

# CHAPTER SEVEN

## CUSTODY AND DETENTION

---

I. TAKING CHILD INTO CUSTODY .....	1
A. GROUNDS FOR TAKING A CHILD INTO CUSTODY .....	1
1. When Law Enforcement Officer Has Probable Cause .....	1
2. When There is Court Order .....	1
B. LAW ENFORCEMENT DISCRETION FOR CONTINUING CUSTODY, IF CHILD IS NOT TAKEN INTO CUSTODY UNDER AN ORDER OF THE COURT .....	1
1. Child May Be Released from Custody .....	1
2. Child May Be Placed in Detention .....	1
3. Special Housing When Parent, Guardian or Custodian Cannot Be Located, Is Unwilling or Unable to Take the Child, or the Child Requests Detention .....	2
4. Good Faith Effort of Release Required for Curfew Violations .....	2
C. PLACEMENT FOR CHILD TAKEN INTO CUSTODY .....	2
1. Child Taken into Custody without a Court Order .....	2
2. Child Taken into Custody with a Court Order .....	2
D. NOTIFICATION BY LAW ENFORCEMENT TO PARENT, GUARDIAN, OR CUSTODIAN AND INTAKE OFFICER OF DETENTION .....	2
E. NOTIFICATION BY LAW ENFORCEMENT TO SCHOOLS OF STUDENT ARREST OR CUSTODY .....	3
1. Notification to School Required for Certain Acts or Crimes .....	3
2. Offenses That Require School Notification .....	3
3. Notification Required Within 48 Hours .....	4
4. Confidentiality of Arrest or Custody Information .....	4
F. INTAKE OFFICER INVESTIGATION OF DETENTION .....	4
1. Intake Officer Investigation Required When No Court Order for Custody .....	4
2. Release from Custody Permitted .....	5
3. Intake Officer May Impose Release Conditions .....	5
4. Timing of Detention Hearing If Intake Officer Imposes Release Conditions .....	5
5. Indiana Youth Assessment System (IYAS) Detention Tool .....	5
6. Reasons for Detention by Intake Officer .....	6
7. Results of Detention Tool Must Be Made Available Prior to Detention Hearing .....	7
Pursuant to Ind. Code 31-37-5-5(f) [effective July 1, 2023], the results of the detention tool shall be made available to the court and any legal party to the case prior to the detention hearing. .	7
8. Child's Statements Made During Preparation of Detention Tool Not Admissible .....	7
Pursuant to Ind. Code 31-37-5-5(g) [effective July 1, 2023], evidence of a child's statements and evidence derived from those statements made for use in preparing an authorized evidence based detention tool, for purposes of making a recommendation to the court regarding continued detention of a child, are not admissible against the child in any other court proceeding. ....	7
9. Special Housing When Parent, Guardian or Custodian Cannot Be Located, Is Unwilling or Unable to Take the Child, or the Child Requests Detention .....	7
II. DETENTION HEARING .....	7
A. CHILDREN LESS THAN 12 YEARS OLD CANNOT BE DETAINED .....	7
B. FORTY-EIGHT (48) HOURS TO HOLD DETENTION HEARING IF DETAINED .....	8

1. Violation of Time Limit .....	8
C. DETENTION HEARING MAY BE HELD AT SAME TIME AS INITIAL HEARING .....	8
D. DETENTION HEARING PROCESS.....	9
1. Notices and Advisements of Rights Required.....	9
2. Opportunity to Be Heard During Detention Hearing .....	11
3. Opportunity to Make Recommendation During Detention Hearing .....	11
4. Presumption In Favor of Release .....	11
5. Detention of Status Offenders .....	14
6. Detention of Child Committing Acts of Crimes if Committed by Adults.....	14
7. Placement for Child for Whom Detention Is Necessary to Protect the Welfare and Safety of the Child .....	15
8. Location of Detention or Placement.....	15
9. Child Transferred from Criminal Court to Juvenile Court Due to Improper Jurisdiction.....	16
10. Child Transferred From Criminal Court to Juvenile Court Due to Reverse Waiver.....	16
11. Written Findings and Conclusions Following Detention Hearing .....	17
12. Additional Detention Hearings May Be Requested .....	19
III. INDIANA JUVENILE MENTAL HEALTH SCREENING, ASSESSMENT, AND TREATMENT PROJECT.....	19
IV. INDIANA YOUTH ASSESSMENT SYSTEM (IYAS) DETENTION TOOL.....	19
V. DETENTION FACILITIES .....	20
A. TYPES OF FACILITIES .....	20
1. Shelter Care Facility.....	20
2. Juvenile Detention Facility.....	20
3. Secure Facility .....	20
1. Any County .....	21
2. Counties with a Population Between 110,000 and 115,000 (Specifically Targeted La Porte County).....	21
3. Marion County .....	21
VI. ALL EXPENSES FOR THE OPERATION OF THE JUVENILE DETENTION CENTER SHALL BE PAID OUT OF THE COUNTY GENERAL FUND. IND. CODE 31-31-9-11.....	22
VII. USE OF STATE HABEAS CORPUS TO SECURE RELEASE OF ILLEGALLY DETAINED CHILD .....	22
A. PURPOSE OF WRIT OF HABEAS CORPUS .....	22
1. Detention Beyond Time Limits.....	22
2. Writ of Habeas Corpus Not Used to Attack Conviction or Sentence.....	22
B. COURTS AND JUDGES AUTHORIZED TO GRANT WRIT OF HABEAS CORPUS .....	22
C. STANDING AND PERSONS ENTITLED TO WRIT OF HABEAS CORPUS.....	23
D. NECESSARY CONTENT OF WRIT OF HABEAS CORPUS.....	23
E. WRIT OF HABEAS CORPUS MUST BE GRANTED WITHOUT DELAY .....	23
F. DELIVERY OF WRIT OF HABEAS CORPUS.....	23
G. PROCEEDINGS UPON THE WRIT OF HABEAS CORPUS.....	23
H. ISSUANCE OF WRIT HABEAS CORPUS .....	24
I. EMERGENCY WARRANTS .....	24

# **CHAPTER SEVEN**

## **CUSTODY AND DETENTION**

---

### **I. TAKING CHILD INTO CUSTODY**

#### **A. GROUNDS FOR TAKING A CHILD INTO CUSTODY**

##### **1. When Law Enforcement Officer Has Probable Cause**

A child may be taken into custody by a law enforcement officer acting with probable cause to believe that child has committed a delinquent act. Ind. Code 31-37-4-2; R.A. v. State, 770 N.E.2d 376, 379 (Ind. Ct. App. 2002).

##### **2. When There is Court Order**

Child may be taken into custody by law enforcement officer under court order. Ind. Code 31-37-4-1.

##### **a. Person Filing Petition Alleging Delinquency May Request Child be Taken into Custody**

If the filing of a petition is approved by the court under Ind. Code 31-37-10-2, the prosecuting attorney may request in writing that the child be taken into custody. The person must support this request with sworn testimony or affidavit. Ind. Code 31-37-10-5(a).

##### **b. Court Must Make Written Findings to Grant Request**

The court may grant the request to take the child into custody if the court makes written findings of facts upon the record that a ground for detention exists under Ind. Code 31-37-6-6. Ind. Code 31-37-10-5(b).

#### **B. LAW ENFORCEMENT DISCRETION FOR CONTINUING CUSTODY, IF CHILD IS NOT TAKEN INTO CUSTODY UNDER AN ORDER OF THE COURT**

##### **1. Child May Be Released from Custody**

If a child is not taken into custody under an order of the court, the law enforcement officer may release the child or may release the child to the child's parent, guardian or custodian upon the person's written promise to bring the child before the juvenile court at a time specified. Ind. Code 31-37-5-3(a).

##### **2. Child May Be Placed in Detention**

Pursuant to Ind. Code 31-37-5-3(a), the law enforcement officer may place the child in detention if the law enforcement officer reasonably believes that:

- (1) The child is unlikely to appear before the juvenile court for subsequent proceedings;

- (2) The child has committed an act that would be murder or a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony if committed by an adult;
- (3) Detention is essential to protect the child or the community;
- (4) The parent, guardian, or custodian:
  - (A) Cannot be located; or
  - (B) Is unable or unwilling to take custody of the child; or+
- (5) The child has a reasonable basis for requesting that the child not be released.

**3. Special Housing When Parent, Guardian or Custodian Cannot Be Located, Is Unwilling or Unable to Take the Child, or the Child Requests Detention**

Pursuant to Ind. Code 31-37-5-3(b), if a child is detained for a reason specified in Ind. Code 31-37-5-3(a)(4) or (a)(5), the child shall be detained under Ind. Code 31-37-7-1.

Pursuant to Ind. Code 31-37-7-1, a child alleged to be a delinquent child... may not be held in:

- (1) A secure facility; or
- (2) A shelter care facility, a forestry camp, or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes.

**4. Good Faith Effort of Release Required for Curfew Violations**

Unless a law enforcement officer determines that detention is essential to protect a child or the community, the law enforcement officer who detains a child for a violation of the curfew law under Ind. Code 31-37-3 shall make a good faith effort to release the child to the child's parent, guardian, or custodian within a reasonable time after the child is detained. Ind. Code 31-37-5-3(c).

**C. PLACEMENT FOR CHILD TAKEN INTO CUSTODY**

**1. Child Taken into Custody without a Court Order**

If the child is not released, the child shall be delivered to a place designated by the court. Ind. Code 31-37-5-4.

**2. Child Taken into Custody with a Court Order**

If a child is taken into custody under an order of the court, the law enforcement officer shall take the child to a place designated in the order to await a detention hearing. Ind. Code 31-37-5-2.

**D. NOTIFICATION BY LAW ENFORCEMENT TO PARENT, GUARDIAN, OR CUSTODIAN AND INTAKE OFFICER OF DETENTION**

Pursuant to Ind. Code 31-37-5-4, the law enforcement officer shall immediately notify the child's parent, guardian, or custodian and an intake officer of the following:

- (1) Where the child is being held.
- (2) The reasons for the child's detention.

## **E. NOTIFICATION BY LAW ENFORCEMENT TO SCHOOLS OF STUDENT ARREST OR CUSTODY**

### **1. Notification to School Required for Certain Acts or Crimes**

Pursuant to Ind. Code 31-37-4-3(b), if a child is taken into custody under Ind. Code 31-37-4 for a crime or act listed in Ind. Code 31-37-4-3(a), the law enforcement agency that employs the law enforcement officer who takes the child into custody shall notify the chief administrative officer of the primary or secondary school, including a public or nonpublic school, in which the child is enrolled or, if the child is enrolled in a public school, the superintendent of the school district in which the child is enrolled:

- (1) That the child was taken into custody; and
- (2) Of the reason why the child was taken into custody.

### **2. Offenses That Require School Notification**

Pursuant to Ind. Code 31-37-4-3(a), the school notification requirement applies if a child is arrested or taken into custody for committing an act that would be any of the following crimes if committed by an adult:

- (1) Murder (Ind. Code 35-42-1-1);
- (2) Attempted Murder (Ind. Code 35-41-5-1);
- (3) Voluntary Manslaughter (Ind. Code 35-42-1-3);
- (4) Involuntary Manslaughter (Ind. Code 35-42-1-4);
- (5) Reckless Homicide (Ind. Code 35-42-1-5);
- (6) Aggravated Battery (Ind. Code 35-42-2-1.5);
- (7) Battery (Ind. Code 35-42-2-1);
- (8) Kidnapping (Ind. Code 35-42-3-2);
- (9) A sex crime listed in Ind. Code 35-42-4-1 through Ind. Code 35-42-4-8;
- (10) Sexual Misconduct with a Minor (Ind. Code 35-42-4-9);
- (11) Incest (Ind. Code 35-46-1-3);
- (12) Robbery as a Level 2 felony or a Level 3 felony (Ind. Code 35-42-5-1);
- (13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or a Level 4 felony (Ind. Code 35-43-2-1);
- (14) Assisting a Criminal as a Level 5 felony (Ind. Code 35-44.1-2-5);
- (15) Escape as a Level 4 felony or Level 5 felony (Ind. Code 35-44.1-3-4);
- (16) Trafficking with an inmate as a Level 5 felony (Ind. Code 35-44.1-3-5);
- (17) Causing Death or Catastrophic Injury When Operating a Vehicle (Ind. Code 9-30-5-5);
- (18) Criminal Confinement as a Level 2 or Level 3 felony (Ind. Code 35-42-3-3);
- (19) Arson as a Level 2 felony, Level 3 felony, or Level 4 felony (Ind. Code 35-43-1-1);
- (20) Possession, Use, or Manufacture of a Weapon of Mass Destruction (Ind. Code 35-47-12-1)(before its repeal);

- (21) Terroristic Mischief as a Level 2 or Level 3 felony (Ind. Code 35-47-12-3) (before its repeal);
- (22) Hijacking or disrupting an aircraft (Ind. Code 35-47-6-1.6);
- (23) A violation of Ind. Code 35-47.5 (controlled explosives) as a Level 2 felony, Level 3 felony, or Level 4 felony;
- (24) A controlled substance offense under Ind. Code 35-48;
- (25) A criminal organization offense under Ind. Code 35-45-9.
- (26) Domestic battery (Ind. Code 35-42-2-1.3)
- (27) A felony terrorist offense (as defined in Ind. Code 35-50-2-18).

### **3. Notification Required Within 48 Hours**

The notification required by law enforcement to the school under Ind. Code 31-37-4-3(b), must occur within forty-eight (48) hours after the child is taken into custody. Ind. Code 31-37-4-3(c).

### **4. Confidentiality of Arrest or Custody Information**

A law enforcement agency may not disclose information that is confidential under state or federal law to a school or school district under this section. Ind. Code 31-37-4-3(d).

## **F. INTAKE OFFICER INVESTIGATION OF DETENTION**

**PRACTICE POINTER:** The intake officer may be located at the detention center, may be an assigned probation officer, or be some other designated person. If you are new to the court, check to see who is assigned as the intake officer for the juvenile court. Also determine how much discretion the intake officer has in the detention decision and if the court has issued a blanket detention order for all children or specific offenses, which would violate Indiana Code.

**PRACTICE POINTER:** Defense counsel who is immediately contacted when the child is taken into custody and who desires the immediate release of the child should contact the intake officer. Often the arresting law enforcement officer is more emotionally involved in the detention process, especially if the child was verbally abusive to the officer or allegedly resisted law enforcement. The intake officer may be more emotionally removed and, therefore, more likely to release the child.

### **1. Intake Officer Investigation Required When No Court Order for Custody**

#### **(a) Before July 1, 2023**

If the child was not taken into custody under an order of the court, an intake officer shall investigate the reasons for the child's detention. Ind. Code 31-37-5-5(a).

#### **(b) After July 1, 2023, Use of Detention Tool Required**

If the child was not taken into custody under an order of the court, an intake officer shall investigate the reason for the child's detention and use a validated detention tool prior to a decision being made. The results of the detention tool shall be used by the intake officer to inform decisions around the use of secure detention and release conditions. Ind. Code 31-37-5-5(a) [effective July 1, 2023].

“Detention tool” means a validated instrument that assesses a child’s risk for rearrest in order to inform a decision on the use of secure detention. Ind. Code 31-9-2-39.7 [effective July 1, 2022].

## **2. Release from Custody Permitted**

The intake officer may release the child to the child’s parent, guardian, or custodian upon the person’s written promise to bring the child before the juvenile court at a time specified. Ind. Code 31-37-5-5(a).

## **3. Intake Officer May Impose Release Conditions**

If the child is released, the intake officer may impose additional conditions upon the child, including:

- a. Home detention;
- b. Electronic monitoring;
- c. A curfew restriction;
- d. A directive to avoid contact with specified individuals until the child’s return to the juvenile court at a specified time;
- e. A directive to comply with Indiana law; or
- f. Any other reasonable conditions on the child’s actions or behavior

Ind. Code 31-37-5-5(a).

## **4. Timing of Detention Hearing If Intake Officer Imposes Release Conditions**

### **(a) Before July 1, 2023**

If the intake officer imposes additional release conditions upon the child under Ind. Code 31-37-5-5(a), the court shall hold a detention hearing under Ind. Code 31-37-6 within forty-eight (48) hours of the imposition of the additional conditions, excluding Saturdays, Sundays, and legal holidays. Ind. Code 31-37-5-5(b).

### **(b) After July 1, 2023, Consideration of Detention Tool Required**

After considering the detention tool results, if the intake officer imposes additional release conditions upon the child under Ind. Code 31-37-5-5(a), the court shall hold a detention hearing under Ind. Code 31-37-6 within forty-eight (48) hours of the imposition of the additional conditions, excluding Saturdays, Sundays, and legal holidays. Ind. Code 31-37-5-5(b) [effective July 1, 2023].

## **5. Indiana Youth Assessment System (IYAS) Detention Tool**

The IYAS Detention Tool is designed to assist in the decision about whether detention is necessary. The assigned probation officer or intake officer must complete the IYAS detention instrument if the child is detained. The instrument should be filed with the court and made available to all parties to a detention hearing.

Juvenile Detention Alternatives Initiative (JDAI) sites are exempt from using the IYAS Detention Tool, as they use a more comprehensive tool.

*For the full text of the instrument and the guidelines, see the Indiana Public Defender Council website.*

## **6. Reasons for Detention by Intake Officer**

### **(a) Before July 1, 2023**

Pursuant to Ind. Code 31-37-5-5(c), the intake officer may place the child in detention if the intake officer reasonably believes that the child is a delinquent child and that:

- (1) The child is unlikely to appear before the juvenile court for subsequent proceedings;
- (2) The child has committed an act that would be murder or a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony if committed by an adult;
- (3) Detention is essential to protect the child or the community;
- (4) The parent, guardian, or custodian:
  - (A) Cannot be located; or
  - (B) Is unable or unwilling to take custody of the child; or
- (5) The child has a reasonable basis for requesting that the child not be released.

### **(b) After July 1, 2023**

#### **(1) Detention Tool Required**

Pursuant to Ind. Code 31-37-5-5(c) [effective July 1, 2023], the intake officer may place the child in detention if the intake officer reasonably believes that the child is a delinquent child and only: (1) after a detention tool has been administered; and (2) if there are grounds to support the use of secure detention if the child does not score as high risk on the detention tool.

#### **(2) Intake Officer Must Use Detention Tool to Inform Use of Secure Detention**

Pursuant to Ind. Code 31-37-5-5(d) [effective July 1, 2023], the intake officer shall use the results of the detention tool to inform the use of secure detention.

#### **(3) Findings Required**

If, after considering the results of the detention tool and other information determined by local policy, the intake officer believes that the child needs to be detained under Ind. Code 31-37-5-5(c)(2), the intake officer shall document the reason for the use of detention, including:

- (1) The child is unlikely to appear before the juvenile court for subsequent proceedings;
- (2) The child has committed an act that would be murder or a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony if committed by an adult;
- (3) Detention is essential to protect the child or the community;



- (4) The parent, guardian, or custodian:
  - (A) Cannot be located; or
  - (B) Is unable or unwilling to take custody of the child; or
- (5) The child has a reasonable basis for requesting that the child not be released.

Ind. Code 31-37-5-5(d) [effective July 1, 2023].

#### **7. Results of Detention Tool Must Be Made Available Prior to Detention Hearing**

Pursuant to Ind. Code 31-37-5-5(f) [effective July 1, 2023], the results of the detention tool shall be made available to the court and any legal party to the case prior to the detention hearing.

#### **8. Child's Statements Made During Preparation of Detention Tool Not Admissible**

Pursuant to Ind. Code 31-37-5-5(g) [effective July 1, 2023], evidence of a child's statements and evidence derived from those statements made for use in preparing an authorized evidence based detention tool, for purposes of making a recommendation to the court regarding continued detention of a child, are not admissible against the child in any other court proceeding.

#### **9. Special Housing When Parent, Guardian or Custodian Cannot Be Located, Is Unwilling or Unable to Take the Child, or the Child Requests Detention**

If a child is detained for a reason specified in Ind. Code 31-37-5-5(c)(4) or (c)(5), the child shall be detained under Ind. Code 31-37-7-1. Pursuant to Ind. Code 31-37-7-1, a child alleged to be a delinquent child... may not be held in:

- (1) A secure facility; or
- (2) A shelter care facility, a forestry camp, or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes

Ind. Code 31-37-5-5(d) [after July 1, 2023, this section will be numbered 31-37-5-5(e)].

## **II. DETENTION HEARING**

**PRACTICE POINTER:** There is extensive information about the impact of detention on juveniles. When detained, the juvenile is more likely to be formally processed and more likely to receive more sanctions at disposition after controlling for demographic and legal factors, such as current offense and history. See, e.g., the Annie E. Casey Juvenile Detention Alternatives Initiative; Joan McCord, et al. eds., *Juvenile Crime, Juvenile Justice*, National Academy Press, 2001; and C.E. Frazier & J.C. Cochran, *Detention of Juveniles: It's Effects on Subsequent Juvenile Court Processing Decisions*, 17 *Youth & Society* 286-305 (1986).

#### **A. CHILDREN LESS THAN 12 YEARS OLD CANNOT BE DETAINED**

Ind. Code 31-37-6 does not apply to a child less than twelve (12) years of age unless:

- (1) the child poses an imminent risk of harm to the community; or

- (2) the court makes a written finding that detention is essential to protect the community and no reasonable alternatives exist to reduce the risk.

Ind. Code 31-37-6-1(b) [effective July 1, 2022].

## **B. FORTY-EIGHT (48) HOURS TO HOLD DETENTION HEARING IF DETAINED**

If a child is not released, a detention hearing shall be held not later than 48-hours, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody. Ind. Code 31-37-6-2.

### **1. Violation of Time Limit**

#### **a. Release Required**

If a detention hearing is not held within 48-hours of the child being taken into custody, excluding Saturdays, Sundays, and legal holidays, the child shall be released. Ind. Code 31-37-6-4.

#### **b. Jurisdiction Remains in Juvenile Court**

Failure to conduct a detention hearing within 48 hours was harmless to the court's jurisdiction; proper remedy under circumstances would have been to seek writ of habeas corpus. In Re Tacy, 427 N.E.2d 919, 921 (Ind. Ct. App. 1981).

#### **c. Confession Made during Delay May Still be Admissible**

Peterson v. State, 674 N.E.2d 528, 538 (Ind. 1996) (The delay in bringing defendant before magistrate does not make confession inadmissible as a matter of law; but it is one factor to be considered in determining admissibility of confession.).

Richey v. State, 426 N.E.2d 389, 394 (Ind. 1981) (Delay in bringing arrestee before magistrate does not render confession a product of illegal detention when arrestee was twice advised of constitutional rights; the confession, following arrestee's request to talk to detective, occurred within twenty hours of arrest; and evidence revealed no indication confession was induced by force, fear, or promises.).

**PRACTICE POINTER:** Given the special status of juveniles and the extra protections afforded to them, consider arguing that, unlike for adults, a juvenile confession made during a delay should be inadmissible. See, e.g., J.D.B. v. North Carolina, 564 U.S. 261 (2011) (recognizing that children cannot be considered the same as adults and a juvenile's age must be considered in determining whether they were in custody for the purposes of Miranda.).

## **C. DETENTION HEARING MAY BE HELD AT SAME TIME AS INITIAL HEARING**

Nothing in the Juvenile Code prohibits or requires the court to conduct a detention hearing at the same time that it conducts an initial hearing.

Partlow v. State, 453 N.E.2d 259, 264-265 (Ind. 1983) (If the court performs the functions of an initial hearing during a detention hearing, the failure to hold an initial hearing does not deprive the court of jurisdiction and obviates the need for an initial hearing.).

**PRACTICE POINTER:** If a preliminary inquiry has been conducted before the detention hearing, the judge will usually consider the preliminary inquiry and rely upon the preliminary inquiry to determine whether to detain or release the child. The court must also consider the preliminary inquiry in determining whether to approve the filing of a delinquency petition pursuant to Ind. Code 31-37-10-2. The child and his/her attorney have the right to access the completed preliminary inquiry. If appointed prior to the preliminary inquiry, counsel should be present at the preliminary inquiry interview with the child, bring forth information helpful to the child's defense, prevent the child from making statements that will be used against him or her, and suggest that the child should be released from custody.

## **D. DETENTION HEARING PROCESS**

### **1. Notices and Advisements of Rights Required**

*For a full discussion of the juvenile's rights, see Chapter 4 – Constitutional and Statutory Rights*

#### **a. Notice of Time, Place and Purpose**

Pursuant to Ind. Code 31-37-6-3, notice of the time, place, and purpose of a detention hearing shall be given to:

- (1) The child;
- (2) The child's parent, guardian, or custodian if the person can be located; and
- (3) Each foster parent or other caretaker with whom the child has been placed for temporary care under Ind. Code 31-37-5.

#### **b. Right to Counsel**

##### **(1) Advisement of right to counsel**

The juvenile court shall inform the child and the child's parent, guardian, or custodian of the child's right to counsel. Ind. Code 31-37-6-5(1).

Matter of Jennings, 375 N.E.2d 258, 261, 176 Ind.App. 277, 280 (1978) (Due process and fair treatment to a juvenile includes notification to juvenile and his parents that juvenile has right to be represented by counsel retained by them or, if they are unable to afford counsel, by counsel appointed by court to represent juvenile.).

##### **(2) When right to counsel attaches**

The court shall appoint counsel for the child at the detention hearing or at the initial hearing, whichever comes first, or at any earlier time if (1) the child is without an attorney who may represent the child without a conflict of interest and (2) the child has not lawfully waived the child's right to counsel under Ind. Code 31-32-5. Ind. Code 31-32-4-2(a).

See also, Ind. Code 31-37-6-5(2) and Ind. Code 31-32-2-2(1), which authorize the appointment of counsel under Ind. Code 31-32-4.

Woolf v. State, 545 N.E.2d 590, 592 (Ind. Ct. App. 1989) (Appointment of counsel for child who is alleged to be delinquent is not conditioned on child's indigency; rather, court should consider only whether child has attorney and whether child has waived his right to counsel.).

In re Gault, 387 U.S. 1, 41, 87 S.Ct. 1428, 1451, 18 L.Ed.2d 527 (1967) (The right to counsel is available to children in delinquency proceedings which may result in commitment to a state institution.).

N.M. v. State, 791 N.E.2d 802, 805 (Ind. Ct. App. 2003) (Before a juvenile can waive the right to counsel in a delinquency proceeding, the record should show that the juvenile was advised of the nature, extent, and importance of the right to counsel and the consequences of waiving that right, and the court must inform the juvenile that, if she or her parents cannot afford an attorney, one will be appointed for her at public expense.).

### **(3) Mandatory appointment of counsel in certain juvenile delinquency proceedings**

Pursuant to Criminal Rule 25, counsel for the child must be appointed:

- (i) When there is a request to waive a child to a court having criminal jurisdiction;
- (ii) When a parent, guardian or custodian has an interest adverse to the child;
- (iii) Before convening any hearing which the court may find facts (or the child may admit to facts) on the basis of which the court may impose the following:
  - a) Wardship of the child to the Department of Correction;
  - b) Placement of the child in a community based correctional facility for children;
  - c) confinement or continued confinement of the child in a juvenile detention center following the earlier of an initial or detention hearing;
  - d) placement or continued placement of the child in a secure private facility following the earlier of an initial or detention hearing;
  - e) placement or continued placement of the child in a shelter care facility following the earlier of an initial or detention hearing; or
  - f) placement or continued placement of the child in any other non-relative out of home placement following the earlier of an initial or detention hearing;

unless or until a valid waiver is or has been made.

Any waiver shall be made in open court, on the record and confirmed in writing, and in the presence of the child's attorney.

#### **c. Right to Remain Silent**

##### **(1) Advisement of right to remain silent**

The juvenile court shall inform the child and the child's parent, guardian, or custodian of the child's right to refrain from testifying against himself or herself. Ind. Code 31-37-6-5(1).

**(2) When right to remain silent attaches**

A child charged with a delinquency act is entitled to refrain from testifying against the child. Ind. Code 31-32-2-2(2).

**d. Right to Confront and Cross-examine Witnesses**

A child charged with a delinquency act is entitled to confront witnesses. Ind. Code 31-32-2-2(3).

A child is entitled to cross-examine witnesses. Ind. Code 31-32-2-1(1).

**e. Right to Obtain Witnesses or Tangible Evidence**

A child is entitled to obtain witnesses or tangible evidence by compulsory process. Ind. Code 31-32-2-1(2).

**f. Right to Present Evidence**

A child is entitled to introduce evidence on the child's own behalf. Ind. Code 31-32-2-1(3).

**g. No Right to Bail at Detention Hearing**

A child may not be released on bail except as provided by Ind. Code 31-30-3 [bond following waiver of jurisdiction]. Ind. Code 31-37-6-9.

**2. Opportunity to Be Heard During Detention Hearing**

The court shall provide the child, the child's parent, guardian, or custodian if the person can be located; and each foster parent or other caretaker with whom the child has been placed for temporary care under Ind. Code 31-37-5 an opportunity to be heard at the detention hearing. Ind. Code 31-37-6-3(b)(1).

**3. Opportunity to Make Recommendation During Detention Hearing**

The court shall allow the child, the child's parent, guardian, or custodian, if the person can be located, and each foster parent or other caretaker with whom the child has been placed for temporary care under Ind. Code 31-37-5, to make recommendations to the court at the detention hearing. Ind. Code 31-37-6-3(b)(2).

**4. Presumption In Favor of Release**

**a. Child Must be Released from Custody Unless Certain Criteria are Met**

The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at time specified, unless it is determined that criteria specified in statute for detention have been met. Ind. Code 31-37-6-6(a) [after July 1, 2023, this code section will be numbered Ind. Code 31-37-6-6(b)].

Matter of L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985) (Policy of juvenile code is to keep children out of detention whenever possible, favoring use of shelter care facilities. Detention of a child prior to a hearing on the merits should be used sparingly and only in cases where the child is in danger, causing harm to others, or likely to flee his/her current residence.).

**b. Consideration of Detention Tool after July 1, 2023**

The juvenile court shall use the results of the detention tool to inform decisions regarding the detention or temporary detention of a child taken into custody under IC 31–37–5. Ind. Code 31-37-6-6(a) [Effective July 1, 2023].

**c. Release May be Subject to Conditions**

**(1) Conditions on the child**

Pursuant to Ind. Code 31-37-6-6(d), whenever the court releases a child, the court may impose conditions upon the child, including:

- (1) Home detention;
- (2) Electronic monitoring;
- (3) A curfew restriction;
- (4) A protective order;
- (5) A no contact order;
- (6) An order to comply with Indiana law; or
- (7) An order placing any other reasonable conditions on the child’s actions or behavior.

**(2) Home detention**

State ex. rel. W.A. v. Marion County Superior Court, Juvenile Division, 704 N.E.2d 477, 479-82 (Ind. 1998) (Home detention furthers policy directives of Juvenile Code, and it provides convenient alternative for others. Pre-hearing detention of juvenile subject of delinquency petition constitutes “detention” for purposes of determining period of time within which hearing is required to be held pursuant to statute; while trial courts possess power to order various forms of home detention as alternatives to detention in public facility, so ordering does not relieve court of duty it would otherwise have had if detention in facility had been ordered.)

C.T.S. v. State, 781 N.E.2d 1193, 1200 (Ind. Ct. App. 2003), *trans. denied* (Juvenile’s parents were willing to go to great lengths so that juvenile could be released to their care while proceedings were pending, given that mother employed a nanny who would be available to supervise juvenile while parents were at work, and stepfather indicated that he was willing to take a leave of absence from work to be with juvenile at all times, thus a less restrictive alternative, such as home detention, would have likely ensured juvenile’s appearance for proceedings and negated need to detain him for reasons of his protection or that of community.).

### **(3) Surrender driver's license**

The court may require the child to surrender the child's driver's license as a condition of release to ensure the child's appearance at subsequent proceedings. Ind. Code 31-37-6-10.

### **(4) Conditions on the parent, guardian, or custodian**

Pursuant to Ind. Code 31-37-6-6(e), if the court releases the child to the child's parent, guardian or custodian, the court may impose conditions on the child's parent, guardian, or custodian to ensure:

- (1) The safety of the child's physical and mental health;
- (2) The public's physical safety; or
- (3) That any combination of the safety of the child's physical or mental health; and the public's physical safety is satisfied.

### **d. Detention for Probation Violations Disfavored**

Matter of L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985) (Even if a child violates terms of probation, the child should not be detained unless he or she committed a crime for which the child could be arrested, noting that even criminal code limits arrests for probation violations. See Ind. Code 35-38-2-3, which authorizes arrest only if risks of flight or harm to others exist. Violation of probation is deemed a modification of disposition requiring request for emergency change of placement to justify removing child from current placement prior to hearing.).

### **e. Institute of Judicial Administration and American Bar Association Standards**

Institute of Judicial Administration and American Bar Association Standards do not have the force of law. *Available at <http://www.abanet.org>.*

Restraints on the freedom of accused juveniles pending trial and disposition are generally contrary to public policy. The preferred course in each case should be unconditional release.

Interim detention should not be imposed on an accused juvenile:

- (1) To punish, treat, or rehabilitate
- (2) To allow parents to avoid legal responsibility
- (3) To satisfy the victim, police, or community
- (4) To permit more convenient access to juvenile
- (5) To facilitate further interrogation or investigation
- (6) Due to lack of a more appropriate facility

### **f. Exceptions to Presumption of Release**

The juvenile court may order child detained if court finds probable cause to believe that 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:
  - (A) Cannot be located; or
  - (B) Is unable or unwilling to take custody of child;
- (4) Return of child to child's home is or would be:
  - (A) Contrary to best interests and welfare of child; and
  - (B) Harmful to safety or health of child; or
- (5) Child has reasonable basis for requesting that child not be released.

Ind. Code 31-37-6-6(a) [effective July 1, 2023, this section will be numbered Ind. Code 31-37-6-6(b)].

## **5. Detention of Status Offenders**

### **a. Facility May Not be Secure or House Persons Charged with Crimes**

Pursuant to Ind. Code 31-37-7-1, a child alleged to be to be a delinquent child due to status offenses under Ind. Code 31-37-2, except as provided in Ind. Code 31-37-7-3, may not be held in:

- (1) a secure facility; or
- (2) a shelter care facility, a forestry camp, or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes.

W.R.S. v. State, 759 N.E.2d 1121, 1123-24 (Ind. Ct. App. 2001) (Children detained for status offenses may not be detained in juvenile detention facility or secure facility pending a fact-finding hearing. Juvenile court could not modify its dispositional order to commit juvenile to the Department of Correction upon finding juvenile to be a repeat truant, because the juvenile has been detained for 24 days in a secured juvenile detention facility.).

### **b. Exception for Runaways**

Pursuant to Ind. Code 31-37-7-3, a child alleged to be a delinquent child because of an act under Ind. Code 31-37-2-2 [leaving home without permission] may be held in a juvenile detention facility for:

- (1) Not more than twenty-four (24) hours before; and
- (2) Not more than twenty-four hours immediately after;

the initial court appearance, not including Saturdays, Sundays, and nonjudicial days. Ind. Code 31-37-7-3.

## **6. Detention of Child Committing Acts of Crimes if Committed by Adults**

Pursuant to Ind. Code 31-37-7-2, a child alleged to be a delinquent child for committing an act that would be an offense if committed by an adult, pursuant to Ind. Code 31-37-1-2, may be held in either of the following:



- (1) A secure facility for not more than six (6) hours upon arrest for the limited purposes of:
  - (A) Identification;
  - (B) Processing;
  - (C) Interrogation;
  - (D) Transfer to a juvenile detention facility; or
  - (E) Release to parents; or
- (2) A juvenile detention facility.

If the child is detained in a secure facility, the child shall be restricted to an area of the facility in which the child has not more than haphazard or incidental sight or sound contact with person charged with, imprisoned for, or incarcerated for crimes.

## **7. Placement for Child for Whom Detention Is Necessary to Protect the Welfare and Safety of the Child**

### **a. Child Who Needs Protection**

If a child is detained after the court finds probable cause to believe the child is a delinquent child and that:

- (1) The parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child;
- (2) Return of the child to the child's home is or would be contrary to the best interests and welfare of the child and harmful to the safety or health of the child; or
- (3) The child has a reasonable basis for requesting that the child not be released;

the child shall be detained under Ind. Code 31-37-7-1. Ind. Code 31-37-6-6(b) [effective July 1, 2023, this section will be numbered Ind. Code 31-37-6-6(c)].

### **b. Facility May Not Be Secure or House Persons Charged with Crimes**

A child alleged to be a delinquent child under Ind. Code 31-37-2 due to status offenses, with a limited exception for runaways, may not be held in (1) a secure facility; or (2) a shelter care facility, a forestry camp, or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes. Ind. Code 31-37-7-1.

## **8. Location of Detention or Placement**

Pursuant to Ind. Code 31-37-7-4, a court may not place a child in:

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

that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate services located in the child's county of residence is

unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services.

## **9. Child Transferred from Criminal Court to Juvenile Court Due to Improper Jurisdiction**

### **a. Presumption of Release of Child Transferred from Criminal Court**

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.

### **b. Placement of Child Transferred from Criminal Court to be Determined by Juvenile Court**

If the child is not released, the child shall be delivered to a place designated by the juvenile court. Ind. Code 31-30-1-11(c).

### **c. Notification of Where Child Held**

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).

### **d. No Release on Bail for Child Transferred from Criminal Court**

A child transferred to the juvenile court from a criminal court under Ind. Code 31-30-1-11 may not be released on bail. Ind. Code 31-30-1-11(d).

Simpson v. State, 381 N.E.2d 1229, 1232, 269 Ind. 495, 500 (1978) (Juvenile court was without jurisdiction as to felony-murder charge; however, court did have jurisdiction of counts of commission of felony while armed with dangerous and deadly weapon and conspiracy to commit felony, and thus court had authority to order defendant held without bond.).

## **10. Child Transferred From Criminal Court to Juvenile Court Due to Reverse Waiver**

When a case is transferred to juvenile court pursuant to Ind. Code 31-30-1-4 [Individuals subject to adult criminal jurisdiction], 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. Ind. Code 31-30-1-4(c)(3). [Effective July 1, 2016].

## **11. Written Findings and Conclusions Following Detention Hearing**

### **a. Findings Not Required if Child is Released Subject to Conditions**

#### **(1) Statute in effect until July 1, 2023**

Findings are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to conditions listed Ind. Code 31-37-6-6(d). Ind. Code 31-37-6-6(a).

#### **(2) Statute in effect after July 1, 2023**

Findings are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to conditions listed Ind. Code 31-37-6-6(e). Ind. Code 31-37-6-6(b) [effective July 1, 2023].

### **b. Probable Cause and Justification for Detention**

Pursuant to Ind. Code 31-37-6-6(a), the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:

- (1) The child is unlikely to appear 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;
- (4) Return of the child to the child's home is or would be:
  - (A) Contrary to the best interests and welfare of the child; and
  - (B) Harmful to the safety or health of the child; or
- (5) The child has a reasonable basis for requesting that the child not be released.

State ex. rel. W.A. v. Marion County Superior Court, Juvenile Div., 704 N.E.2d 477, 480 (Ind. 1998) (Statute authorizing pre-hearing detention of juveniles requires more than probable cause alone for detention order to issue.).

### **c. All Findings and Conclusions Required for Eligibility for Assistance Under Title IV-E or Any Other Federal Law**

Pursuant to Ind. Code 31-37-6-6(f), the juvenile court shall include in any order approving or requiring detention of a child or approving temporary detention of a child taken into custody under Ind. Code 31-37-5 all findings and conclusions required under:

- (1) The applicable provisions of Title IV-E of the federal Social Security Act (42 U.S.C. 670 et. seq.); or
- (2) Any applicable federal regulation, including 45 CFR 1356.21;

as a condition of eligibility of a delinquent child for assistance under Title IV-E or any other federal law. Ind. Code 31-37-6-6(f).

**d. Language Approved and Recommended by the Judicial Conference of Indiana**

(1) Statute in Effect until July 1, 2023

Pursuant to Ind. Code 31-37-6-6(g), inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

- (1) Removal from the child's home; or
- (2) Detention;

of a child who is alleged to be, or adjudicated as, a delinquent child constitutes compliance with Ind. Code 31-37-6-6(f).

(2) Statute in Effect After July 1, 2023

Pursuant to Ind. Code 31-37-6-6(h) [effective July 1, 2023], inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

- (1) Removal from the child's home; or
- (2) Detention;

of a child who is alleged to be, or adjudicated as, a delinquent child constitutes compliance with Ind. Code 31-37-6-6(g).

**e. Specific Additional Written Findings and Conclusions Required If Child Detained to Protect Welfare and Safety of Child**

(1) Statute in Effect until July 1, 2023

Pursuant to Ind. Code 31-37-6-6(c), if a child is detained due to Ind. Code 31-37-6-6(a)(4), the court shall make written findings and conclusions that include the following:

- (1) The factual basis for the finding.
- (2) A description of the family services available and efforts made to provide family services before removal of the child.
- (3) The reasons why efforts made to provide family services did not prevent removal of the child.
- (4) Whether efforts made to prevent removal of the child were reasonable.

(2) Statute in Effect after July 1, 2023

Pursuant to Ind. Code 31-37-6-6(d) [effective July 1, 2023], if a child is detained due to Ind. Code 31-37-6-6(b)(4), the court shall make written findings and conclusions that include the following:

- (1) The factual basis for the finding.

- (2) A description of the family services available and the efforts made to provide family services before removal of the child.
- (3) The reasons why efforts made to provide family services did not prevent removal of the child.
- (4) Whether efforts made to prevent removal of the child were reasonable.

**f. Results of Detention Tool after July 1, 2023**

Pursuant to Ind. Code 31-37-6-6(i) [effective July 1, 2023], an order of detention shall also include:

- (1) The rationale and reasoning for approving or requiring detention of a child if the child did not score as high risk on the detention tool; and
- (2) The child's detention screening results.

**12. Additional Detention Hearings May Be Requested**

**a. Upon State's or Court's Own Motion**

Upon the juvenile court's own motion or upon motion of the person representing the interests of the State, a child who has been released may be ordered to appear for an additional detention hearing. Ind. Code 31-37-6-7.

**b. Upon Motion of the child**

A child detained under Ind. Code 31-37-6-6 or Ind. Code 31-37-6-7 may petition the juvenile court for an additional detention hearing. Ind. Code 31-37-6-8.

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

Most children who are detained are screened for mental health concerns that may need to be addressed during the period of detention, such as self-harming behavior, and to offer resources upon community reentry. The information collected is confidential and is not made available to the court or any participants, generally.

*For a detailed overview of the project, see 2011 Report and Recommendations available at <http://www.youthlawteam.org>.*

**IV. INDIANA YOUTH ASSESSMENT SYSTEM (IYAS) DETENTION TOOL**

The IYAS Detention Tool is designed to assist in the decision about whether detention is necessary. The assigned probation officer or intake officer must complete the IYAS detention instrument if the child is detained. The instrument should be filed with the court and made available to all parties to a detention hearing.

Juvenile Detention Alternatives Initiative (JDAI) sites are exempt from using the IYAS Detention Tool, as they use a more comprehensive tool.

*For the full text of the instrument and the guidelines, the files are available from the Indiana Public Defender Council at <http://www.in.gov/ipdc>*

## **V. DETENTION FACILITIES**

### **A. TYPES OF FACILITIES**

#### **1. Shelter Care Facility**

A shelter care facility is a place of residence that is licensed under the laws of any state and is not locked to prevent a child's departure unless the administrator determines that locking is necessary to protect the child's health. Ind. Code 31-9-2-117.

Shelter care facilities shall be operated in accordance with rules adopted by the department of child services under Ind. Code 31-27. Ind. Code 31-31-8-5(b).

#### **2. Juvenile Detention Facility**

A juvenile detention facility is a secure facility that is only used for the lawful custody and treatment of juveniles or is located on the same grounds or in the same building as an adult jail or lockup. Ind. Code 31-9-2-71 and Ind. Code 31-31-8-2(1).

Pursuant to Ind. Code 31-31-8-2(2), if the facility is on the same grounds as an adult jail or lockup, the following criteria must be met:

- (1) Total separation between adult and juvenile spatial areas;
- (2) Total separation in all juvenile and adult program activities;
- (3) The administration and security functions of the juvenile detention program must be vested in separate staff who, if the staff serve both populations, are trained to serve a juvenile population.
- (4) The facility meets state standards and licensing requirements as provided in department of correction rule 210 IAC 6. The architectural and operational configuration of the juvenile facility must assure total separation.

Juvenile detention facilities shall be operated in accordance with rules adopted by the department of correction. Ind. Code 31-31-8-5(a).

Mentally ill children may not be placed in juvenile detention facilities established pursuant to Ind. Code 31-31-8-3. 1989 Op. Atty. Gen. No. 89-15.

#### **3. Secure Facility**

A secure facility is a place of residence, other than a shelter care facility, that prohibits the departure of a child. Ind. Code 31-9-2-114.

W.R.S. v. State, 759 N.E.2d 1121, 1124, n.3 (Ind. Ct. App. 2001) (A juvenile detention facility is considered to be a type of secure facility.).

### **B. ESTABLISHMENT AND OPERATION OF JUVENILE DETENTION AND/OR SHELTER CARE FACILITIES**

## **1. Any County**

### **a. Establishment and Payment**

Pursuant to Ind. Code 31-31-8-3:

- (1) The juvenile court may establish juvenile detention and shelter care facilities for children, except as provided by Ind. Code 31-31-9 [Juvenile Detention Facilities in Marion County].
- (2) The court may contract with other agencies to provide juvenile detention and shelter care facilities.
- (3) If the juvenile court operates the juvenile detention and shelter care facilities, the judge shall appoint staff and determine the budgets.
- (4) The county shall pay all expenses. The expenses for the juvenile detention facility shall be paid from the county general fund.

### **b. Advisory Committee**

The judge may appoint an advisory committee to review the operations of each facility, except as provided by Ind. Code 31-31-8-6.

### **c. Facility is an Arm of the Juvenile Court**

A detention home, established to care for delinquent children coming under the jurisdiction of the juvenile court, cannot be considered as a penal institution, but rather as an arm of the juvenile court, established to facilitate the handling of delinquents. 1956 Op.Att.Gen. No. 37.

## **2. Counties with a Population Between 110,000 and 115,000 (Specifically Targeted La Porte County)**

Notwithstanding Ind. Code 31-31-8-3, the juvenile court shall operate a juvenile detention facility or juvenile shelter facility established in the county. However, the county legislative body shall determine the budget for the juvenile detention facility or the juvenile shelter care facility. The expenses for the juvenile detention facility shall be paid from the county general fund. Ind. Code 31-31-8-4.

## **3. Marion County**

The executive committee [elected under Ind. Code 33-33-49-14] shall operate and maintain all juvenile detention centers located within the county. Ind. Code 31-31-9-2.

In addition to being operated in accordance with rules adopted by the department of correction, the department of child services shall make an annual inspection of the center and report to the advisory board whether the center meets the requirements established by the state health department for temporary detention centers. Any noncompliance with those requirements must be stated in writing to the advisory board. Ind. Code 31-31-9-3.

The executive committee with feedback from the advisory board shall establish criteria for admission to the juvenile detention center. The power to order admission to the center remains with the court. Ind. Code 31-31-9-4.

**VI. ALL EXPENSES FOR THE OPERATION OF THE JUVENILE DETENTION CENTER SHALL BE PAID OUT OF THE COUNTY GENERAL FUND. IND. CODE 31-31-9-11.**

**VII. USE OF STATE HABEAS CORPUS TO SECURE RELEASE OF ILLEGALLY DETAINED CHILD**

*Note – This section is not exhaustive. See also the Indiana Public Defender Council Pretrial Manual, Chapter 13.*

**A. PURPOSE OF WRIT OF HABEAS CORPUS**

**1. Detention Beyond Time Limits**

Matter of Tacy, 427 N.E.2d 919, 921 (Ind. Ct. App. 1981) (Child who has been detained beyond time limits required by statute should file petition seeking writ of habeas corpus in juvenile court.).

Benford v. Marvel, 842 N.E.2d 826, 828 (Ind. Ct. App. 2006); *citing* Partlow v. Superintendent, Miami Corr. Facility 756 N.E.2d 978, 980 (Ind. Ct. App. 2001); *quoting* O’Leary v. Smith, 37 N.E.2d 60 (Ind. 1941) (Purpose of writ of habeas corpus is to bring person in custody before court for inquiry into cause of restraint.).

**2. Writ of Habeas Corpus Not Used to Attack Conviction or Sentence**

Partlow v. Superintendent, Miami Corr. Facility, 756 N.E.2d 978, 980 (Ind.Ct.App. 2001) (Writ of habeas corpus is not to be used to attack conviction or sentence. When petitioner attacks the validity of conviction or sentence and/or does not allege that he is entitled to immediate discharge, must file petition for post-conviction relief, not writ of habeas corpus.).

Mills v. State, 840 N.E.2d 354, 357 (Ind. Ct. App. 2006); *citing* Partlow, *supra* (One is entitled to habeas corpus relief only if he is entitled to immediate release from unlawful custody.).

Parker v. State, 822 N.E.2d 285, 286 (Ind. Ct. App. 2005) (Treats challenge of sentence imposed by parole board as post-conviction proceeding and reviews under standard applicable under post-conviction rules.).

Hannis v. Deuth, 816 N.E.2d 872, 875 (Ind. Ct. App. 2004) (Appellant’s challenge to parole board’s revocation of his sentence recognized as habeas claim; court cited appellant’s claim that he was entitled to immediate release.).

T.D. v. State, 2022 WL 16545555 (Ind. Ct. App. 2022) (Because juvenile delinquency adjudications are civil in nature, post-conviction procedures are unavailable. Trial Rule 60 is the appropriate rule to attack delinquency adjudications. See, J.W. v. State, 113 N.E.3d 1202 (Ind. 2019).).

**B. COURTS AND JUDGES AUTHORIZED TO GRANT WRIT OF HABEAS CORPUS**

Pursuant to Ind. Code 34-25.5-2-2(a), writs of habeas corpus may be granted by:

- (1) The circuit or superior courts of the county in which the person applying for the writ may be restrained of his or her liberty, or by the judges of those courts; or



(2) If the judges described in subdivision (1) are:

(A) Absent from the circuits; or

(B) By reason of sickness or other cause, unable or incompetent to hear and determine the application for the writ;

then by any judge of an adjoining circuit.

#### **C. STANDING AND PERSONS ENTITLED TO WRIT OF HABEAS CORPUS**

Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into cause of the restraint, and shall be delivered from the restraint if the restraint is illegal. Ind. Code 34-25.5-1-1.

Writs of habeas corpus shall be granted in favor of parents, guardians, and spouses to enforce the rights and for the protection of minors and incapacitated persons whose incapacity is not caused only by a physical illness, impairment, or infirmity (as defined in Ind. Code 29-3-1-7.5). Ind. Code 34-25.5-7-1.

*Note:* The only juvenile case law addressing appeals from denial of habeas relief pertains to custody of children who were not alleged delinquent. However, clearly under Tacy, a case involving a child waived to criminal court, the writ is available to alleged delinquents. Matter of Tacy, 427 N.E.2d 919, 921 (Ind.Ct.App. 1981). See also In re Deinstitutionalization of Status Offender, etc., 537 N.E.2d 468 (Ind. 1989) (It is not clear whether Ind. Code 34-25.5-7-1 requires caption seeking relief in favor of parent, or whether discharge should be sought in child's name.).

#### **D. NECESSARY CONTENT OF WRIT OF HABEAS CORPUS**

Pursuant to Ind. Code 34-25.5-2-1, application for writ must be made by complaint, signed, and verified by either applicant or some person on applicant's behalf. The complaint must specify:

- (1) Who is restraining the applicant's liberty, the place where applicant is being held, and names of all parties, if they are known, or descriptions of them if they are not known;
- (2) The cause or pretense of restraint, according to the best of the knowledge and belief of applicant.
- (3) If restraint is alleged to be illegal, nature of the illegality.

#### **E. WRIT OF HABEAS CORPUS MUST BE GRANTED WITHOUT DELAY**

Upon application, a writ granted under Ind. Code 34-25.5-2-2(a), shall be granted without delay. Ind. Code 34-25.5-2-2(b).

#### **F. DELIVERY OF WRIT OF HABEAS CORPUS**

Ind. Code 34-25.5-3 specifies who shall deliver the writ and make a proper service and return of the writ.

#### **G. PROCEEDINGS UPON THE WRIT OF HABEAS CORPUS**

Ind. Code 34-25.5-4 specifies how hearings and other proceedings upon the writ must be conducted.

## **H. ISSUANCE OF WRIT HABEAS CORPUS**

Ind. Code 34-25.5-5 specifies conditions under which person may be released under writ of habeas corpus.

## **I. EMERGENCY WARRANTS**

Ind. Code 34-25.5-6 provides emergency warrant procedure for bringing before the court a person who is illegally held in custody or restraint and there is good reason to believe that the applicant: (1) will be carried out of the jurisdiction of the court or judge before whom the application is made; or (2) will suffer some irreparable injury before compliance with the write can be enforced.