

**CHAPTER SIX**  
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# CHAPTER SIX

## SPECIAL HEARINGS: TREATMENT, CONTROL, AND CONTEMPT

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### I. MENTAL OR PHYSICAL EXAMINATION OR TREATMENT

#### A. COURT MAY ORDER EXAM OR TREATMENT AFTER HEARING

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 under the following circumstances:

- (1) If the court has not authorized the filing of a petition but a physician certifies that an emergency exists, the court: (A) May order medical or physical examination or treatment of the child; and (B) May order the child detained in a health care facility while the emergency exists.
- (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: (A) May order medical services for a reasonable length of time; and (B) May order the child detained while medical services are provided.
- (3) If the court has authorized the filing of a petition alleging that a child is a CHINS, the court may order examination of the child to provide information for the dispositional hearing. The court may order medical examinations and treatment of the child under any circumstances otherwise permitted by this section.
- (4) After a child has been adjudicated a CHINS, the court may order examinations and treatment under Ind. Code 31-34-20.

Juvenile court may not use adult criminal competency statute to commit an incompetent child with commitment to the Department of Correction or the Department of Mental Health and Addiction for restorative purposes. In re K.G., 808 N.E.2d 631, 638-39 (Ind. 2004). Ind. Code § 31-32-12-1 is sufficient to enter an order committing a child found to be incompetent to an appropriate facility operated by the Department of Mental Health. Id.

For jurisdiction to be invoked under emergency treatment provisions, the facts presented must be substantial, non-conclusory, and non-self-serving. McCormack v. Lemond (In re Lemond), 413 N.E.2d 228, 249 (Ind. 1980).

#### B. COURT MAY ORDER 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. Does Not Authorize Formal Mental Health Commitment

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

### **C. CHILD MAY BE RETURNED TO FAMILY AFTER TREATMENT**

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 § 31-34-5 or Ind. Code § 31-37-5 that the child should remain in detention.

## **II. REQUESTING AN ORDER FOR CONTROL OF PERSON OR EXAMINATION OR TREATMENT**

### **A. MOTION FOR ORDER**

Pursuant to Ind. Code § 31-32-13-1, upon a juvenile court's motion or upon motion of a child's parent, guardian, custodian, or guardian ad litem, a probation officer, a caseworker, the prosecuting attorney, the attorney for the department of child services, or any person providing services to the child or the child's parent, guardian, or custodian, the juvenile court may issue an order: (1) To control the conduct of any person in relation to the child; (2) To provide a child with an examination or treatment under Ind. Code § 31-32-12; or (3) To prevent a child from leaving the court's jurisdiction.

West Clark Community Schools v. H.L.K., 690 N.E.2d 238 (Ind. 1997) (Juvenile court had authority to control conduct of school corporation in relation to CHINS, except when the school corporation has invoked the pupil discipline statute. This includes seeking injunctive relief to prevent expulsion.).

### **B. EMERGENCY ORDER**

If: (1) the juvenile court determines on the juvenile court's review of the record that an emergency exists; or (2) the moving party demonstrates by sworn testimony or affidavit that an emergency exists; the juvenile court may issue an emergency order without a hearing. Ind. Code § 31-32-13-7.

Hallberg v. Hendricks County Office of Family & Children, 662 N.E.2d 639, 643-44 (Ind. Ct. App. 1996) (If court determines an emergency exists during a hearing alleging the father molested a child, the court had subject matter jurisdiction to issue an emergency protective order without further hearing and without notifying the father of the proceedings.).

#### **1. Duration of Emergency Order Is 72 Hours**

An emergency order issued under Ind. Code § 31-32-13-7 is valid for not more than seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays. Ind. Code § 31-32-13-8(a).

#### **2. Extension of Emergency Order**

The juvenile court may extend an emergency order issued under Ind. Code § 31-32-13-7 only on good cause shown upon the record for the extension. Ind. Code § 31-32-13-8(b).

### **C. HEARING ON MOTION FOR ORDER**

Pursuant to Ind. Code § 31-32-13-2, the juvenile court may: (1) Immediately set a matter described in Ind. Code § 31-32-13-1 for hearing; or (2) Consider the matter at any other proceeding or hearing authorized under the juvenile law.

### **1. Notice of Hearing**

The juvenile court must give notice to any person whose conduct will be regulated by an order issued under Ind. Code § 31-32-13-1 to appear at a specified date and time concerning the relief requested under Ind. Code § 31-32-13-1. Ind. Code § 31-32-13-3.

### **2. Evidence To Be Considered**

The court may also consider any other evidence presented in other proceedings or hearing authorized under the juvenile law concerning the child as the basis for the issuance of the order. Ind. Code § 31-32-13-4.

### **3. Findings**

#### **a. Court Must Find Good Cause**

The court shall issue an order under Ind. Code § 31-32-13-1 if the court finds that good cause to issue the order is shown upon the record. Ind. Code § 31-32-13-4.

#### **b. Order Must Be Specific**

An order issued under Ind. Code § 31-32-13-1 must specifically describe in reasonable detail the acts or persons to be regulated under the order. Ind. Code § 31-32-13-5.

#### **c. Duration of Order for One Year**

An order issued under Ind. Code § 31-32-13-1 remains in effect for one (1) year. Ind. Code § 31-32-13-6.

#### **d. Extension of Order**

Pursuant to Ind. Code § 31-32-13-6, the juvenile court may: (1) Extend the order for additional one (1) year periods after an annual review of the order; and (2) Modify or dissolve the order at any time after a showing that: (A) The original circumstances concerning the order have changed; or (B) New circumstances have developed.

### **D. FILING ORDER AND ANY PROTECTIVE ORDER**

Pursuant to Ind. Code § 31-32-13-9, when a court issues an order or an emergency order under this chapter: (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 office of judicial administration with the clerk.

## **III. INVOLUNTARY DRUG AND ALCOHOL TREATMENT**

A proceeding under this chapter is separate from and does not affect a proceeding for involuntary treatment under Ind. Code § 12-26. Ind. Code § 31-32-16-1(1).

### **A. FILING OF VERIFIED PETITION**

#### **1. Who May File**

A parent, guardian, or custodian of a child may file a verified petition 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. Ind. Code § 31-32-16-2(a).

#### **2. Petition Contents**

##### **a. Petition Must Include Affidavit**

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. 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. Petition Must Include Summary of Facts**

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.

**B. EX PARTE PROBABLE CAUSE DETERMINATION 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 the Assessment**

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. Ind. Code § 31-32-16-4(a).

**a. May Not Be Same Assessor Who Did Affidavit**

The person who performs the assessment under Ind. Code § 31-32-16-4(a) must be different from the person who submitted the affidavit under Ind. Code § 31-32-16-2. Ind. Code § 31-32-16-4(a).

**2. Assessment Must Include Recommended Treatment, If Necessary**

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).

**C. HEARING**

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

**1. Each Assessor Must Be Present**

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

**2. Notice To Family of Participation in Treatment**

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).

**3. Order for Treatment**

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 in 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.

**a. Treatment May be Inpatient or Outpatient**

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

**b. Treatment May Not Be a State Facility**

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

**4. Order for Parental Participation**

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.

**D. FURTHER HEARINGS AND TREATMENT AND MODIFICATION**

**1. Review Hearing Required**

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).

**a. Additional Treatment May Be Ordered**

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. Ind. Code § 31-32-16-6(b).

**b. Additional Treatment May Not Exceed 45 Days**

An additional term of involuntary treatment may not exceed forty-five (45) consecutive days. Ind. Code § 31-32-16-6(b).

**c. Additional Review Hearings Required Each Time**

The juvenile court must conduct a review hearing before the expiration of the additional term. Ind. Code § 31-32-16-6(b).

**d. Additional Treatment Periods May be Ordered After Each Hearing**

The court may order subsequent terms of involuntary treatment if at each review hearing the court makes findings required by this section. Ind. Code § 31-32-16-6(b).

**e. Court Must Make Additional Written Findings**

Each order for an additional term of treatment under Ind. Code § 31-32-16-6(b) must be supported by written findings of fact. Ind. Code § 31-32-16-6(c).

**f. Written Findings Must be issued within 10 Days**

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. Ind. Code § 31-32-16-6(c).

## **2. Modification Of Original 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.

## **IV. CONTEMPT OF COURT**

The juvenile court may punish a person for contempt of court under Ind. Code § 34-47. Ind. Code § 31-32-14-1.