having jurisdiction over such matters. Ind. Code 31-40-1-3.8(d).

b. If unpaid obligation, court may find parent in contempt

Pursuant to Ind. Code 31-40-4-1, if the parent or guardian of the estate:

- (1) Defaults in reimbursing the county or the department, as ordered by the juvenile court; or
- (2) Fails to pay a fee authorized by Ind. Code 31-40;

the juvenile court may find the parent or guardian in contempt and enter judgment for the amount due.

c. If judgment for unpaid obligation made, payment to clerk

After a judgment for unpaid parental reimbursement obligation is rendered, payments made toward satisfaction of the judgment shall be made to the clerk of the court in the county where the enforcement action is filed. Ind. Code 31-40-1-3.8(e).

d. County may collect unpaid obligations

The county may collect any money that is owed under Ind. Code 31-40-1-3.8 as provided by Ind. Code 36-1-4-17. Ind. Code 31-40-1-3.8(f).

5. Reimbursement Obligation Ends with Child's Release

Upon release from services order under Ind. Code 31-40-1-3.8, the parental reimbursement obligation payment ends. Ind. Code 31-40-1-3.8(g).

6. Child Support Obligation Reassigned Upon Child's Release

If there was a child support order for the child adjudicated delinquent, it reverts to the most recent child support order in effect before the child's adjudication. If the child is placed with a person other than a custodial parent, the juvenile court shall establish a new support order for the benefit of the child. Ind. Code 31-40-1-3.8(g).

E. PARENT OR GUARDIAN RESPONSIBLE FOR COST OF RETURN OF CHILD UNDER INTERSTATE COMPACT ON JUVENILES

The parent or guardian of the estate of any child returned to Indiana under the interstate compact on juveniles under Ind. Code 31-37-23 shall reimburse the department for all costs involved in returning the child that the court orders the parent or guardian to pay under Ind. Code 31-40-1-3 whether or not the child has been adjudicated a delinquent child or a child in need of services. Ind. Code 31-40-1-4.

F. SERVICES AND FEES

1. Court Fees

Court fees under Ind. Code 33-37-4 are included in the "services" for which the parent is responsible. See M.Q.M. v. State, 840 N.E.2d 441, 449 (Ind. Ct. App. 2006); Woolf v. State, 545 N.E.2d 590, 592 (Ind. Ct. App. 1989).

a. Docket fee

The clerk shall collect a juvenile costs fee of \$120 for each action filed under Ind. Code 31-37 [delinquent children]. Ind. Code 33-37-4-3(a).

b. Other fees that may apply

Pursuant to Ind. Code 33-37-4-3(b), in addition to juvenile costs fee, the clerk shall also collect the following fees, if required under Ind. Code 33-37-5:

- (1) Document fee (Ind. Code 33-37-5-1, Ind. Code 33-37-5-3, or Ind. Code 33-37-5-4);
- (2) Marijuana eradication fee (Ind. Code 33-37-5-7);
- (3) Alcohol and drug services program fee (Ind. Code 33-37-5-8(b));
- (4) Law enforcement continuing education program fee (Ind. Code 33-37-5-8(c));
- (5) Alcohol and drug countermeasure fee (Ind. Code 33-37-5-10);
- (6) Document storage fee (Ind. Code 33-37-5-20);
- (7) Automated record keeping fee (Ind. Code 33-37-5-21);
- (8) Late payment fee (Ind. Code 33-37-5-22);
- (9) Public defense administration fee (Ind. Code 33-37-5-21.2);
- (10) Judicial insurance adjustment fee (Ind. Code 33-37-5-25);
- (11) Judicial salaries fee (Ind. Code 33-37-5-26);
- (12) Court administration fee (Ind. Code 33-37-5-27); and
- (13) DNA sample processing fee (Ind. Code 33-37-5-26.2).

2. Payment for GAL or CASA Fees

Subject to Ind. Code 31-40-1-3, juvenile court may order the parent or guardian of the estate of any child for whom a guardian ad litem (GAL) or court appointed special advocate (CASA) is appointed, to pay to the probation department a user's fee of not more than \$100 to be deposited in the GAL or CASA fund. Ind. Code 31-40-3-1.

3. Payment for Costs of Rehabilitation or Education Services

If the juvenile court orders supervision of the child by the probation department under Ind. Code 31-37-19-1(a)(1) or Ind. Code 31-37-19-5(b)(1), the child or the child's parent, guardian, or custodian is responsible for any costs resulting from the participation in a rehabilitative service or educational class provided by the probation department. Any costs collected for services provided by the probation department shall be deposited in the county supplemental juvenile probation services fund. Ind. Code 31-37-19-1(d) and Ind. Code 31-37-19-5(c).

4. User's Fee

See Ind. Code 31-40-2 for a complete listing of all probation fee statutes

Pursuant to Ind. Code 31-40-2-1(a), subject to Ind. Code 31-40-1-3, a juvenile court may order each delinquent child who receives supervision under Ind. Code 31-37-19 or the child's parent, guardian, or custodian to pay to either the probation department or the clerk of court:

- (1) An initial probation user's fee of at least \$25 but not more than \$100;
- (2) A probation user's fee of at least \$10 but not more than \$25 per month the child receives supervision; and
- (3) An administrative fee of \$100 if the delinquent child is supervised by a juvenile probation officer.

a. Increased fee if out-of-state

Pursuant to Ind. Code 31-40-2-1.5, the court may order a person to pay a probation user's fee in excess of the maximum in Ind. Code 31-40-2-1(a) if:

- (1) The person was placed on probation in another state and moved or transferred to Indiana;
- (2) The other state allows higher probation user's fee than the maximum amount allowed under Ind. Code 31-40-2-1; and
- (3) The probation user's fee court order does not exceed the maximum amount allowed in the other state.

b. Fee may be increased if ability to pay changes

Pursuant to Ind. Code 31-40-2-1.7(b), a probation department may petition a court to:

- (1) Impose a probation user's fee on a person; or
- (2) Increase a person's probation user's fee;

under section Ind. Code 31-40-2-1 or -1.5 if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

c. Order to pay probation user's fee is a lien

Pursuant to Ind. Code 31-40-2-1.7(c), an order to pay a probation user's fee under Ind. Code 31-40-2-1 or -1.5

- (1) Is a judgment lien that:
 - (A) Attaches to the property of the person subject to the order;
 - (B) May be perfected
 - (C) May be enforced to satisfy any payment that is delinquent under Ind. Code 31-40-2-1 or -1.5; and
 - (D) Expires;

in the same manner as a judgment lien created in a civil proceeding;

- (2) Is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) Is not discharged by the liquidation of a person's estate by a receiver under Ind. Code 32-30-5.

d. Multiple delinquent acts may have to pay multiple initial fees, but only one monthly fee

Pursuant to Ind. Code 31-40-2-1.7(d), a delinquent child placed on probation for more than one (1) delinquent act:

- (1) May be required to pay more than one (1) initial probation user's fee and
- (2) May not be required to pay more than one (1) monthly probation user's fee per month;

to either the probation department or the clerk of the court.

e. Court may garnish wages to enforce probation fees order

If a court orders a person to pay a probation user's fee under Ind. Code 31-40-2-1 or -1.5, the court may garnish the wages, salary, and other income earned by the person to enforce the order. Ind. Code 31-40-2-1.7(e).

G. DCS MAY CONTRACT FOR COLLECTION SERVICES

Pursuant to Ind. Code 31-40-1-6(a), the department may contract with any of the following, on terms and conditions with respect to compensation and payment or reimbursement of expenses as the department may determine, for the enforcement and collection of any parental reimbursement obligation established by order entered by the court under Ind. Code 31-40-1-3 or -5(g):

- (1) The prosecuting attorney of the county in which the juvenile court that ordered or approved the services is located or in which the obligor resides.
- (2) An attorney licensed to practice law in Indiana, if the attorney is not an employee of the department.
- (3) A private collection agency licensed under Ind. Code 25-11.

See Ind. Code 31-40-1-6 for more details.