

CHAPTER TWO

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CHAPTER TWO

JURISDICTION, VENUE, CHANGE OF JUDGE

I. JUVENILE COURT IS A CIVIL COURT

Juvenile proceedings are in the nature of a civil proceeding. Shupe v. Bell, 141 N.E.2d 351, 352, 127 Ind.App. 292, 295 (1957).

A juvenile adjudicated delinquent in juvenile court may not be considered a “criminal” as a result of the adjudication. Ind. Code § 31-32-2-6(a).

While juvenile proceedings are civil in nature, the criminal rules of evidence are applicable. Juvenile delinquency proceedings are thus distinguishable from ordinary civil cases. J.R.T. v. State, 783 N.E.2d 300, 306 (Ind. Ct. App. 2003), *trans. denied*.

Additionally, when the State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be criminal if committed by an adult, the criminal burden of proof applies. The State must prove every element of that offense beyond a reasonable doubt. J.V. v. State, 766 N.E.2d 412, 414-15 (Ind. Ct. App. 2002), *trans. denied*.

II. POLICY AND PURPOSE OF JUVENILE JUSTICE SYSTEM

Pursuant to Ind. Code 31-10-2-1, it is the policy of this state and the purpose of this title to:

- (1) Recognize the importance of family and children in our society, including the parenting rights of a parent, regardless of whether the parent has a disability;
- (2) Recognize the responsibility of the state to enhance the viability of children and family in our society;
- (3) Acknowledge the responsibility each person owes to the other;
- (4) Strengthen family life by assisting parents to fulfill their parental obligations;
- (5) Ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- (6) Remove children from families only when it is in the child’s best interest or in the best interest of public safety;
- (7) Provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- (8) Provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- (9) Use diversionary programs when appropriate;
- (10) Provide a judicial procedure that:
 - (A) Ensures fair hearings;
 - (B) Recognizes and enforces the legal rights of children and their parents; and
 - (C) Recognizes and enforces the accountability of children and parents;
- (11) Promote public safety and individual accountability by the imposition of appropriate sanctions; and

- (12) Provide a continuum of services developed in a cooperative effort by local governments and the state.

III. JUVENILE COURT JURISDICTION

Jurisdiction is the legal power to entertain any matter or proceeding, and power to act must be derived from Constitution or statute. Jurisdiction embraces three elements: (1) jurisdiction over the subject matter, (2) jurisdiction of the person, and (3) jurisdiction of the particular case. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984).

Phrases recently common to Indiana practice, like “jurisdiction over a particular case,” confuse actual jurisdiction with legal error and it is best to cease such characterizations. The fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006).

Dinson v. Drosta, 80 N.E. 32, 33, 39 Ind. App. 432 (Ind. Ct. App. 1907) (The power conferred upon the juvenile court is of the same character as the jurisdiction exercised by courts of chancery over the person and property of infants and flows from the general power and duty of the state parens patriae to protect those who have no other lawful protector.).

State ex rel. Johnson v. White Circuit Court, 77 N.E.2d 298, 301, 225 Ind. 602, 608 (1948) (The history of juvenile jurisdiction reveals that the state assumed this authority as parens patriae for the welfare of the infants.).

A. SUBJECT MATTER JURISDICTION

1. Definition

Subject matter jurisdiction concerns whether or not a particular court has jurisdiction over general class of actions to which particular case belongs. Twyman, v. State, 459 N.E.2d 705, 707 (Ind. 1984); Troxel v. Troxel, 737 N.E.2d 745, 749 (Ind. 2000).

“Subject-matter jurisdiction is the constitutional or statutory power of a court ‘to hear and determine cases of the general class to which any particular proceeding belongs.’” State v. Reinhart, 112 N.E.3d 705, 711 (Ind. 2018) (*quoting* K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006)).

2. Source of Subject Matter Jurisdiction

Subject matter jurisdiction must be derived from the Constitution or statute and cannot be conferred by consent or agreement of parties. State ex rel. Hight v. Marion Superior Court, 547 N.E.2d 267, 269 (Ind. 1989); Phares v. State, 796 N.E.2d 305, 307 (Ind. Ct. App. 2003).

a. Necessary Documents and Procedure

Duty v. State, 169 Ind.App. 621, 623, 349 N.E.2d 729, 731 (1976) (Applying the now-repealed Indiana Code section 31-5-7-8, the Court of Appeals explained that the following are essential documents for a juvenile court to obtain jurisdiction: (1) the request to authorize a petition alleging delinquency, (2) the record of the pre-petition investigation, (3) the order of the juvenile court authorizing the filing of the petition alleging delinquency, and (4) the petition alleging delinquency.).

Murphy v. State, 408 N.E.2d 1311, 1313 (Ind. Ct. App. 1980) (A preliminary inquiry is required to vest jurisdiction with the juvenile court.).

Matter of C.K., 695 N.E.2d 601, 603 (Ind. Ct. App. 1998) (noncompliance with statutorily prescribed preliminary inquiry prior to the filing of a delinquency petition “precludes the assumption of jurisdiction over the juvenile”), *trans. denied* (citing Taylor v. State, 438 N.E.2d 275, 277 (Ind. 1982)).

B.R. v. State, 823 N.E.2d 301 (Ind. Ct. App. 2005) (Juvenile Court was required to approve the filing of the delinquency petition in order to have jurisdiction over the case.). But see K.S. v. State, 849 N.E.2d 538 (Ind. 2006) (Appeal following a violation of probation finding and commitment to Department of Correction. Issue of whether there was proper jurisdiction where the court did not approve the original delinquency petition by written order. Claim of procedural error found to be untimely where there was no objection in the original proceeding and the issue was later raised by collateral attack.).

b. Facts Conferring Jurisdiction Must Appear in Record

Summers v. State, 230 N.E.2d 320, 323, 248 Ind. 551, 557 (1967) (If the jurisdiction of the court is derived from statutory authority, the facts conferring jurisdiction must appear in the record.).

c. No Jurisdiction if Required Steps Are Not Taken

D.P. v. State, 151 N.E.3d 1210, 1213 (Ind. 2020) (Juvenile courts have limited subject matter jurisdiction, as they may exercise authority over cases only as permitted by statute. “In other words, when statutory jurisdictional prerequisites are not satisfied, the juvenile court has no power to hear and decide the matter).

Summers v. State, 230 N.E.2d 320, 323, 248 Ind. 551, 556-57 (1967) (The exclusive original jurisdiction may only be obtained by the juvenile court as set forth by statute and unless such preliminary statutory procedural steps are taken there is no jurisdiction established.).

K.S. v. State, 849 N.E.2d 538 (Ind. 2006) (Attorneys and judges frequently characterize procedural error as one of jurisdictional dimension. “The fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction.” Failure to note the approval for the filing of a petition is a procedural error but not a jurisdictional error.)

3. Absence of Subject Matter Jurisdiction Cannot Be Waived by Failure to Object

Absence of subject matter jurisdiction cannot be waived by failure to object; judgment entered without subject matter jurisdiction is void. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984); City of Marion v. Howard, 832 N.E.2d 528, 531 (Ind. Ct. App. 2005), *citing State ex rel. Hight v. Marion Superior Court*, 547 N.E.2d 267, 269 (Ind. 1989). But see K.S. supra.

If the juvenile court lacks subject matter jurisdiction over a particular case, any orders issued are void, not merely voidable. “When a court lacks jurisdiction of the subject matter, its actions are void ab initio and have no effect whatsoever. Such judgments are incapable of confirmation or ratification.” Troxel v. Troxel, 737 N.E.2d 745, 749 (Ind. 2000).

4. Exclusive Juvenile Court Jurisdiction

Under Ind. Code 31-30-1-1, a juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 [Ind. Code 31-30-1-9 (murder or felony by child who left Indiana), Ind. Code 31-30-1-10 (paternity proceeding to enforce support), Ind. Code 31-30-1-12 (child custody proceeding in marriage dissolution), and Ind. Code 31-30-1-13 (child custody proceeding in paternity proceeding)] of this chapter, in the following:

- (1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under Ind. Code 31-37;
- (2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under Ind. Code 31-34;
- (3) Proceedings concerning the paternity of a child under Ind. Code 31-14.
- (4) Proceedings under the interstate compact on juveniles under Ind. Code 31-37-23;
- (5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under Ind. Code 31-34-20 or Ind. Code 31-37-15;
- (6) Proceedings under Ind. Code 31-34-4, Ind. Code 31-34-5, Ind. Code 31-37-5, and Ind. Code 31-37-6 governing the detention of a child before a petition has been filed;
- (7) Proceedings to issue a protective order under Ind. Code 31-32-13;
- (8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult;
- (9) Proceedings in which a child is alleged to have committed an act that would be an offense under Ind. Code 9-30-5 [Operating a Vehicle While Intoxicated] if committed by an adult;
- (10) Guardianship of the person proceedings for a child:
 - (A) Who has been adjudicated as a child in need of services;
 - (B) For whom a juvenile court has approved a permanency plan under Ind. Code 31-34-21-7 that provides for the appointment of a guardian of the person; and
 - (C) Who is the subject of a pending child in need of services proceeding under Ind. Code 31-34.
- (11) Proceedings concerning involuntary drug and alcohol treatment under Ind. Code 31-32-16;
- (12) Proceedings under the interstate compact for juveniles under Ind. Code 11-13-4.5-1.5.
- (13) Proceedings under Ind. Code 31-28-5.8 [Collaborative Care]
- (14) Other proceedings specified by law.

State ex rel. Camden v. Gibson Circuit Court, 640 N.E.2d 696, 697 (Ind. 1994)
(Exclusive jurisdiction is conferred by law upon the state's juvenile courts in a wide range of proceedings, including proceedings in which a child under the age of eighteen is alleged to have committed an act which, if committed by an adult, would be a felony or misdemeanor, proceedings in which a child is alleged to have been abused or neglected, and proceedings involving runaways and truancy.).

State v. Neukam, 189 N.E.3d 152, 153, 156 (Ind. 2022) (Juvenile courts have exclusive original jurisdiction over “[p]roceedings in which a child ... is alleged to be a delinquent child under IC 31-37.” Ind. Code 31-30-1-1(1). A delinquent act committed before the defendant was eighteen could not ripen into a criminal act when the defendant became an adult, and criminal court lacked jurisdiction over such an allegation. Calling into question Indiana’s juvenile waiver statute, the Court wrote: “The question is whether the statutes confer the circuit court with jurisdiction over this class of cases. On the issue of criminal-versus-juvenile jurisdiction, a circuit court has jurisdiction over only “criminal cases”. And a delinquent act by a juvenile cannot “be” a crime because it “would be” a crime only if committed by an adult. Thus, under the relevant statutes, circuit courts lack jurisdiction over conduct by juveniles.”).

But see Kedrowitz v. State, -- N.E.3d --, 2022 WL 17248932 (Ind. Ct. App. Nov. 28, 2022) (holding that jurisdiction can be validly waived by the juvenile court and disagreeing with the argument that Neukam, *supra*, invalidated Indiana’s permissive waiver statutes).

State v. Pemberton, 186 N.E.3d 647 (Ind. Ct. App. 2022), *trans. denied* (juvenile court had exclusive jurisdiction over delinquency proceedings involving allegation that 16-year-old committed child molesting; State’s attempt to prosecute the now-23-year-old defendant in an adult criminal case for the offense allegedly committed while a juvenile was impermissible).

D.P. v. State, 151 N.E.3d 1210, 1213 (Ind. 2020) (A juvenile court has “exclusive” subject matter jurisdiction over proceedings in which a “child” is alleged to be a delinquent. Ind. Code § 31-30-1-1(1) (2020). The term “child” for juvenile law purposes, is defined as (1) a person less than eighteen; (2) a person eighteen, nineteen, or twenty and who either is charged with a delinquent act committed before the age of eighteen or has been adjudicated a child in need of services before eighteen; or (3) a person less than twenty-one and who has allegedly committed what would be murder when less than eighteen. I.C. § 31-9-2-13(d). The juvenile court does not have subject matter jurisdiction over someone twenty-one years old or older who has been alleged to have committed a delinquent act, even for the limited purpose of waiving that person to adult court).

M.C. v. State, 127 N.E.2d 1178, 1181 (Ind. Ct. App. 2019) (“The age of the offender determines whether a juvenile court has subject matter jurisdiction. It is clear from the definitional statute that the juvenile court’s jurisdiction in delinquency proceedings is limited to cases involving those under age twenty-one. Applied here, M.C. was not under the age of eighteen at the time the petition was filed; although the delinquent act was committed when M.C. was under eighteen, he was not eighteen, nineteen, or twenty years old when the petition was filed; and he is alleged to have committed the crime of child molesting, not murder. Although the alleged delinquent act occurred when M.C. was seventeen, he was twenty-two at the time the petition was filed and cannot be considered a “child” under Indiana Code section 31-9-2-13. Therefore, . . . the juvenile court was without subject matter jurisdiction at the time it adjudicated M.C. delinquent and entered a disposition, and its judgment is void.”) (*citations omitted*).

K.C.G. v. State, 156 N.E.3d 1281 (Ind. 2020) (abrogated by statute) (Because the dangerous-possession statute (I.C. § 35-47-10-5) defines the offense as a crime that is

committed by a child, then a child cannot be prosecuted as a delinquent child for committing that offense. A delinquent child is a child who has committed a delinquent act, and a delinquent act (I.C. § 31-37-1-2) is an act that would have been an offense had it been committed by an adult. Therefore, because the statutory prerequisite of alleging a delinquent act had not been met, the juvenile court did not have subject matter jurisdiction.)

a. Lake County Superior Court Additional Exclusive Jurisdiction

Pursuant to Ind. Code 33-33-45-6, notwithstanding Ind. Code 31-30-1-2, the Lake County juvenile court has exclusive jurisdiction over a child who:

- (1) Has been taken into custody in Lake County; and
- (2) Has allegedly committed an act that would be a misdemeanor traffic offense if committed by an adult.

b. Marion Superior Court Additional Exclusive Jurisdiction

Ind. Code 31-30-1-8 provides that the juvenile division of Marion Superior Court established under Ind. Code 33-33-49 has exclusive jurisdiction over a child who:

- (1) Has been taken into custody in Marion County; and
- (2) Has allegedly committed an act that would be a misdemeanor traffic offense if committed by an adult.

State ex rel. Hunter v. Juvenile Court of Marion County, 308 N.E.2d 695, 696, 261 Ind. 624, 627 (1974) (Jurisdiction of Marion County juvenile court is exclusive until waived by that court.).

J.H. v. State, 809 N.E.2d 456 (Ind. Ct. App. 2004) (Bailey, J., concurring) (Ind. Const. Art. 1, Sec. 23 provides in pertinent part that our legislature shall not grant to any citizen privileges or immunities, which, upon the same terms, shall not equally belong to all citizens. “Because the issue of whether [IC 31-30-1-8] violates Article 1, Section 23 of the Indiana Constitution is not squarely before us today, and because this court does not issue advisory opinions on constitutional issues, I decline to express an opinion on the constitutionality of the statute at issue. However, Indiana Code Sections 31-30-1-8 and 33-5-29.5-4 may not survive constitutional scrutiny”)

5. Juvenile Court Concurrent Original Jurisdiction

a. Certain Cases Involving Adults Charged with Crimes

Pursuant to Ind. Code 31-30-1-3, a juvenile court has concurrent original jurisdiction when the adult is charged with the crime of:

- (1) Neglect of a Dependent (Ind. Code 35-46-1-4);
- (2) Contributing to Delinquency (Ind. Code 35-46-1-8);
- (3) Violating the Compulsory School Attendance Law (Ind. Code 20-33-2);
- (4) Criminal Confinement of a Child (Ind. Code 35-42-3-3; or

(5) Interference with Custody (Ind. Code 35-42-3-4).

b. Certain Cases Involving the Probate Court

Pursuant to Ind. Code 31-30-1-5, a juvenile court has concurrent original jurisdiction with the probate court in the following proceedings:

- (1) Proceedings to commit children under Ind. Code 12-26;
- (2) Proceedings to terminate the parent-child relationship under Ind. Code 31-35.

However, the juvenile court's jurisdiction is limited as described by Ind. Code 12-26-1-4.

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

c. Certain Cases Involving Watercraft

A juvenile court has concurrent original jurisdiction in cases involving individuals who are subject to prosecution under Ind. Code 14-15-10-3. Ind. Code 31-30-1-7.

A person at least sixteen (16) years of age and less than eighteen (18) years of age who violates this article may be prosecuted and tried in a court having jurisdiction over adults who violate this article. Ind. Code 14-15-10-3.

d. An Act That Would be Murder or a Felony by a Child Who Left Indiana

Pursuant to Ind. Code 31-30-1-9(a), a court having felony jurisdiction has concurrent original jurisdiction with the juvenile court if there is probable cause to believe that:

- (1) A child has committed an act that would be murder or a felony if committed by an adult;
- (2) The child has left Indiana; and
- (3) The state cannot obtain jurisdiction over the child in any other lawful manner except under the proceedings authorized for the extradition of alleged felons.

e. Child returned to juvenile court following criminal extradition procedure

Upon return of any child under the criminal extradition law, the court having felony jurisdiction shall immediately transfer the child to the juvenile court under Ind. Code 31-30-1-11. Ind. Code 31-30-1-9(b).

Fuller v. State, 752 N.E.2d 235, 238 (Ind. Ct. App. 2001) (Criminal court was not obligated to transfer case to the juvenile court where the offense and the age of the child was a statutory exception to the juvenile court's exclusive jurisdiction.).

f. Paternity

(1) Proceedings to enforce support

Ind. Code 31-30-1-10 provides that a circuit court and superior court have concurrent original jurisdiction with the juvenile court, including the probate court described in Ind. Code 33-31-1-9(b) (St. Joseph County), for the purpose of establishing the paternity of a child in a proceeding under:

- (1) Ind. Code 31-18.5 [Uniform Interstate Family Support Act];
- (2) Ind. Code 31-1.5 (before its repeal); or
- (3) Ind. Code 31-2-1 (before its repeal).

Egan v. Bass, 644 N.E.2d 1272, 1274 (Ind. Ct. App. 1994) (The Uniform Reciprocal Enforcement of Support Act (URESA) provided circuit courts with concurrent jurisdiction to juvenile courts over paternity actions.).

(2) Proceedings related to child custody

Pursuant to Ind. Code 31-30-1-13(a), a court having jurisdiction under Ind. Code 31-14 over establishment or modification of paternity, child custody, parenting time, or child support in a paternity proceeding has concurrent original jurisdiction with another juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of the other juvenile court because:

- (1) The child is the subject of a child in need of services proceeding; or
- (2) The child is the subject of a juvenile delinquency proceeding that does not involve an act described under Ind. Code 31-37-1-2.

(a) When modification becomes effective

Pursuant to Ind. Code 31-30-1-13(b), whenever the court having child custody jurisdiction under Ind. Code 31-14 in a paternity proceeding modifies child custody as provided by this section, the modification is effective only when the juvenile court with jurisdiction over the child in need of services proceeding or juvenile delinquency proceeding:

- (1) Enters an order adopting and approving the child custody modification; or
- (2) Terminates the child in need of services proceeding or the juvenile delinquency proceeding.

(b) Paternity court reassumes primary jurisdiction if juvenile court terminates proceeding

Pursuant to Ind. Code 31-30-1-13(c), if a juvenile court:

- (1) Establishes or modifies paternity, custody, child support, or parenting time of a child; and

- (2) Terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child;

the order establishing or modifying paternity, custody, child support, or parenting time survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding until the court having concurrent original jurisdiction under subsection (a) assumes or reassumes primary jurisdiction of the case to address all other issues.

(c) Modification orders survive the termination of the juvenile court proceedings

A court that assumes or reassumes jurisdiction of a case under subsection (c) may modify child custody, child support, or parenting time in accordance with applicable modification statutes. Ind. Code 31-30-1-13(d).

g. Child Custody Proceeding in Marriage Dissolution

Pursuant to Ind. Code 31-30-1-12(a), and subject to Ind. Code 31-30-1-12(b), a court having jurisdiction under Ind. Code 31-17-2 [Actions for Child Custody and Modification of Child Custody Orders] of a child custody, parenting time, or child support proceeding in a marriage dissolution has concurrent original jurisdiction with the juvenile court for the purpose of modifying custody, parenting time, or child support of a child who is under the jurisdiction of the juvenile court because:

- (1) The child is the subject of a child in need of services proceeding;
- (2) The child is the subject of a juvenile delinquency proceeding that does not involve an act described under Ind. Code 31-37-1-2; or
- (3) The child is the subject of a paternity proceeding.

Hemingway v. Sandoe, 676 N.E.2d 368, 372 (Ind. Ct. App 1997) (Juvenile courts have no jurisdiction in dissolution proceedings; and have no jurisdiction over the custody of a child other than as part of a CHINS, termination of parental rights, or juvenile delinquency case.).

(1) When modifications become effective

Pursuant to Ind. Code 31-30-1-12(b), whenever the court having child custody jurisdiction under Ind. Code 31-17-2 in a marriage dissolution modifies child custody as provided by this section, the modification is effective only when the juvenile court having jurisdiction of the child in the child in need of services proceeding or the juvenile delinquency proceeding:

- (1) Enters an order adopting and approving the child custody modification; or
- (2) Terminates the child in need of services proceeding, the juvenile delinquency proceeding, or the paternity proceeding.

(2) Child custody court resumes primary jurisdiction if juvenile court terminates proceeding

Pursuant to Ind. Code 31-30-1-12(c), if under this section a juvenile court:

- (1) Modifies child custody, child support, or parenting time; and
- (2) Terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child;

the order modifying child custody, child support, or parenting time survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding until the court having concurrent original jurisdiction under Ind. Code 31-30-1-12(a) assumes or reassumes primary jurisdiction of the case to address all issues.

(a) Once primary jurisdiction resumed, court may make modifications

A court that assumes or resumes jurisdiction of a case under Ind. Code 31-30-1-12(c) may modify child custody, child support, or parenting time in accordance with applicable modification statutes. Ind. Code 31-30-1-12(d).

6. Prior Jurisdiction Terminated When Prior Proceedings Terminated

B.R. v. State, 823 N.E.2d 301, 304 (Ind. Ct. App. 2005) (The jurisdiction of a juvenile court in a subsequent proceeding turns not on the existence of a prior delinquency adjudication, but on the contents of the dispositional decree in the prior proceeding and the date it was entered.).

W.L. v. State, 707 N.E.2d 812, 813 (Ind. Ct. App. 1999) (Juvenile court was divested of jurisdiction over child once it had entered the dispositional decree that discharged the child.).

7. No Juvenile Court Jurisdiction

a. No Jurisdiction over Child for Infraction Violations

The juvenile law does not apply to a child who is alleged to have committed a violation of a statute defining an infraction, except as provided under Ind. Code 7.1-5-7. Ind. Code 31-30-1-2(1).

b. No Jurisdiction over Child for Ordinance Violations

The juvenile law does not apply to a child who is alleged to have committed a violation of an ordinance. Ind. Code 31-30-1-2(2).

c. No Jurisdiction over Child Who Has Previously Been Waived (“Once Waived, Always Waived”)

Pursuant to Ind. Code 31-30-1-2(3), except as provided in Ind. Code 33-33-45-6 (Lake County misdemeanor traffic offenses) and Ind. Code 31-30-1-8 (Marion County misdemeanor traffic offenses), the juvenile law does not apply to a child who:

- (1) Is alleged to have committed an act that would be a felony if committed by an adult; and
- (2) Has previously been waived under Ind. Code 31-30-3 (or Ind. Code 31-6-2-4 before its repeal) to a court having felony jurisdiction.

[But see Ind. Code 31-30-3-6, requiring a motion from the prosecuting attorney to waive a

child charged with an act that would be a felony if the child has been previously convicted of a felony or a nontraffic misdemeanor.].

d. No Jurisdiction over Adult Co-Defendants

The jurisdiction of the juvenile court cannot extend to a person over 18 years of age solely because that person acted with another person subject to its jurisdiction. Ervin v. State, 158 Ind.App. 594, 598, 303 N.E.2d 835, 838 (1973).

e. No Jurisdiction for Certain Violent Crimes if the Child is 16 Years Old or Older

Pursuant to Ind. Code 31-30-1-4(a), the juvenile court does not have jurisdiction over an individual who is at least sixteen (16) years of age but less than eighteen (18) years of age at the time of the alleged violation of:

- (1) Attempted Murder (Ind. Code 35-41-5-1(a));
- (2) Murder (Ind. Code 35-42-1-1);
- (3) Kidnapping (Ind. Code 35-42-3-2);
- (4) Rape (Ind. Code 35-42-4-1);
- (5) Criminal Deviate Conduct (Ind. Code 35-42-4-2) (before its repeal);
- (6) Robbery (Ind. Code 35-42-5-1), if:
 - (A) The robbery was committed while armed with a deadly weapon; or
 - (B) The robbery results in bodily injury or serious bodily injury;
- (7) Carjacking (Ind. Code 35-42-5-2) (before its repeal);
- (8) Unlawful Carrying of a Handgun, if charged as a felony (Ind. Code 35-47-2-1.5);
- (9) Children and Firearms, if charged as a felony (Ind. Code 35-47-10);
- (10) Any offense that may be joined under Ind. Code 35-34-1-9(a)(2) with any crime listed in this subsection.

Johnson v. State, 541 N.E.2d 518, 520 (Ind. 1989) (Rape defendant who was 16 years and 10 months old was properly tried by criminal court rather than juvenile court.).

Douglass v. State, 466 N.E.2d 721, 722-23 (Ind. 1984); *citing* Harris v. Oklahoma, 433 U.S. 682, 97 S.Ct. 2912 (1977) (No separate waiver hearing was necessary for the burglary accusation where the burglary charge was the underlying felony to the additional charge of felony-murder. The completed or attempted underlying felony is always a lesser-included offense of felony murder.).

f. Jurisdiction Remains with Criminal Court for Conviction of Certain Offenses

Pursuant to Ind. Code 31-30-1-4(b), once an individual described in Ind. Code 31-30-1-4(a) has been charged with any offense listed in subsection (a), the court having adult criminal jurisdiction shall retain jurisdiction over the case if the individual pleads guilty to or is convicted of any offense listed in 31-30-1-4 (a)(1) through (a)(9). These are often referred to as direct file offenses.

8. Transfer of Jurisdiction from Criminal Court to Juvenile Court For Certain Offenses

Pursuant to Ind. Code 31-30-1-4(c), if:

- (1) the individual described in Ind. Code 31-30-1-4(a) is charged with one (1) or more offenses listed in subsection (a) (direct file offenses)
- (2) all of the charges under subsection (a)(1) through (a)(9) resulted in an acquittal or were dismissed; and
- (3) the individual pleads guilty to or is convicted of any offense other than an offense listed in subsection (a)(1) through (a)(9)

the court having adult criminal jurisdiction may withhold judgment and transfer jurisdiction to the juvenile court for adjudication and disposition.

a. Factors for Determining Transfer to Juvenile Court

Pursuant to Ind. Code 31-30-1-4(c), in determining whether to transfer jurisdiction to the juvenile court for adjudication and disposition, the court having adult criminal jurisdiction shall consider:

- (i) Whether there are appropriate services available in the juvenile justice system
- (ii) Whether the child is amenable to rehabilitation under the juvenile justice system; and
- (iii) Whether it is in the best interests of the safety and welfare of the community that the child be transferred to juvenile court.

b. Detention or Release upon Transfer to Juvenile Court

Pursuant to Ind. Code 31-30-1-4(c), all orders concerning release conditions remain in effect until a juvenile court detention hearing, which must be held not later than forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, after the order of transfer of jurisdiction.

PRACTICE POINTER – The decision concerning which crime to charge is, obviously, at the discretion of the State. If you know about a case, because of a detention hearing or other means, prior to charges being filed, consider meeting with the assigned prosecuting attorney. Try to influence the assigned prosecuting attorney to keep the child in juvenile court by avoiding over-charging and focusing on the charge to which the child is likely to plead guilty to or be convicted.

If the child is charged in criminal court for a direct file offense, you may consider negotiating a plea to a lesser included offense that allows for transfer to juvenile court for adjudication and disposition. If the prosecutor is unwilling to enter into such agreement or if the case proceeds to trial and the child is convicted of the direct file offense, also consider presenting evidence for the child to receive alternative sentencing under Ind. Code 31-30-4-1.

9. Transfer of Jurisdiction from Criminal Court to Juvenile Court Due to Improper Jurisdiction

Except as provided by Ind. Code 31-30-1-9 [involving criminal extradition law], if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime

before the defendant is eighteen (18) years of age, the court shall immediately transfer the case, together with certified copies of all papers, documents, and testimony, to the juvenile court. The juvenile court shall proceed as if it had received a referral under Ind. Code 31-37-8. Ind. Code 31-30-1-11(a).

Hicks v. State, 230 N.E.2d 757, 761, 249 Ind. 24, 30-31 (1967) (In a county not having a separate juvenile court, in a case where it is not apparent at the outset that the defendant is below 18 years of age, upon receiving indication, the court should halt proceedings and transfer the case to the juvenile docket. The matter thereafter should be treated in every respect in accordance with the state's juvenile procedure statute.).

State v. Neukam, 189 N.E.3d 152 (Ind. 2022) (calling into question whether criminal courts can obtain jurisdiction over a juvenile matter when cause is first filed in juvenile court).

D.P. v. State, 151 N.E.3d 1210 (Ind. 2020) (held that persons 21 or older could not be prosecuted in juvenile court for their act of committing an offense before reaching the age of 18. and IC 31-30-1-11 required transfer to the juvenile court if charged in a court of criminal jurisdiction in that circumstance. If this result is not what the legislature intended, it is for the legislature to make the necessary statutory changes.)

See, also, State v. Dibble, 177 N.E.3d 832 (Ind. Ct. App. 2021), *trans. denied*.

a. Criminal Court Shall Release Child Unless Detention Is Necessary

Pursuant to Ind. Code 31-30-1-11(b), the court having criminal jurisdiction shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon that person's written promise to bring the child before the juvenile court at a specified time. However, the court may order the child detained if the court finds probable cause to believe that the child committed an act that would be a crime if committed by an adult and that:

- (1) The child is unlikely to appear before the juvenile court for subsequent proceedings;
- (2) Detention is essential to protect the child or the community;
- (3) The parent, guardian, or custodian:
 - (A) Cannot be located; or
 - (B) Is unable or unwilling to take custody of the child; or
- (4) The child has a reasonable basis for requesting that he or she not be released.

If the child is detained for a reason specified in subdivision (3) or (4), the child must be detained in accordance with Ind. Code 31-37-7-1.

b. If Detained, Juvenile Court's Designated Facility is Used

If the child is not released, the child shall be delivered to a place designated by the juvenile court. The court having criminal jurisdiction shall promptly notify the child's parent, guardian, or custodian and an intake officer of where the child is being held and the reasons for the child's detention. Ind. Code 31-30-1-11(c).

c. Child May Not be Released on Bail

A child transferred to the juvenile court under this section (or Ind. Code 31-6-2-2 before its repeal) may not be released on bail. Ind. Code 31-30-1-11(d).

10. Waiver of Juvenile Jurisdiction

For a full discussion of waiver of jurisdiction, please see Chapter 10.

Waiver of jurisdiction refers to an order of the juvenile court that waives the case to a court that would have jurisdiction had the act been committed by an adult. Waiver is for the offense charged and all included offenses. Ind. Code 31-30-3-1.

PRACTICE POINTER: If the State is considering seeking permissive waiver in your client's case, consider arguing that State v. Neukam and the resulting uncertainty in the law surrounding the validity of waiver into adult criminal court warrants keeping the case in juvenile court. However, be aware of Kedrowitz v. State, - N.E.3d --, 2022 WL 17248932, slip op. at 9-11 (Ind. Ct. App. Nov. 28, 2022).

B. PERSONAL JURISDICTION

1. Definition

Jurisdiction of the person refers to particular parties who are brought before the court and the right of that particular court to exercise jurisdiction over those parties. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984).

2. Personal Jurisdiction Requires Appropriate Process but Challenge Waived by Appearance

Personal jurisdiction requires that appropriate process be affected over the parties. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006).

Pursuant to Ind. Code 31-32-9-1, service may be made upon any person under 4.1 of the Indiana Rules of Trial Procedure, subject to the following:

- (a) Personal service must be made at least three (3) days before the hearing to which the person is summoned.
- (b) Service by mail must be sent at least ten (10) days before the hearing.
- (c) Service of summons is not required if the person entitled to be served attends the hearing.

Matter of C.K., 695 N.E.2d 601, 604 (Ind. Ct. App. 1998) (Because C.K. was alleged to be a delinquent based upon an act which would constitute a crime if committed by an adult, no further inquiry in addition to that contained in the probable cause affidavit was necessary. The juvenile court properly obtained jurisdiction despite the lack of preparation of a preliminary inquiry.).

K.S. v. State, 849 N.E.2d 538, 542 (Ind. 2006) (Personal jurisdiction was established where K.S. was a Marion County resident and submitted himself to the authority of the court.).

e. Failure to Timely Hold Detention Hearing Does Not Waive Jurisdiction

Gerrick v. State, 451 N.E.2d 327, 331-32 (Ind. 1983) (Juvenile court’s jurisdiction over a child attaches as soon as the child has been taken into custody by a law enforcement officer who is acting with probable cause to believe the child has committed an act that would be a felony if committed by an adult. Jurisdiction cannot be lost by failure to conduct a detention hearing in a proper manner.).

f. Subsequent Proceedings May Not Require Strict Procedures

S.W.E. v. State, 563 N.E.2d 1318, 1321 (Ind. Ct. App. 1990) (Once a juvenile court obtains jurisdiction in one delinquency proceeding, it need not strictly follow all of the statutory jurisdictional prerequisites in a subsequent delinquency proceeding against the same child.).

B.R. v. State, 823 N.E.2d 301, 304 (Ind. Ct. App. 2005) (clarifying prior case law: “the jurisdiction of a juvenile court in a subsequent proceeding turns not on the existence of a prior delinquency adjudication, but on the contents of the dispositional decree in the prior proceeding and the date it was entered. We cannot agree with the import of the concurring opinion that the juvenile court retains jurisdiction over every child ever adjudicated a delinquent or because a particular child has been a “frequent customer” of the juvenile court.”).

3. Waiver of Personal Jurisdiction

Objections to personal jurisdiction may be waived by a failure to assert them in a timely manner. Ind. Trial Rule 12(H), Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984).

K.D. v. State, 754 N.E.2d 36, 40 (Ind. Ct. App. 2001) (K.D. cannot successfully challenge the court’s personal jurisdiction because he submitted himself to the authority of the court and did not challenge personal jurisdiction by filing a motion to dismiss.).

C.C. v. State, 826 N.E.2d 106, 109 (Ind. Ct. App. 2005), *trans. denied* (C.C. appeared at the scheduled proceedings and submitted himself to the personal jurisdiction of the court without objection. Thus, he waived the argument against personal jurisdiction.).

IV. CONTINUATION OR REINSTATEMENT OF JUVENILE COURT JURISDICTION

A. CONTINUATION OF JUVENILE COURT JURISDICTION

1. Continuing Jurisdiction until 21 or Wardship Granted to DOC

Pursuant to Ind. Code 31-30-2-1(a), except as provided in subsections (b), (c), and (h), the juvenile’s court jurisdiction over a delinquent child or a child in need of services and over the child’s parent, guardian, or custodian continues until:

- (1) The child becomes twenty-one (21) years of age, unless the court discharges child and the child’s parent, guardian, or custodian at an earlier time; or
- (2) Guardianship of the child is awarded to the department of correction.

2. Court May Reinstate Jurisdiction to Order Parental Participation with DOC Programs

The juvenile court may, on its own motion, after guardianship of a child is awarded to the department of correction, reinstate the court's jurisdiction for the purpose of ordering the child's parent, guardian, or custodian to participate in programs operated by or through the department of correction. Ind. Code 31-30-2-1(b).

3. Jurisdiction over Estate Continues Until Financial Obligation Met

The juvenile court's jurisdiction over a parent or guardian of the estate of a child under this section continues until the parent or guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate that is imposed under Ind. Code 31-40 [obligation for costs] (or Ind. Code 31-6-4-18 before its repeal). Ind. Code 31-30-2-1(c).

4. Continuing Jurisdiction in Paternity Support Action

Pursuant to Ind. Code 31-30-2-1(d), except as provided by Ind. Code 31-30-2-1(g) [jurisdiction over older youth] the jurisdiction of the juvenile court over a proceeding described in Ind. Code 31-30-1-1(10) [guardianship of the person proceedings for a child] for a guardianship of the person continues until the earlier of the date that:

- (1) The juvenile court terminates the guardianship of the person; or
- (2) The child becomes:
 - (A) Nineteen (19) years of age, if a child who is at least eighteen (18) years of age is a full-time student in a secondary school or the equivalent level of vocational or career and technical education; or
 - (B) Eighteen (18) years of age if clause (A) does not apply.

If the guardianship of the person continues after the child becomes the age specified in subdivision (2), the juvenile court shall transfer guardianship of the person proceedings to a person having probate jurisdiction in the county in which the guardian of the person resides. If the juvenile court has both juvenile and probate jurisdiction, the juvenile court may transfer the guardianship of the person proceedings to the probate docket of the court.

5. Continuing Jurisdiction to Order or Enforce Payment for Institutional Placement

The jurisdiction of the juvenile court to enter, modify, or enforce a support order under Ind. Code 31-40-1-5 [obligation of parent, guardian, or custodian to pay for institutional placement] continues during the time that the court retains jurisdiction over a guardianship of the person proceeding described in Ind. Code 31-30-1-1(10) [guardianship of the person proceedings for a child] Ind. Code 31-30-2-1(e).

6. Juvenile Court May Transfer Case to Probate Court

At any time, a juvenile court may, with the consent of the probate court, transfer to the probate court guardianship of the person proceedings and any related support order initiated in the juvenile court. Ind. Code 31-30-2-1(f).

7. Continuing Jurisdiction over Older Youth

Pursuant to Ind. Code 31-30-2-1-(g), a juvenile court may retain jurisdiction over an older youth, as defined by Ind. Code 31-28-5.8-4 (an individual who is at least eighteen (18) years of age but less than twenty (20) years of age), who is a recipient or beneficiary of:

- (a) Kinship guardianship assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 673), as amended, or
- (b) Other financial assistance provided to or for the benefit of the child who:
 - (i) Was previously adjudicated as a CHINS or delinquent child;
 - (ii) Is a protected person under a legal guardianship if Ind. Code 29-3-8-9(f) applies; and
 - (iii) Is approved for assistance under a rule or published policy of the department.

Pursuant to Ind. Code 31-30-2-1- (h) Upon receipt of a motion under Ind. Code 31-37-22-11, the juvenile court shall reinstate its jurisdiction to conduct a hearing and issue an appropriate order in accordance with Ind. Code 31-37-22-11.

B. REINSTATEMENT OF JURISDICTION AFTER RELEASE FROM THE DEPARTMENT OF CORRECTION (“DOC”)

1. Notice Required at Least Ten Days before Release

If the DOC is awarded guardianship of the child pursuant to Ind. Code 31-30-2-1(a)(2), the DOC shall notify the court the court awarding the guardianship when the department will release the child from the department’s custody. The notification must be sent to the court at least ten (10) days before the child’s release. Ind. Code 31-30-2-2.

2. Court May Reinstate Jurisdiction for Modification

a. *Sua Sponte* Reinstatement of Court’s Jurisdiction

After the juvenile court receives notification of the child’s impending release from DOC custody, a juvenile court may within thirty (30) days after notification, on the court’s own motion, reinstate jurisdiction over the child for the purpose of modifying under Ind. Code 31-34-23 (CHINS modification) or Ind. Code 31-37-22 (delinquency modification) the court’s original dispositional decree. Ind. Code 31-30-2-3.

b. DOC May Petition for Reinstatement of Court’s Jurisdiction

DOC may petition the court to reinstate the court’s jurisdiction over the child and the child’s parent, guardian, or custodian to modify the court’s decree under Ind. Code 31-34-23 (CHINS modification) or Ind. Code 31-37-22 (delinquency modification) (or Ind. Code 31-6-7-16 before its appeal) or order the child’s parent, guardian, or custodian to participate in programs operated by or through the DOC. Ind. Code 31-30-2-4(a).

DOC may petition the court to reinstate the court’s jurisdiction over an older youth for purposes of Ind. Code 31-28-5.8 (collaborative care), including an older youth who previously was a CHINS who is eligible for collaborative care.

PRACTICE POINTER – At the time of publication, according to DOC administrators, juvenile parole is required for children less than 17.5 years of age at the time of release and juveniles adjudicated for sex offenses, if the juvenile court does not reinstate jurisdiction. IC 31-37-19-11.5, provides that a child may receive at least three (3) months of transitional services under policies established by the statewide juvenile justice oversight body, but it is not required.

DOC may request that the juvenile court reinstate jurisdiction to put the juvenile under probation supervision or even out-of-home placement. Some counties use reinstatement of jurisdiction as a way to transition the child back into the home, including temporary placement in shelter care or detention upon release from DOC for a short period of time followed by probation supervision and services. An argument can be made that if DOC has determined that the child has completed their program, then no ongoing supervision by the court is necessary and the court should not reassume jurisdiction.

3. Reinstatement to Satisfy Restitution Order

If any part of an order of restitution remains unpaid at the time a child is released by the DOC, 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.

V. APPLICABLE RULES OF PROCEDURE

A juvenile charged with delinquency is entitled to have the court apply those common law jurisprudential principles that 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); *citing In re Gault*, 387 U.S. 1, 30, 87 S.Ct. 1428 (1967).

A failure by the juvenile court to follow the Indiana Juvenile Code that results in purported waiver of statutorily protected right may be deemed a deprivation of due process. T.D. v. State, -- N.E.3d --, 2022 WL 16545555 (Ind. Ct. App. Oct. 31, 2022).

A. INDIANA JUVENILE CODE

Ind. Code 31 is always the first place to start. If the matter is not addressed in the juvenile code, then turn to criminal and civil procedure rules and statutes.

Shupe v. Bell, 141 N.E.2d 351, 352, 127 Ind.App. 292, 295 (1957) (The Act establishing juvenile courts and outlining their procedures are special statutory proceedings, and the provisions of the statute must be followed.).

B. CRIMINAL PROCEDURES, RULES, AND LAWS

If a child is alleged to be a delinquent child, the procedures governing criminal trials apply to all matters not covered by the juvenile law. Ind. Code 31-32-1-1.

If a person is charged with a crime, the laws governing criminal trials apply. Ind. Code 31-32-1-2.

S.D. v. State, 937 N.E.2d 425, 429 (Ind. Ct. App. 2010), *trans. denied*. (The special status accorded juveniles in other areas of the law is fully applicable in the area of criminal procedure.).

Matter of L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985) (Criminal procedural rules only apply in juvenile proceedings when the matter in question is not addressed by the juvenile code.).

Clemons v. State, 162 Ind.App. 50, 57, 317 N.E.2d 859, 864 (1974), *cert. denied*, citing McKeiver v. Pennsylvania, 403 U.S. 528, 551, 91 S.Ct. 1976 (1971) (A juvenile is not entitled to all the procedural rights afforded a criminal defendant. If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence.).

C. CIVIL PROCEDURES

In cases not subject to Ind. Code 31-32-1-1 or -2, the Indiana Rules of Trial Procedure apply in all matters not covered by the juvenile law. Ind. Code 31-32-1-3.

VI. VENUE

Pursuant to Ind. Code 31-32-7-1, if a child is alleged to be a delinquent child or a child in need of services, proceedings under the juvenile law may be commenced in the county:

- (1) Where the child resides;
- (2) Where the act occurred; or
- (3) Where the condition exists.

A. Change of Venue

A change of venue from the county may not be granted except under Ind. Code 31-32-7-3. Ind. Code 31-32-7-2.

B. Assignment of Case to Child's County of Residence

Upon: (1) the juvenile court's own motion; (2) the motion of a child; or (3) the motion of the child's parent, guardian, or custodian; the juvenile court may assign a case to a juvenile court in the county of a child's residence at any time before the dispositional hearing. Ind. Code 31-32-7-3(a).

1. Supervision of Child May Be Assigned

Supervision of a child may be assigned to a juvenile court in the county of the child's residence. Ind. Code 31-32-7-3(b).

2. Copies of All Court Documents Must Be Forwarded

The assigning court shall send to the receiving court certified copies of all documents pertaining to the case. Ind. Code 31-32-7-3(c).

VII. CHANGE OF JUDGE

Except as provided in section 2 [Ind. Code 31-32-8-2] of this chapter [certain TPR proceedings], a change of judge may be granted only for good cause shown by affidavit filed at least twenty-four (24) hours before the fact-finding hearing. Ind. Code 31-32-8-1.