

CHAPTER EIGHT

PRELIMINARY INQUIRY AND PETITION ALLEGING DELINQUENCY

I.	PRELIMINARY INQUIRY	1
A.	FULL PRELIMINARY INQUIRY NOT NECESSARY TO ASSUME JURISDICTION	1
B.	RECEIPT OF DELINQUENCY INFORMATION	1
1.	Intake Officer Must Forward Information to Prosecutor.....	1
C.	PROSECUTOR INSTRUCTS INTAKE OFFICER TO MAKE A PRELIMINARY INQUIRY	1
D.	CONTENTS OF PRELIMINARY INQUIRY	2
E.	NOTICE OF PRELIMINARY INQUIRY	3
F.	ADVISEMENT OF RIGHTS DURING CHILD’S INTERVIEW	4
G.	RECOMMENDATION WITHIN PRELIMINARY INQUIRY	4
H.	DISTRIBUTION OF PRELIMINARY INQUIRY	5
I.	COURT AND PROSECUTOR MAY CHANGE PROCEDURE	5
II.	DELINQUENCY PETITION IS ESSENTIAL FOR JUVENILE COURT JURISDICTION AND DUE PROCESS	5
III.	PROSECUTING ATTORNEY MAY FILE DELINQUENCY PETITION	5
A.	PROSECUTING ATTORNEY MAY FILE PETITION	5
B.	DECISION OF PROSECUTING ATTORNEY IS FINAL	6
IV.	TIME PARAMETERS FOR PETITION	6
A.	SEVEN (7) DAYS TO FILE IF CHILD IS IN DETENTION	6
1.	Release from Detention Is Remedy If Time Limit Exceeded.....	6
B.	ANSWER TO PETITION MUST OCCUR WITHIN ONE (1) YEAR OF FILING	6
V.	CONTENT OF DELINQUENCY PETITION	6
A.	VERIFICATION OF PETITION	7
B.	CARELESS DRAFTING OF PETITION	7
1.	Error In or Omission of Citation	7
2.	Failure to State Offense with Sufficient Certainty	7
VI.	COURT APPROVAL OF DELINQUENCY PETITION	8
A.	BEFORE APPROVAL, THE JUVENILE COURT CONSIDERS THE PRELIMINARY INQUIRY AND EVIDENCE OF PROBABLE CAUSE	8
B.	PETITION DEEMED FILED ON DATE OF APPROVAL.....	8
C.	APPROVAL OF PETITION MAY NOT BE PREREQUISITE TO ACQUISITION OF JURISDICTION .	8
D.	NEW PETITION REQUIRED FOR EACH NEW CAUSE	8
VII.	STATE MAY REQUEST DETENTION IF PETITION APPROVED.....	9
A.	STATE MAY MAKE WRITTEN REQUEST FOR DETENTION	9
B.	CIRCUMSTANCES FOR GRANTING DETENTION REQUEST.....	9
C.	IF CHILD DETAINED, DETENTION HEARING MUST BE HELD	9
VIII.	SERVICE OF DELINQUENCY PETITION.....	9
A.	PARTIES FOR WHOM SUMMONS SHALL BE ISSUED	9
B.	SUMMONS ISSUED UNDER INDIANA TRIAL PROCEDURE RULE 4.....	9
C.	NOTICE TO FOSTER PARENTS OR OTHER CARETAKERS	9
D.	NOTICE AND OPPORTUNITY TO BE HEARD.....	9
IX.	DUAL STATUS ASSESSMENT DETERMINATION.....	10
X.	DISMISSAL OF DELINQUENCY PETITION.....	10
A.	DISMISSAL ON MOTION OF STATE’S REPRESENTATIVE FOR ANY REASON.....	10

B. DISMISSAL FOR ERROR IN OR OMISSION OF CITATION IF PREJUDICIAL.....	10
C. DISMISSAL FOR EXCESSIVE DELAY IN PROSECUTION	10
D. PETITION IS NOT DISMISSED BY ORDER DENYING WAIVER OF JURISDICTION.....	10
E. FAILURE TO FILE PETITION OR DISMISSAL OF PETITION TRIGGERS RIGHT TO HAVE FINGERPRINTS AND/OR PHOTOGRAPHS DESTROYED	10
1. No Destruction If Other Acts Pending Or Prior Arrests.....	11
2. Copies Forwarded To Other Agencies Must Also Be Destroyed.....	11

CHAPTER EIGHT

PRELIMINARY INQUIRY AND PETITION ALLEGING DELINQUENCY

I. PRELIMINARY INQUIRY

A preliminary inquiry is an informal investigation into the facts and circumstances reported to the court. Ind. Code 31-37-8-2.

A. FULL PRELIMINARY INQUIRY NOT NECESSARY TO ASSUME JURISDICTION

Matter of C.K., 695 N.E.2d 601, 603 (Ind. Ct. App. 1998), *trans. denied* (Where the child is alleged to have committed an adult crime and the court is presented with a probable cause affidavit, inquiry by the court into further social history is unnecessary and not required by the statute defining preliminary inquiry.).

Howard v. State, 175 Ind.App. 575, 579, 372 N.E.2d 1237, 1241 (1978) (Error predicated on the failure to follow requirements to assume jurisdiction, including failure to consider a preliminary inquiry, must be asserted at the time they were alleged to have occurred. Without a sufficient objection, the argument is waived and not preserved for appeal.).

B. RECEIPT OF DELINQUENCY INFORMATION

A person may give an intake officer, or a prosecuting attorney written information indicating that a child is a delinquent child. Ind. Code 31-37-8-1(a).

1. Intake Officer Must Forward Information to Prosecutor

If the information is given to the intake officer, the intake officer shall immediately forward the information to the prosecuting attorney. Ind. Code 31-37-8-1(b)(1).

2. Intake Officer Must Complete Dual Status Screening Tool

If the information is given to the intake officer, the intake officer shall complete a dual status screening tool on the child, as described in Ind. Code 31-41-1-3. Ind. Code 31-37-8-1(b)(2).

3. Beginning on July 1, 2023, Intake Officer Must Complete Risk Screening Tool

Effective July 1, 2023, the intake officers shall also complete a risk screening tool on the child. Ind. Code 31-37-8-1(b)(3) (eff. July 1, 2023).

C. PROSECUTOR INSTRUCTS INTAKE OFFICER TO MAKE A PRELIMINARY INQUIRY

If the prosecuting attorney has reason to believe the child has committed a delinquent act, the prosecuting attorney shall instruct the intake officer to make a preliminary inquiry to

determine whether the interests of the public or of the child require further action. Ind. Code 31-37-8-1(c).

D. CONTENTS OF PRELIMINARY INQUIRY

Pursuant to Ind. Code 31-37-8-2, whenever practicable, the preliminary inquiry should include the following information:

- (1) The child's background.
- (2) The child's current status.
- (3) The child's school performance.
- (4) If the child has been detained:
 - (A) Efforts made to prevent removal of the child from the child's home, including the identification of any emergency situation that prevented reasonable efforts to avoid removal;
 - (B) Whether it is in the best interest of the child to be removed from the home environment; and
 - (C) Whether remaining in the home would be contrary to the health and welfare of the child.
- (5) The results of a dual status screening tool to determine whether the child is a dual status child, as described in Ind. Code 31-41-1-2.
- (6) Beginning July 1, 2023, the preliminary inquiry should also include the results of a risk screening tool conducted on the child to inform diversion decisions.

Pursuant to Ind. Code 31-37-5-5, an intake officer is also tasked with investigating the reasons for the child's detention, if the child was not taken into custody under an order of the court.

Effective July 1, 2023, Ind. Code 31-37-5-5 requires the intake officer to use a validated detention tool, as defined in Ind. Code 31-9-2-39.7, in informing decisions around the use of secure detention and release conditions:

- (a) 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 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. 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 and may impose additional conditions upon the child, including:
 - (1) home detention;
 - (2) electronic monitoring;
 - (3) a curfew restriction;
 - (4) a directive to avoid contact with specified individuals until the child's return to the juvenile court at a specified time;
 - (5) a directive to comply with Indiana law; or
 - (6) any other reasonable conditions on the child's actions or behavior.

- (b) After considering the detention tool results, if the intake officer imposes additional conditions upon the child under subsection (a), the court shall hold a detention hearing under IC 31-37-6 within forty-eight (48) hours of the imposition of the additional conditions, excluding Saturdays, Sundays, and legal holidays.
- (c) 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.
- (d) The intake officer shall use the results of the detention tool to inform the use of secure detention. 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 subsection (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.
- (e) If a child is detained for a reason specified in subsection (d)(4) or (d)(5), the child shall be detained under IC 31-37-7-1.
- (f) Results of the detention tool shall be made available to the court and any legal party to the case prior to the detention hearing.
- (g) 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.

Matter of C.K., 695 N.E.2d 601, 603-04 (Ind. Ct. App. 1998), *trans. denied* (Inquiry into social history may be unnecessary when the child is alleged to have committed a crime and protection of the public is at issue, as it may add nothing to the decisional process to file a petition alleging delinquency. The probable cause affidavit may be sufficient.).

E. NOTICE OF PRELIMINARY INQUIRY

If a parent, guardian, or custodian of a child seeks information concerning a preliminary inquiry, the person shall be notified: (1) whether a preliminary inquiry is being made; and (2) if so, the nature of the inquiry. Ind. Code 31-37-8-3.

F. ADVISEMENT OF RIGHTS DURING CHILD’S INTERVIEW

Until July 1, 2023, pursuant to Ind. Code 31-37-8-4, if a child interview occurs, the intake officer shall advise the child and the child’s parent, guardian, or custodian of the following:

- (1) The nature of the allegations against the child.
- (2) That the intake officer is conducting a preliminary inquiry to assist the prosecuting attorney in determining whether a petition should be filed alleging that the child is a delinquent child.
- (3) That the intake officer will recommend whether to:
 - (A) File a petition;
 - (B) File a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41;
 - (C) Informally adjust the case;
 - (D) Informally adjust the case and recommend that the child be referred for an assessment by the dual status assessment team as described in Ind. Code 31-41-1-5;
 - (E) Refer the child to another agency; or
 - (F) Dismiss the case.
- (4) That the child has a right to remain silent.
- (5) That anything the child says may be used against the child in subsequent judicial proceedings.
- (6) That the child has a right to consult with an attorney before the child talks with the intake officer.
- (7) That the child has a right to stop at any time and consult with an attorney.
- (8) That the child has a right to stop talking with the intake officer at any time.
- (9) That if the child cannot afford an attorney, the court will appoint an attorney for the child.

Effective July 1, 2023, the intake officer must also advise the child and the child’s parent, guardian, or custodian of the following:

That the intake officer will recommend whether to refer the child to juvenile diversion as described in Ind. Code 31-37-8.5 and whether to refer the child to juvenile diversion as described in Ind. Code 31-37-8.5 and recommend that the child be referred for an assessment by the dual status assessment team as described in Ind. Code 31-41-1-5. Ind. Code 31-37-8-4(3)(C) & (D) (eff. July 1, 2023).

G. RECOMMENDATION WITHIN PRELIMINARY INQUIRY

Pursuant to Ind. Code 31-37-8-5(a)(2), the intake officer shall recommend whether to:

- (A) file a petition;
- (B) file a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5;

- (C) informally adjust the case;
- (D) informally adjust the case and recommend that the child be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5;
- (E) refer the child to another agency; or
- (F) dismiss the case.

Beginning July 1, 2023, the intake officer shall also recommend whether to refer the child to juvenile diversion and whether to refer the child to juvenile diversion as described in Ind. Code 31-37-8.5 and recommend that the child be referred for an assessment by the dual status assessment team as described in Ind. Code 31-41-1-5. Ind. Code 31-37-8-5(2)(C) & (D) (eff. July 1, 2023).

H. DISTRIBUTION OF PRELIMINARY INQUIRY

The intake officer shall send the prosecuting attorney a copy of the preliminary inquiry. Ind. Code 31-37-8-5(a)(1).

I. COURT AND PROSECUTOR MAY CHANGE PROCEDURE

The prosecuting attorney and the court may agree to alter the procedure described in Ind. Code 31-37-8-5(a) [recommendation and distribution]. Ind. Code 31-37-8-5(b).

II. DELINQUENCY PETITION IS ESSENTIAL FOR JUVENILE COURT JURISDICTION AND DUE PROCESS

If the juvenile is charged with a crime over which the juvenile court lacks jurisdiction, no petition will be filed. See Ind. Code 31-30-1-4. The crimes over which the juvenile court lacks jurisdiction, if the child is between sixteen and eighteen years old at the time of commission, are listed in Ind. Code 31-30-1-4(a) (new version effective July 1, 2022).

“We know that courts do not assume jurisdiction, sua sponte.... jurisdiction of the court must be invoked by the verified accusation as provided for by [statute]. . . .” Seay v. State, 167 Ind.App. 22, 337 N.E.2d 489, 493 (1975). A delinquency petition is included among documents essential both to acquiring jurisdiction and to effective waiver of jurisdiction to criminal court. Id. at 498.

Davies v. State, 171 Ind.App. 487, 489-90, 357 N.E.2d 914, 916 (1976) (Due process requires that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.).

III. PROSECUTING ATTORNEY MAY FILE DELINQUENCY PETITION

A. PROSECUTING ATTORNEY MAY FILE PETITION

The prosecuting attorney may file a petition alleging that a child is a delinquent child. Ind. Code 31-37-10-1.

If the child fails to complete the terms of a juvenile diversion, the prosecuting attorney may petition the juvenile court for authorization to file a delinquency petition. Ind. Code 31-37-8.5-5(c).

B. DECISION OF PROSECUTING ATTORNEY IS FINAL

The prosecuting attorney shall decide whether to file a petition. Ind. Code 31-37-8-6.

IV. TIME PARAMETERS FOR PETITION

A. SEVEN (7) DAYS TO FILE IF CHILD IS IN DETENTION

If a child is in detention, the delinquency petition must be filed not later than seven (7) days, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody. Ind. Code 31-37-11-1.

1. Release from Detention Is Remedy If Time Limit Exceeded

If a child is in detention and the petition is not filed within the seven-day time limit set out in Ind. Code 31-37-11-1, the child shall be released on the child's own recognizance or to the parent, guardian, or custodian. Ind. Code 31-37-11-7.

B. ANSWER TO PETITION MUST OCCUR WITHIN ONE (1) YEAR OF FILING

A child may not be required to answer a petition alleging that the child is a delinquent child for more than one (1) year in aggregate. Ind. Code 31-37-11-5.

C. TIMING OF PETITION WHERE CHILD IS FOUND COMPETENT AFTER EVALUATION

If a child is found to be competent after a competency evaluation is ordered, the factfinding hearing must be commenced within the period specified by section 2 of this chapter. The date of the petition is considered to be filed is the date when the child is found to be competent. Ind. Code 31-37-11-11.

V. CONTENTS OF DELINQUENCY PETITION

Pursuant to Ind. Code 31-37-10-3, a petition must:

- (1) Be verified;
- (2) Be entitled "In the Matter of _____, a Child Alleged to be a Delinquent Child";
- (3) Contain the following information:
 - (A) A citation to the provision of the juvenile law that gives the juvenile court jurisdiction in the proceeding.
 - (B) A citation to the statute that the child is alleged to have violated.
 - (C) A concise statement of the facts upon which the allegations are based, including the date and location at which the alleged act occurred.
 - (D) The child's name, birth date, and residence address, if known.

(E) The name and residence address of the child's parent, guardian, or custodian if known.

(F) The name and title of the person signing the petition.

Shupe v. Bell, 127 Ind.App. 292, 300, 141 N.E.2d 351, 355 (1957) (Proceedings to have a child declared to be a delinquent being highly penal in nature, compels special statutes dealing with children to be strictly construed, especially as to the commencement of the action and notice.).

Davies v. State, 171 Ind.App. 487, 490, 357 N.E.2d 914, 917 (1976) (A showing must be made in a delinquency petition that there is an existing set of facts comprising an act which, if committed by an adult, would be a crime.).

A. VERIFICATION OF PETITION

Hendricks v. State, 426 N.E.2d 367, 369 (Ind. 1981), *citing* Indiana Trial Rule 11(B) (The *sine quo non* of verified petition is that person executing it affirm under penalties of perjury, or state upon oath, before official authorized to administer oaths, that representations within body of petition are true. If the verification is missing, an objection to the defect should be voiced immediately by a motion to quash or it would be deemed to have been waived.).

B. CARELESS DRAFTING OF PETITION

Smith v. State, 459 N.E.2d 355, 360 (Ind. 1984) (Degree of precision in actual charging information required to "enlighten and protect" the defendant at trial is greater than amount of precision required in delinquency petition used to provide defendant with notice of waiver hearing.).

In re Coyle, 122 Ind.App. 217, 218, 101 N.E.2d 192, 193 (1951) (A carelessly or inexpertly drafted petition alleging delinquency that does not exactly conform to the drafting statute, but to which there was no objection, was sufficient to enable the juvenile court to assume jurisdiction.).

1. Error In or Omission of Citation

Pursuant to Ind. Code 31-37-10-4, error in a citation or the omission of a citation is ground for:

- (1) Dismissal of the petition; or
- (2) Reversal of the adjudication;

only if the error or omission misleads the child to the child's prejudice.

2. Failure to State Offense with Sufficient Certainty

In re Davies, 171 Ind.App. 487, 357 N.E.2d 914, 916-17 (1976) (Even if petition satisfies jurisdictional requirements of the juvenile code, petition which fails to state offense with sufficient certainty and fails to provide sufficiently definite statement of facts to afford notice to child may violate due process. The child is entitled to have the allegation meet the same standard as it would for a criminal offense.).

McClintock v. State, 253 Ind. 333, 346, 253 N.E.2d 233, 241 (1969) (Some specific act or conduct must be charged as constituting the delinquency and the truth of such charge must be determined in an adversary proceeding.).

J.M. v. State, 727 N.E.2d 703 (Ind. 2000) (Where a child was found delinquent for a lesser included offense, the court examined the charges and wrote that the delinquency petition sufficiently alleged facts supporting the ultimate delinquency finding.)

VI. COURT APPROVAL OF DELINQUENCY PETITION

A. BEFORE APPROVAL, THE JUVENILE COURT CONSIDERS THE PRELIMINARY INQUIRY AND EVIDENCE OF PROBABLE CAUSE

Pursuant to Ind. Code 31-37-10-2, the juvenile court shall do the following:

- (1) Consider the preliminary inquiry and evidence of probable cause.
- (2) Approve the filing of the petition if there is probable cause to believe that:
 - (A) The child is a delinquent child; and
 - (B) It is in the best interests of the child or the public that the petition be filed.

B. PETITION DEEMED FILED ON DATE OF APPROVAL

In re Tacy, 427 N.E.2d 919, 921 (Ind. Ct. App. 1981) (It is not error for petition to have been filed before the court authorized it to be filed and, in that event, it will be deemed filed as of the date of authorization by the court, not date that it was actually filed (for purpose of calculating time limits for commencement of hearing.).

C. APPROVAL OF PETITION MAY NOT BE PREREQUISITE TO ACQUISITION OF JURISDICTION

K.S. v. State, 849 N.E.2d 538, 542 (Ind. 2006) (Objection to noncompliance with statutory scheme for approval of petition is waivable error. Failure to approve filing does not render judgment open to collateral attack on grounds that court did not acquire jurisdiction if not timely raised. Subject matter jurisdiction [delinquency proceeding] and personal jurisdiction [child was resident of county and submitted himself to authority of the court] were evaluated to determine whether the court had jurisdiction despite procedural defect.).

D. NEW PETITION REQUIRED FOR EACH NEW CAUSE

B.R. v. State, 823 N.E.2d 301, 304-305 (Ind. Ct. App. 2005) (Juvenile court was required to approve the filing of the delinquency petition in order to gain jurisdiction over the juvenile's delinquency proceeding, regardless of prior contacts with the system, unless there is continuing jurisdiction pursuant to Ind. Code 31-30-2-1.).

VII. STATE MAY REQUEST DETENTION IF PETITION APPROVED

A. STATE MAY MAKE WRITTEN REQUEST FOR DETENTION

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. CIRCUMSTANCES FOR GRANTING DETENTION REQUEST

The court may grant the request to detain the child if the court makes findings of fact upon the record that a ground for detention exists under Ind. Code 31-7-6-6 [findings required for detention order]. Ind. Code 31-37-10-5(b).

C. IF CHILD DETAINED, DETENTION HEARING MUST BE HELD

See complete information about a detention and detention hearings in Ch. 7.

If the juvenile court grants the request to have the child taken into custody, the court shall proceed in accordance with Ind. Code 31-37-6 [detention hearing]. Ind. Code 31-37-10-6.

VIII. SERVICE OF DELINQUENCY PETITION

A. PARTIES FOR WHOM SUMMONS SHALL BE ISSUED

Pursuant to Ind. Code 31-37-12-2(b), the juvenile court shall set a time for the initial hearing and the summons shall be issued for:

- (1) The child
- (2) The child's parent, guardian, custodian, or guardian ad litem
- (3) Any other person necessary for the proceeding.

B. SUMMONS ISSUED UNDER INDIANA TRIAL PROCEDURE RULE 4

A copy of the petition must accompany each summons, and the clerk shall issue the summons under Indiana Trial Procedure Rule 4. Ind. Code 31-37-12-2(c).

C. NOTICE TO FOSTER PARENTS OR OTHER CARETAKERS

The prosecuting attorney or the probation department shall provide notice of the time, place and purpose of the initial hearing scheduled or held to each foster parent or other caretaker with whom the child has been placed for temporary care under Ind. Code 31-37-5 or Ind Code 31-37-7. Ind. Code 31-37-12-2(d)

D. NOTICE AND OPPORTUNITY TO BE HEARD

The court shall provide a person for whom a summons is required to be issued an opportunity to be heard and allow the person to make recommendations to the court. Ind. Code 31-37-12-2(d).

IX. DUAL STATUS ASSESSMENT DETERMINATION

The juvenile court shall determine if a child should be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41. In making its determination, the court shall consider the length of time since the delinquent act or the incident of abuse or neglect. Ind. Code 31-37-12-2(e).

X. DISMISSAL OF DELINQUENCY PETITION

A. DISMISSAL ON MOTION OF STATE'S REPRESENTATIVE FOR ANY REASON

Upon motion by the person representing the interests of the state, the juvenile court shall dismiss any petition the person has filed. Ind. Code 31-37-10-8.

B. DISMISSAL FOR ERROR IN OR OMISSION OF CITATION IF PREJUDICIAL

Juvenile court may order petition dismissed if there is error in citation or omission of citation, only if error or omission misleads the child to child's prejudice. Ind. Code 31-37-10-4.

C. DISMISSAL FOR EXCESSIVE DELAY IN PROSECUTION

Child may not be required to answer petition alleging that child is delinquent child for more than one (1) year in aggregate. Ind. Code 31-37-11-5.

A.K. v. State, 915 N.E.2d 554 (Ind. Ct. App. 2009), reh'g denied, trans. denied (addressing a timeliness argument under a different statutory provision, the Court held that it is appropriate to analogize juvenile court timeliness claims with adult criminal court timeliness claims under Criminal Rule 4 and to require an objection to the setting of an untimely factfinding hearing).

C.W. v. State, 643 N.E.2d 915 (Ind. Ct. App. 1994) (delay in prosecution due to juvenile's participation in informal adjustment chargeable to juvenile).

D. PETITION IS NOT DISMISSED BY ORDER DENYING WAIVER OF JURISDICTION

State v. Gorzelanny, 468 N.E.2d 589, 591 (Ind. Ct. App. 1984), citing Partlow v. State, 453 N.E.2d 259, 264; Jonaitis v. State, 437 N.E.2d 140,142 (Ind. Ct. App. 1982) (Juvenile court improperly dismissed petition following waiver hearing at which court denied state's motion for waiver of jurisdiction; waiver hearing was not adjudication of delinquency but rather only determines jurisdiction of court; delinquency must be adjudicated in a separate hearing).

E. FAILURE TO FILE PETITION OR DISMISSAL OF PETITION TRIGGERS RIGHT TO HAVE FINGERPRINTS AND/OR PHOTOGRAPHS DESTROYED

Pursuant to Ind. Code 31-39-5-4(a), upon written request of the child or the child's parent, guardian, or custodian, a law enforcement agency shall destroy or deliver to the child any of the child's fingerprints or photographs taken if:

- (1) The child was taken into custody and no petition was filed against the child;
- (2) The petition was dismissed because of mistaken identity;
- (3) The petition was dismissed because no delinquent act was actually committed; or
- (4) The petition was dismissed for lack of probable cause;

if the photographs or prints were taken pursuant to Ind. Code 31-39-5-1.

1. No Destruction If Other Acts Pending or Prior Arrests

If the child has a record of prior arrests or if another charge is pending against the child, the law enforcement agency does not have to destroy the child's fingerprints or photographs. Ind. Code 31-39-5-4(b).

2. Copies Forwarded to Other Agencies Must Also Be Destroyed

Any law enforcement agency that has forwarded copies of fingerprints or photographs that the law enforcement agency must destroy pursuant to Ind. Code 31-39-5-4 to any agency of the United States, of any other state, or of this state, shall request in writing that all copies be returned for destruction or for presentation to the child. Ind. Code 31-39-5-6.

F. EXPUNGEMENT OF RECORDS THAT DO NOT RESULT IN ADJUDICATION

For a complete summary of expungement opportunities and procedures, refer to the IPDC manual "Guide to Expungement in Indiana."

Pursuant to Ind. Code 35-38-9-1, if a child is alleged to be a delinquent child, but the allegations do not result in a juvenile adjudication, or the adjudication is subsequently vacated, or one year has passed since the filing of the delinquency allegations, and there is no disposition and State is not actively prosecuting the allegations, the court shall order all records related to the delinquency allegations expunged. An expungement for non-prosecution goes into effect immediately, but an expungement due to dismissal, acquittal, or not true finding may not go into effect until at least sixty (60) days after the triggering event. The prosecutor may petition for an additional delay of the expungement, up to one year after the dismissal, acquittal, or not true finding. Additionally, the child may petition for the expungement of arrest records that do not result in a petition alleging the child to be a delinquent child.