

CHAPTER FIVE

COMPETENCY, MENTAL HEALTH, AND SUBSTANCE ABUSE TREATMENT

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CHAPTER FIVE

COMPETENCY, MENTAL HEALTH, AND SUBSTANCE ABUSE TREATMENT

I. COMPETENCE TO STAND TRIAL

A. JUVENILE HAS RIGHT TO BE FOUND COMPETENT TO STAND TRIAL

A juvenile alleged to be delinquent has the constitutional right to have her competency determined before she is subjected to delinquency proceedings. Without competence to stand trial, all other constitutional rights extended to juveniles are meaningless. A juvenile charged with delinquency is entitled to have the court apply those common law jurisprudential principles which experience, and reason have shown are necessary to give the accused the essence of a fair trial. In re K.G., 808 N.E.2d 631, 635 (Ind. 2004); see also In re Gault, 387 U.S. 1, 30, 87 S.Ct. 1428 (1967).

B. STANDARD OF COMPETENCY

Competent and competency mean the present ability of a child to (1) understand the nature and objectives of a proceeding against the child; and (2) assist in the child's defense. Ind. Code 31-37-26-2 (effective Dec. 31, 2022).

In re K.G., 808 N.E.2d 631, 635 (Ind. 2004) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial." Drope v. Missouri, 420 U.S. 162, 171 [] (1975). [] Principles of fundamental fairness require that this right be afforded in juvenile proceedings.)

1. Assisting Counsel

Assisting counsel means having the ability to listen to the attorney, the ability to understand the basics of what the attorney is saying, having the ability to communicate with the attorney during the trial process, and being able to understand what is happening during the trial process and relate it to himself or herself. Thomas Grisso, *Assessment of Competence of Adolescents*, 8 T.M. Cooley J. Prac. & Clinical L. 49, 51-52 (2005-06).

2. Factual Understanding of Proceedings

A factual understanding typically refers to having a basic knowledge of the charges and the seriousness of the possible penalties, what those possible penalties are and what the possible pleas are, basic knowledge of what the roles of the people in the trial process, and what the process is itself. Thomas Grisso, *Assessment of Competence of Adolescents*, 8 T.M. Cooley J. Prac. & Clinical L. 49, 51 (2005-06).

C. CRIMINAL LAW COMPETENCY PROCEDURE DOES NOT APPLY

In re R.L.H., 831 N.E.2d 250, 255-56 (Ind. Ct. App. 2005) (Juvenile court erred by applying adult competency procedures in IC 35-36-3-1, not following IC 12-26

commitment procedures, and committing delinquent juveniles as inpatients at state psychiatric institution. Statutes allowed court to order outpatient treatment, but not inpatient treatment at state psychiatric institution).

1. Criminal Competency Procedure, In Part

If the court finds that the defendant lacks [the ability to understand the proceedings and assist in the preparation of the defendant's defense], it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. Ind. Code 35-36-3-1(b).

2. Needs of Child May Not Be Served by Commitment to Division of Mental Health Pursuant to IC 35-36-3-1

In re K.G., 808 N.E.2d 631, 637-38 (Ind. 2004) (In essence the code affords juvenile courts a degree of discretion and flexibility, unparalleled in the criminal code, to address the needs of children and to act in their best interests. That flexibility is severely compromised by resorting to the procedures set forth in the adult competency statute when resolving questions concerning juvenile competency. There certainly are occasions where it may not be in the child's best interest to be committed to the division of mental health).

PRACTICE POINTER – A resource concerning the clinical evaluations for juvenile competence includes Thomas Grisso, Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals, Professional Resource Press (2005).

PRACTICE POINTER – Unlike an adult competency evaluation, a clinician will likely involve parents, guardians, and/or custodians in the competency evaluation process to gather data about the child's development, as well as the defense attorney to gather information about any communication concerns. School records should also be made available to the clinician, especially if the child has an Individual Education Plan and has undergone educational evaluations.

PRACTICE POINTER – If the child cannot be restored to competency because the incompetence is due to developmental issues, move for a dismissal outright or for the case to be filed as a CHINS 6 case to ensure that the child's and family's needs are met. At the time of publication, there is no way to force the Department of Child Services to file a CHINS 6 petition, but efforts should be made through the normal reporting procedures.

D. REQUIREMENT TO ORDER COMPETENCY EVALUATION

Pursuant to Ind. Code 31-37-26-3 (effective Dec. 31, 2022), if, at any time before disposition, a court has reasonable grounds to believe that a child is not competent, the court shall order the child to undergo a competency evaluation as described in Ind. Code 31-37-26-4, unless the child is represented by counsel and waives the competency evaluation.

E. PROCEDURES FOR COMPETENCY EVALUATION

1. One Disinterested Evaluator Required.

If a court orders a competency evaluation under Ind. Code 31-37-26-3, the court shall appoint one (1) disinterested person to evaluate the child's competency. Ind. Code 31-37-26-4(a).

2. Second Disinterested Evaluator Appointed upon Request.

If a party requests the appointment of an additional person to conduct an evaluation, the court shall appoint a second disinterested person to evaluate the child's competency. Ind. Code 31-37-26-4(a). (The statute does not state when the request can be made. In cases where it is anticipated that competency will be hotly contested, you may want to request a second evaluation before waiting until the first evaluation is complete.)

3. Evaluator Qualifications

A person appointed under Ind. Code 31-37-26-4(a) may be a:

- (1) psychiatrist; or
- (2) psychologist endorsed by the Indiana state board of examiners in psychology as health service providers in psychology;

who has expertise in determining competency in juveniles. Ind. Code 31-37-26-4(b).

4. Location of Evaluation

Pursuant to Ind. Code 31-37-26-4(c), the court shall order a competency evaluation to be performed in a location or facility that, consistent with the nature of the case and the best interests and needs of the child:

- (1) Imposes the fewest restrictions on the freedom of the child and the child's parent, guardian or custodian;
- (2) Interferes the least with family autonomy and family life; and
- (3) Is as close as practicable to the home of the parents, guardian, or custodian, consistent with the best interests and special needs of the child.

5. DCS Not Responsible for Costs

The department of child services shall not be responsible for the payment of a competency evaluation. Ind. Code 31-37-26(c).

6. Evaluator May Consider Any Relevant Information

A person appointed to conduct a competency evaluation may consider any relevant information. Ind. Code. 31-37-26-4(e).

7. Probation Department Must Provide Records to Evaluator within 7 Days

Not later than seven (7) days from the date the court appoints a person to conduct a competency evaluation, the juvenile probation department shall provide the person appointed to conduct a competency evaluation with all relevant files in the possession

of the probation department, including any preliminary investigatory records and a copy of the delinquency allegations. Ind. Code 31-37-26-4(d).

8. Written Report Required withing 14 Days

Not later than fourteen (14) days upon completion of the competency evaluation, the person who conducted the evaluation shall provide a written report to the court and to all attorneys of record. Ind. Code 31-37-26-4(f). (Despite requiring the written report within 14 days of the completion of the evaluation, there is no time limit articulated for the evaluation itself. Be mindful of this, and advocate for the court to set a time frame for the examination if it is in your client's interest to speed up the process.)

9. Contents of Written Report

(a) Pursuant to Ind. Code 31-37-26-4(f), the competency report shall include:

- (1) the opinion of the person who conducted the competency evaluation as to the child's ability to understand the nature and objectives of the proceeding against the child.
- (2) the opinion of the person who conducted the competency evaluation as to the child's ability to assist in the child's defense.
- (3) if a person who conducted the competency evaluation determined that the child is not competent:
 - (a) a description of the child's needs for services; and
 - (b) recommendation concerning the least restrictive setting and treatment that would assist in restoring the child's competency.

(b) The competency report may not contain any statement from the child relating to the alleged delinquent act. Ind. Code 31-37-26-4(f).

F. TIMING FOR COMPTENCY DETERMINATION

As soon as practicable after receiving the written competency evaluation, the court shall determine whether the child is competent for adjudication or disposition. Ind. Code 31-37-26-5.

G. COMPETENCY HEARING

1. Competency Hearing Required Upon Request

Upon a motion by any party, the court shall conduct a hearing to determine competency. Ind. Code 31-37-26-5.

(A hearing is not required unless requested. Make sure to notify the court if you think a hearing may be necessary before the receipt of the written competency evaluation if possible. A hearing can always be vacated later if it becomes unnecessary.)

2. Rights of Child at Competency Hearing

Pursuant to Ind. Code 31-37-26-5, the child has

- (1) the right to notice;
- (2) the opportunity to participate personally at the hearing;
- (3) the right to present evidence; and
- (4) the right to be represented by counsel. If the child is indigent, the court shall appoint counsel for the child.

3. Burden of Proof

The party alleging that the child is not competent has the burden of proving that the child is not competent by a preponderance of the evidence. Ind. Code 31-37-26-5.

H. STATEMENTS BY CHILD DURING COMPETENCY PROCEEDINGS

No statement that a child makes during an evaluation or hearing conducted under Ind. Code 31-37-26 may be used against the child in any juvenile or adult proceeding. Ind. Code 31-37-26-6(a).

The competency report may not contain any statement from the child relating to the alleged delinquent act. Ind. Code 31-37-26-4(f).

(Be mindful that this protection is written more broadly than the protections against the use of statements to mental health evaluators contained in IC 31-32-2-2.5 and IC 31-37-8-4.5, and should exclude statements by the child even in probation revocation proceedings and modifications, which is an allowable use under IC 31-32-2-2.5 and IC 31-37-8-4.5)

I. PROCEEDINGS IF CHILD FOUND COMPETENT

If the court determines that the juvenile is competent, the court shall proceed with the delinquency proceedings as provided by law. Ind. Code 31-37-26-6(a) and Ind. Code 31-37-26-6(l).

J. PROCEEDINGS IF CHILD REASONABLY LIKELY TO ATTAIN COMPETENCE

1. Timeframe to Attain Competence

Pursuant to Ind. Code 31-37-26-6(b), if the court determines that the juvenile is not competent, the court shall determine whether the child may attain competency within:

- (a) one hundred eighty (180) days, if the child is alleged to have committed an act that would be a felony if committed by an adult; or
- (b) ninety (90) days, if the child is alleged to have committed an act that would not be a felony if committed by an adult.

2. Order for Services

Pursuant to Ind. Code 31-37-26-6(d), if the court determines that the juvenile is not competent but is reasonably likely to attain competency within the relevant time periods as described in Ind. Code 31-37-26-6(b), the court may order the child to participate in services, other than a state institution, specifically designed to help the child attain competency, to be paid by the department subject to the requirements

described in Ind. Code 31-37. If the court orders the child to receive competency attainment services, the court shall:

- (a) identify a qualified provider to deliver the competency attainment services; and
- (b) order a probation officer to contact that provider by a specified date to arrange for services.

3. Competency Attainment Plan within 30 Days of Referral

Pursuant to Ind. Code 31-37-26-6(f), not later than thirty (30) days after the probation officer contacts the competency attainment services provider under Ind. Code 31-37-26-6(d), the provider shall submit to the court a competency attainment plan for the court's approval.

4. Notice of Competency Attainment Plan

If the court approves the plan, the court shall provide copies of the plan to the prosecuting attorney, the child's attorney, the child's guardian ad litem, if any, and the child's parents, guardian, or custodian.

(1) Conditions and Time Periods for Competency Attainment Services

(a) Least Restrictive Setting

Services shall be provided in the least restrictive setting that is consistent with the child's ability to attain competency, and the safety of both the child and the community.

(b) More restrictive setting may be ordered if child fails operate

If the child has been released on a temporary or interim order and refuses or fails to cooperate with the provider, the court may reassess the order and amend it to require a more appropriate setting. Ind. Code 31-37-26-6(g)(1).

(c) No Longer Than Required

No child may be required to participate in competency attainment services for longer than is required for the child to attain competency. Ind. Code. 31-37-26-6(g)(2).

(d) Time Limit for Nonresidential Setting

In a nonresidential setting, the child may not be required to participate for more than:

- (i) ninety (90) days if the child is charged with an act that would not be a felony if committed by an adult; or
- (ii) one hundred eighty (180) days if the child is charged with an act that would be a felony or murder if committed by an adult. Ind. Code. 31-37-26-6(g)(2)(A).

(e) Time Limits for Residential Setting under Ind. Code 31-37-26-6(g)(B) (C)1

- (1) In a residential setting that is operated solely or in part for the purpose of providing competency attainment services, the child may not be ordered to participate for more than:

- (i) forty-five (45) days if the child is charged with an act that would not be a felony if committed by an adult;
 - (ii) ninety (90) days if the child is charged with an act that would be a Level 4, Level 5, or Level 6 felony if committed by an adult; or
 - (iii) one hundred eighty (180) days if the child is charged with an act that would be murder or a Level 1, Level 2, or Level 3 felony if committed by an adult;
- (2) In a residential, detention, or other secured setting where the child has been placed for reasons other than to participate in competency attainment services, but where the child is also ordered to participate in competency attainment services, the child may not be required to participate for more than
- (i) ninety (90) days if the child is charged with an act that would not be a felony if committed by an adult; or
 - (ii) one hundred eighty (180) days if the child is charged with an act that would be a felony or murder if committed by an adult.

(2) Reports Required from Service Provide

(a) Timing

The provider shall report on the child's progress every thirty (30) days, and upon the termination of services. Ind. Code 31-37-26-6(h)(1).

(b) Cannot Include Statements from the Child

The report may not include any details of the alleged offense as reported by the child. Ind. Code 31-37-26-6(h)(1).

(c) Current Setting No Longer Least Restrictive Setting Appropriate

If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community, the provider shall report this to the court within three (3) days of the determination. Ind. Code 31-37-26-6(h)(2).

(d) Provider Determines Child Attained Competence

If the provider determines that the child has achieved the goals of the plan and is able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, with or without reasonable accommodations, the provider shall issue a report informing the court of that determination within three (3) days of the determination. If the provider believes that accommodations are necessary or desirable, the report shall include recommendations for accommodations. Ind. Code 31-37-26-6(h)(3).

(e) Provider Determines Child Will Not Attain Competence

If the provider determines that the child will not achieve the goals of the plan within the applicable period of time under this Ind. Code 31-37-26-6, the provider shall issue a report informing the court of the determination within three (3) days of the determination. The report shall include recommendations for services for the child

that would support the safety of the child or the community. Ind. Code 31-37-26-6(h)(4).

(f) Reports Provided to Parties

Pursuant to Ind. Code 31-37-26-6(i), the court shall provide a copy of any report received under Ind. Code 31-37-26-6(h) to:

- (1) the prosecuting attorney
- (2) the attorney representing the child.
- (3) the child's guardian ad litem, if any.
- (4) the child's parent, guardian, or custodian, unless the court finds that providing a copy of the report is not in the best interests of the child.
- (5) Service Provider Reports May Trigger New Hearing and/or Evaluation

Not later than fifteen (15) days after receiving a report under subsection Ind. Code 31-37-26-6(h), the court may hold a hearing to determine if it should issue a new order. The court may order a new competency evaluation if the court believes that it may assist the court in making its determination. The child shall continue to participate in competency attainment services until a new order is issued or the required period of participation ends. Ind. Code 31-37-26-6(j).

K. PROCEEDINGS WHEN CHILD IS UNLIKELY TO ATTAIN COMPETENCE

1. Dismissal of Allegations

Pursuant to Ind. Code 31-37-26-6(c) and Ind. Code 31-37-26-6(k), if the court determines that the juvenile is not competent and will not attain competency within the relevant time period described in Ind. Code 31-37-26-6(b) or Ind. Code 31-37-26-6(g), the court shall:

- (1) dismiss the allegations without prejudice; or
- (2) delay dismissing the allegations for not more than ninety (90) days and:
 - (a) refer the matter to the department and request that the department determine whether the child may be a child in need of services; or
 - (b) order a probation officer to:
 - (i) refer the child or the child's family to an entity certified or licensed by the division of mental health and addiction, or the bureau of developmental disabilities services; or
 - (ii) otherwise, secure services to reduce the potential that the child will engage in behavior that could result in delinquent child or other criminal charges.

2. Civil Commitment Proceedings

If the court determines that the dismissal options described in Ind. Code 31-37-26-6(c)(1) and (2) or Ind. Code 31-37-26-6(k)(1) and (2), are not in the best interests of the child, the court may, if it appears to the court that a child is mentally ill, refer the matter to the court having probate jurisdiction for civil commitment proceedings under IC 12-26 or initiate a civil commitment proceeding under IC 12-26.

3. Subsequent Proceedings Not Precluded

Pursuant to Ind. Code 31-37-26-6(m), allegations dismissed under Ind. Code 31-37-26-6(c) or Ind. Code 31-37-26-6(k) do not preclude:

- (1) a future proceeding against the child if the child eventually attains competency;
or
- (2) a civil action against the child based on the conduct that formed the basis of the allegations against the child.

L. COMPETENCY PROCEEDINGS DO NOT TOLL TIME LIMITS

Pursuant to Ind. Code 31-37-26-6(o), proceedings under Ind. Code 31-37-26 do not toll the time limits under IC 31-37-11-5 (answer to petition alleging delinquency exceeding one year in aggregate).

M. REFERRAL DOESN'T ESTABLISH OBLIGATION TO PROVIDE SERVICES

Pursuant to Ind. Code 31-37-26-6(n), a referral made under Ind. Code 31-37-26-6(c) or Ind. Code 31-37-26-6(k) does not establish an obligation on the division of mental health and addiction, a state institution, or the bureau of developmental disabilities services to provide services to a referred child.

N. COMPUTATION OF TIME LIMITS IN COMPETENCY PROCEEDINGS

In computing time under Ind. Code 31-37-26, Saturdays, Sundays, and legal holidays are not included in the computation if the time prescribed is less than fifteen (15) days. Ind. Code 31-37-26-(b).

II. PRIVILEGED COMMUNICATIONS TO MENTAL HEALTH PROVIDER

Notwithstanding Ind. Code 31-37-8-4(5) [child's statements to intake officer] and except as provided by Ind. Code 31-37-8-4.5(d) and except for purposes of:

- (1) A probation revocation proceedings; or
- (2) A modification of a dispositional decree under Ind. Code 31-37-22;

a statement communicated to an evaluator in the evaluator's official capacity may not be admitted as evidence against the child on the issue of whether the child committed a delinquent act or a crime. Ind. Code 31-37-8-4.5(b).

A. PRIVILEGE APPLIES TO COURT ORDERED OR VOLUNTARY TREATMENT

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

B. PRIVILEGE PROTECTS STATEMENTS AND EVIDENCE DERIVED FROM STATEMENTS

State v. I.T., 4 N.E.2d 1139 (Ind. 2014) (State was prohibited from using juvenile's statements to the evaluator or evidence derived from those statements because Ind. Code

31-32-2-2.5 and Ind. Code 31-37-8-4.5 were construed to provide use and derivative use immunity).

C. PRIVILEGE WAIVED FOR INSANITY DEFENSE

This section does not affect the admissibility of evidence when a juvenile interposes the defense of insanity. Ind. Code 31-32-2-2.5(c) and Ind. Code 31-37-8-4.5(c).

D. PRIVILEGE DOES NOT APPLY TO HOMICIDES OR INTENTION TO COMMIT A CRIME

Pursuant to Ind. Code 31-37-8-4.5(d), this section does not affect a disclosure or reporting requirement in effect on July 1, 2007, under statute, or in case law regarding a statement that:

- (1) Relates directly to the facts or immediate circumstances of a homicide; or
- (2) Reveals that the child may intend to commit a crime.

III. INDIANA JUVENILE MENTAL HEALTH SCREENING, ASSESSMENT, AND TREATMENT PROJECT

For additional information, see the 2011 Report and Recommendations. Available at http://youthlawteam.org/mental_health.html. (Last visited April 11, 2017).

A. ADMINISTERED AT MOST OF THE DETENTION CENTERS

As of 2011, fourteen (14) of the county detention centers were participating in the project, including Bartholomew, Clark, Dearborn, Delaware, Elkhart, Grant, Hamilton, Henry, Howard, Johnson, Knox, Lake, LaPorte, Marion, Porter, Tippecanoe, and Vigo.

B. INFORMATION GIVEN IS CONFIDENTIAL

Statutory information given to evaluator may not be admitted into evidence against child on issues of whether the child committed a delinquent act or crime.

C. MAYSI-2 IS DETENTION SCREENING TOOL

The MAYSI-2 may be administered on both boys and girls from ages 12-17. If the child scores such that mental health intervention may be necessary, there are additional tools that may be administered.

For additional overview information, see <http://nysap.us/MAYSIWARE.html>. (Last visited April 11, 2017).

D. CHILDREN SHOULD BE CONNECTED WITH OUTPATIENT SERVICES

A goal of the program is to connect the children needing follow-up care with resources in the community upon reentry as a response to research that shows that a multi-systemic therapy and wraparound services approach to children with significant emotional difficulties reduces recidivism. Matthew C. Aalsma, *2011 Report and Recommendations*, Indiana State Bar Association, p.3 (August 2011) *Available at http://youthlawteam.org/mental_health.html. (Last visited April 11, 2017).*

IV. EMERGENCY MENTAL OR PHYSICAL EXAMINATION AND TREATMENT

A. NO PETITION AUTHORIZED, BUT EMERGENCY EXISTS

Pursuant to Ind. Code 31-32-12-1, if the procedures under Ind. Code 31-32-13 are followed, the juvenile court may authorize mental or physical examinations or treatment...(1) if the court has not authorized the filing of a petition but a physician certifies that an emergency exists, the court:

- (1) May order medical or physical examination or treatment of the child; and
- (2) May order the child detained in a health care facility while the emergency exists.

B. NO PETITION AUTHORIZED, BUT CONTINUED MEDICAL CARE NECESSARY

Pursuant to Ind. Code 31-32-12-1, if the procedures under Ind. Code 31-32-13 are followed, the juvenile court may authorize mental or physical examinations or treatment...(2) if the court has not authorized the filing of a petition but a physician certifies that continued medical care is necessary to protect the child after the emergency has passed, the court:

- (1) May order medical services for a reasonable length of time; and
- (2) May order the child detained while medical services are provided.

C. TEMPORARY CONFINEMENT

The juvenile court may order temporary confinement for not more than fourteen (14) days, excluding Saturdays, Sundays, and legal holidays, to complete the mental or physical examination of a child. Ind. Code 31-32-12-2(a).

1. Not a Commitment

Ind. Code 31-32-12-2(a) does not authorize a commitment under Ind. Cod 12-26.
Ind. Code 31-32-12-2(b).

2. Return of Child after Emergency Passed or Care No Longer Necessary

Pursuant to Ind. Code 31-32-12-3, whenever an emergency has passed or whenever medical care is no longer necessary under Ind. Code 31-32-12-1(2), the child shall be returned to the child's parent, guardian, or custodian unless:

- (1) A petition has been filed; and
- (2) The court has determined under Ind. Code 31-37-5 [Child Taken into Custody] that the child should remain in detention.

D. MEDICAL CONSENT FOR INCOMPETENT MAY STILL APPLY

Ind. Code 31-32-12 is in addition to, is not limited by, and does not limit Ind. Code 16-36-3 [Consent to Medical Treatment of Incompetent]. Ind. Code 31-32-12-4.

V. INVOLUNTARY DRUG AND ALCOHOL TREATMENT

A. VERIFIED PETITION FILED

1. Who Files Petition

Pursuant to Ind. Code 31-32-16-2(a), a parent, guardian, or custodian of a child may file a verified with the juvenile court in the county in which the child resides for involuntary drug and alcohol treatment if the child:

- (1) Is incapable of consenting; or
- (2) Refuses to consent;

to voluntary treatment.

2. Contents of Petition

A verified petition filed under Ind. Code 31-32-16-2 must include the name and age of the child and a summary of facts that support the petitioner's request for involuntary drug and alcohol treatment. Ind. Code 31-32-16-3.

3. Affidavit Must Be Included

The verified petition must include an affidavit from a person described in Ind. Code 31-32-16-4(a), who has examined or treated the child not more than thirty (30) days before the filing of the verified petition. Ind. Code 31-32-16-2(b).

a. Contents of Affidavit

The affidavit must state that reasonable grounds exist to believe the child named in the petition is a drug or alcohol abuser (as defined in 440 IAC 4.4-1-1). Ind. Code 31-32-16-2(b).

B. GUARDIAN AD LITEM MAY BE APPOINTED

The judge of the juvenile court may appoint a guardian ad litem for the child at any time. Ind. Code 31-32-16-11.

C. EX PARTE DETERMINATION OF PROBABLE CAUSE AND ASSESSMENT

The juvenile court, after making an ex parte determination that there is probable cause to believe the child is a drug or alcohol abuser (as defined in 440 IAC 4.4-1-1), shall order the child named in the petition to undergo a drug and alcohol assessment. Ind. Code 31-32-16-4(a).

1. Who Performs Assessment

Pursuant to Ind. Code 31-32-16-4(a), the assessment shall be performed by:

- (1) A psychiatrist (as defined in Ind. Code 11-10-3-1);
- (2) A physician (as defined in Ind. Code 12-15-35-12); or
- (3) A psychologist with training in drug and alcohol assessment and treatment.

The person who performs the assessment must be different from the person who submitted the affidavit under Ind. Code 31-32-16-2.

2. Court Order to Perform Assessment

Notwithstanding Ind. Code 34-46-3 and Ind. Code 25-33-1-17, the judge may order a physician or a psychologist to submit a drug and alcohol assessment to the juvenile court in a proceeding under Ind. Code 31-32-16. Ind. Code 31-32-16-10.

3. Contents of Assessment

If it is determined that involuntary treatment is necessary, the assessment must include a recommended level of care and length of treatment. Ind. Code 31-32-16-4(a)(3).

D. HEARINGS

After completion of the assessment, the juvenile court shall conduct a hearing. Ind. Code 31-32-16-4(b).

1. Assessors Must Be Present at Hearing

Each person who performed an assessment must be present and available to testify at the hearing. Ind. Code 31-32-16-4(b).

2. Findings

Pursuant to Ind. Code 31-32-16-5, following a hearing, the juvenile court may order involuntary drug and alcohol treatment for not more than forty-five (45) consecutive days if the court finds by clear and convincing evidence that the child:

- (1) Is a drug or alcohol abuser (as defined as 440 IAC 4.4-1-1);
- (2) Is incapable of consenting to or refuses to consent to voluntary treatment services; and
- (3) Will benefit from a period of involuntary drug and alcohol treatment.

E. REVIEW HEARINGS

Before the expiration of a period of involuntary treatment, the juvenile court shall conduct a review hearing to determine whether further treatment is necessary. Ind. Code 31-32-16-6(a).

1. Additional Treatment

Pursuant to Ind. Code 31-32-16-6(b), the juvenile court may order an additional term of treatment if it finds at the initial review hearing by clear and convincing evidence that the conditions enumerated in Ind. Code 31-32-16-5 are present and further treatment is necessary. An additional term of involuntary treatment may not exceed forty-five (45) consecutive days, and the juvenile court must conduct a review hearing before the expiration of the additional term. The court may order subsequent terms of involuntary treatment if at each review hearing the court makes findings required by this section.

2. Review Hearing Findings

Pursuant to Ind. Code 31-32-16-6(c), each order for an additional term of treatment under Ind. Code 31-32-16-6(b) must be supported by written findings of fact. The juvenile court shall issue written findings of fact not more than ten (10) days after the review hearing that orders an additional term of involuntary treatment.

F. MODIFICATION OF TREATMENT ORDER

The juvenile court may modify the original terms of involuntary drug and alcohol treatment if it finds by clear and convincing evidence that a substantial change in the circumstances that supported the original terms and conditions of treatment has occurred. Ind. Code 31-32-16-8.

G. TYPES OF FACILITIES

Involuntary drug and alcohol treatment under Ind. Code 31-32-16 may include appropriate placement in an inpatient or outpatient program or facility. Ind. Code 31-32-16-2(c).

1. May Not Be a State Facility

A person ordered to complete inpatient drug and alcohol treatment under Ind. Code 31-32-16 may not be placed in a facility that is owned or operated by the state. Ind. Code 31-32-16-2(c).

H. PARENT, GUARDIAN, OR CUSTODIAN

1. Notice of Possibility of Parental Participation

The judge of the juvenile court in which the verified petition is filed shall inform each parent, guardian, or custodian of the child that the parent, guardian, or custodian may be ordered to participate in any aspect of the child's treatment. Ind. Code 31-32-16-2(d).

2. Participation May Be In Any Part of Treatment

The juvenile court may order each parent, guardian, or custodian of the child to participate in any aspect of the child's treatment under Ind. Code 31-32-16-5 or 6. Ind. Code 31-32-16-7.

3. Responsible For Costs and Fees

Pursuant to Ind. Code 31-32-16-9, a parent, guardian, or custodian is required to pay court costs, court fees, and the costs of assessment and treatment. Neither the court nor the county is liable for any part of the costs of assessment or treatment under Ind. Code 31-32-16.

I. SEPARATE FROM INVOLUNTARY COMMITMENT OR DISPOSITION

Pursuant to Ind. Code 31-32-16-1, a proceeding under Ind. Code 31-32-16 is separate from and does not affect:

- (1) A proceeding for involuntary treatment under Ind. Code 12-26; or

- (2) An order from a juvenile court under Ind. Code 31-37 that requires drug or alcohol treatment.

VI. CIVIL COMMITMENT PROCEEDINGS

Pursuant to Ind. Code 31-37-18-3, 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 probation jurisdiction for civil commitment proceedings under Ind. Code 12-26; or
- (2) Initiate a civil commitment proceeding under Ind. Code 12-26.

A. JUVENILE PROCEEDINGS DISCHARGED OR CONTINUED

Pursuant to Ind. Code 31-37-18-4, if:

- (1) A child is referred to a probate court;
- (2) The juvenile court initiates a commitment proceeding; or
- (3) The court transfers a commitment proceeding under Ind. Code 12-26-1-4;

the juvenile court shall discharge the child or continue the court's proceedings under the juvenile law.

1. DCS Not Released from Obligations Pending Outcome of Proceedings

If the child is under the custody of DCS, the juvenile court may not release DCS from the obligations of DCS to the child pending the outcome of the proceeding under Ind. Code 12-26. Ind. Code 31-37-18-4.

2. DCS Released If Child Placed in State Institution

Pursuant to Ind. Code 31-37-18-5, if the court authorizes a child who is under the custody or supervision of DCS to be placed in a state institution (as defined in Ind. Code 12-7-2-184) for voluntary treatment in accordance with Ind. Code 12-26-3, the court may not release DCS from obligations of DCS to the child under the earlier of:

- (1) The date the child is discharged; or
- (2) The date that a parent, guardian, or other responsible person approved by the court assumes the obligation.

B. INVOLUNTARY MENTAL HEALTH COMMITMENT

See Ind. Code 12-26 for all of the relevant statutes.

1. Definition of Mental Illness

Pursuant to Ind. Code 12-7-2-130, "mental illness" means the following:

- (1) For purposes of Ind. Code 12-26, a psychiatric disorder that:
 - (A) Substantially disturbs an individual's thinking, feeling, or behavior; and
 - (B) Impairs the individual's ability to function.

a. Definition Includes Substance Abuse

The term includes intellectual disability, alcoholism, and addiction to narcotics or dangerous drugs. Ind. Code 12-7-2-130.

2. Types of Involuntary Detention or Commitment

Pursuant to Ind. Code 12-26-1-1, an individual who is mentally ill and either dangerous or gravely disabled may be involuntarily detained or committed under any of the following statutes:

a. Immediate Detention

See Ind. Code 12-26-4 for relevant statutes

Pursuant to Ind. Code 12-26-4-1, a law enforcement officer, having reasonable grounds to believe that an individual has a mental illness, is either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment, may do the following:

- (1) Apprehend and transport the individual to the nearest appropriate facility. The individual may not be transported to a state institution.
- (2) Charge the individual with an offense if applicable.

b. Emergency Detention – Not More than 72 Hours

See Ind. Code 12-26-5 for relevant statutes

Pursuant to Ind. Code 12-26-5-1, an individual may be detained in a facility for not more than seventy-two (72) hours under this chapter, excluding Saturdays, Sundays, and legal holidays, if a written application for detention is filed with the facility. The individual may not be detained in a state institution unless the detention is instituted by the state institution.

c. Temporary Commitment – Not More than 90 Days

See Ind. Code 12-26-6 for relevant statutes

An individual who is alleged to be mentally ill and either dangerous or gravely disabled may be committed to a facility for not more than ninety (90) days under Ind. Code 12-26-6. Ind. Code 12-26-6-1.

d. Regular Commitment for Chronic Mental Illness -- More than 90 Day Commitment

See Ind. Code 12-26-7 for relevant statutes

Pursuant to Ind. Code 12-26-7-1, Ind. Code 12-26-7 applies to a proceeding for commitment of an individual:

- (1) Alleged to be mentally ill and either dangerous or gravely disabled; and
- (2) Whose commitment is reasonably expected to require custody, care, or treatment in a facility for more than ninety (90) days.

3. Jurisdiction

A juvenile court has concurrent jurisdiction with probate court over proceedings under Ind. Code 12-26 that involve a child. Ind. Code 12-26-1-4(a).

4. Child May Only Be Placed in a Child Caring Institution

Pursuant to Ind. Code 12-26-1-4(b), the juvenile court may not commit or temporarily place a child under Ind. Code 12-26 in a facility other than a child caring institution. If the juvenile court determines that commitment or temporary placement of a child in another facility is necessary, the juvenile court shall transfer the proceeding to a court having probate jurisdiction.

a. Definition of Child Caring Institution

Pursuant to Ind. Code 12-7-2-29, “child caring institution,” for purposes of Ind. Code 12-26, means an institution that:

- (1) Operates under a license issued under Ind. Code 31-27;
- (2) Provides for delivery of mental health services that are appropriate to the needs of the individual; and
- (3) Complies with the rules adopted under Ind. Code 4-22-2 by DCS.

5. Juvenile Court Must Appoint a GAL/CASA

A juvenile court that conducts a proceeding under Ind. Code 12-26 shall appoint a CASA, GAL, or both for the child before the court begins a proceeding under Ind. Code 12-26. Ind. Code 12-26-8-1(a).

a. Who May be Appointed GAL/CASA?

(1) GAL/CASA does not have to be an attorney

An advocate is not required to be an attorney. Ind. Code 12-26-8-1(b).

(2) Child’s attorney may be appointed as GAL/CASA

An attorney representing the child may be appointed as the child’s advocate. Ind. Code 12-26-8-1(c).

(3) GAL/CASA may not be a party

Pursuant to Ind. Code 12-26-8-1(d), the court may not appoint any of the following to be a child’s advocate:

- (1) A party to the proceeding.
- (2) An employee of a party to the proceeding.
- (3) A representative of a party to the proceeding.

b. GAL/CASA May be Represented by an Attorney

A child’s advocate may be represented by an attorney. Ind. Code 12-26-8-3(a).

If necessary to protect the child's interests, the juvenile court may appoint one (1) attorney to represent an advocate of a child. Ind. Code 12-26-8-3(b).

c. GAL/CASA is an Officer of the Court

A child's advocate is an officer of the juvenile court for the purpose of representing a child's interests. Ind. Code 12-26-8-2.

d. GAL/CASA Duties

(1) Represent best interests

An advocate shall represent and protect the best interests of the child. Ind. Code 12-26-8-1(e).

(2) Evaluate facilities

Pursuant to Ind. Code 12-26-8-4(a), within thirty (30) days after a child is first committed to a facility by a juvenile court, the child's advocate shall do all of the following:

- (1) Visit the facility.
- (2) Evaluate the services delivered to the child.
- (3) Evaluate whether the commitment continues to be appropriate for the child.

(a) Review evaluation every six months

Pursuant to Ind. Code 12-26-8-4(b), the child's advocate shall conduct a review similar to that required under Ind. Code 12-26-8-4(a):

- (1) Sixty (60) days after the child is first committed.
- (2) Six (6) months after the child is first committed; and
- (3) Every six (6) months thereafter.

(b) Superintendent of facility must assist

The superintendent of the facility shall provide necessary assistance to carry out the reviews. Ind. Code 12-26-8-4(c).

(3) Prepare and submit report

Pursuant to Ind. Code 12-26-8-5, the child's advocate shall submit a report of each review required by Ind. Code 12-26-8-4 to all of the following:

- (1) The committing juvenile court.
- (2) The superintendent of the facility.
- (3) A county office that has wardship of the child.
- (4) Each party to the commitment proceeding.

(4) GAL/CASA shall have access to all of child's reports

A child's advocate shall be given access to all reports relevant to the child. Ind. Code 12-26-8-6(a). Ind. Code 31-39-2 applies to the release of reports that are confidential under Ind. Code 31-39-1. Ind. Code 12-26-8-6(b).

(5) Payment of any fees

Payment of any fees shall be made under Ind. Code 31-40. Ind. Code 12-26-8-7.

6. DCS Duties

a. DCS Not Released from Obligations by Commitment

If a child under the custody or supervision of a county office is committed to a state institution, the court may not release the county office from the county office's obligations to the child unless the court appoints a guardian for the child under Ind. Code 12-26-16. Ind. Code 12-26-8-8.

C. VOLUNTARY TREATMENT

See Ind. Code 12-26-3 for all statutes.

1. Who May Be Admitted

Pursuant to Ind. Code 12-26-3-1, the superintendent of a facility or an individual's attending physician may admit an Indiana resident who:

- (1) Has a mental illness or has symptoms of mental illness; and
- (2) Makes an appropriate application;

for observation, diagnosis, care, or treatment.

2. Who May Apply for Admission

If an individual is less than eighteen (18) years of age, an application under Ind. Code 12-26-3 may be made by the individual's parent or legal guardian. Ind. Code 12-3-2(a).

3. May Be Converted into a Temporary or Regular Commitment

If the individual makes a written request for release under Ind. Code 12-26-3-4 and the superintendent or attending physician has reason to believe the individual is mentally ill and either dangerous or gravely disabled, a report may be submitted to the appropriate court with a request for a hearing. Ind. Code 12-26-3-5.