

[CAPTION]

MOTION FOR RELEASE OF JUVENILE FROM DETENTION
(Placement in County other than that of Residence)

[Insert name of client], a juvenile, by counsel, respectfully requests this Court to release him from detention. In support of the Motion, the juvenile states the following:

1. No written request, along with sworn testimony or an affidavit, has been filed with the Court, asking that the juvenile be taken into custody, as required by I.C. 31-37-10-5.
2. Pursuant to I.C. 31-37-7-4, the Court may not place the juvenile in a facility located outside his residence unless a comparable or appropriate facility with adequate services is unavailable in the child's county of residence. Such detention could be undertaken pursuant to the Interstate Compact on Juveniles, I.C. 31-37-23-1.
3. Pursuant to I.C. 31-32-7-3 and 31-37-7-4, upon the juvenile's motion, the Court may assign supervision to a juvenile court in the County of the Child's residence at any time before dispositional hearing. In the alternative to the above relief sought, the juvenile would move for release from detention, with supervision of his release to be undertaken by the appropriate authorities in [insert county of residence].

WHEREFORE, the juvenile respectfully requests this Court to immediately release him from his present detention, to release him to be supervised by the County in his county of residence, or in the alternative, to set an additional Detention Hearing, pursuant to I.C. 31-37-6-8, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK U.5

I.C. 31-37-11-2 (if a child is in detention and a petition has been filed, the fact- finding hearing must be commenced not later than sixty days (excluding Saturdays, Sundays and legal holidays) after the petition is filed).

CASE LAW

D.J. v. State, 798 N.E.2d 535 (Ind.Ct.App. 2003) (placement of juvenile outside his county of residence did not violate I.C. 31-37- 19-23, which provides that a court may not place a delinquent child in a facility outside his 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 ..."; the in-county facility suggested by the Defendant at trial was not "a comparable facility" to the out-of-county facility where the court placed the juvenile). See also E.M.W. v. State, 762 N.E.2d 1283 (Ind.Ct.App. 2003).

R.A. v. State, 770 N.E.2d 376 (Ind.Ct.App. 2002) (the juvenile court lacked authority to hold the juvenile in the secure facility for seven-days pending fact-finding hearing on alleged probation violation; repeat truant who is alleged to have violated probation may be held in pre-hearing detention facility for up to twenty-four hours pending fact- finding hearing pursuant to I.C. 31-37-22-6(4)). But see W.R.S. v. State, 759 N.E.2d 1121 (Ind.Ct.App. 2001) (contrary to R.A., the limitations of I.C. 31-37-22-6(4) apply even after adjudication).

W.A. v. State, 704 N.E.2d 477 (Ind. 1998) (before the court can order any form of detention, it must first find probable cause to believe child is delinquent child and that: (1) child is unlikely to appear for subsequent proceedings; (2) detention is essential to protect child or community; (3) parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of child; or (4) child has reasonable basis for requesting child not be released; here, the court adopted the probation officer's recommendation as to above findings of probable cause without making any finding of its own; thus, improper detainment).