

[CAPTION]

**MOTION TO DISMISS DELINQUENCY PETITION**

[Insert client's name], a juvenile, by counsel, respectfully requests this Court to dismiss the Delinquency Petition, pursuant to Ind. Code 35-34-1-4. In support of the Motion, the juvenile states the following:

1. [Insert date], a Delinquency Petition was filed, charging the juvenile with [insert offense(s)] if committed by an adult.
2. Pursuant to Ind. Code 31-32-1-1, if a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by juvenile law.
3. The provisions of the juvenile code must be closely followed in dealing with the rights of an alleged delinquent. Seay v. State, 337 N.E.2d 489, 493 (Ind.Ct.App. 1975).  
Jurisdiction by the Juvenile Court is dependent upon strict compliance with the provisions of the juvenile code. Id.
4. Pursuant to Ind. Code 31-37-8-1, once a prosecuting attorney is provided information indicating a child is a delinquent child, and if the prosecuting attorney has reason to believe that 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." In this instance, the record does not indicate that any preliminary inquiry was undertaken, as required by statute, and does not indicate that a written inquiry report was forwarded to the prosecutor. Strict compliance with preliminary inquiry requirements is prerequisite to exercise of personal jurisdiction over a juvenile in connection with a delinquency proceeding. Collins v. State, 540 N.E.2d 85 (Ind.Ct.App. 1989).
5. Pursuant to Ind. Code 31-37-10-2, a petition alleging delinquency may be filed only following approval by the Court, following a finding that there is probable cause to

believe that the child is a delinquent child AND that it is in the best interests of the child or the public that the petition be filed. In this cause, the Court has found probable cause to believe the child is a delinquent child, but has not authorized the State to file a petition in this cause.

6. The Petition filed in this cause is defective under Ind. Code 35-34-1-4 for the following reasons: [insert appropriate allegations, such as]
  - a. The Petition does not state the offense with sufficient certainty to allow the Defendant to prepare a defense and, therefore, does not comply with the requirements of Article 1, Sections 12 and 13 of the Indiana Constitution and the Sixth and Fourteenth Amendments to the U.S. Constitution.
  - b. The facts stated in the Petition do not constitute an offense.
  - c. The facts in the probable cause affidavit, upon which the Petition is based, does not substantially conform to the requirement of Ind. Code 35-34-1-2(a) and Ind. Code 31-37-10-3, in that it has not been verified.

WHEREFORE, the juvenile, by counsel, respectfully request this Court to set this matter for an immediate hearing, dismiss the Delinquency Petition and for all other relief just and proper in the premise.

(Signature)

## REFERENCES

## CASEBANK U.7

Ind. Code 31-37-10-4 (error and omissions in petition require dismissal of the petition or reversal of the adjudication only if they mislead the child to the child's prejudice).

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

Ind. Code 31-37-8-1 (receipt and forwarding of information concerning delinquent child; preliminary inquiry).

Ind. Code 31-37-10-2(2) ("The juvenile court shall . . . [a]pprove the filing of a 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").

## CASE LAW

In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (notice of juvenile delinquency proceedings must be given sufficiently in advance of the court proceedings to provide reasonable preparation time and must set forth alleged misconduct with particularity).

K.S. v. State, 849 N.E.2d 538 (Ind. 2006) (failure of juvenile court to approve filing of delinquency petition, as required by Ind. Code 31-37-10-2, does not affect the court's personal and subject matter jurisdiction over the case and the juvenile; K.S. waived error by failing to raise an objection in a timely manner, and cannot now collaterally attack original petition).

In re Heaton, 503 N.E.2d 410 (Ind.Ct.App. 1986) (juvenile court did not properly acquire jurisdiction where there was no preliminary inquiry, no petition filed and no petition for waiver filed).

Hendricks v. State, 426 N.E.2d 367 (Ind. 1981) (although the Indiana Code requires petition alleging delinquency to be verified, the Defendant must object to a defect via a motion to quash or objection is waived; here, sworn testimony of alleged victims at waiver hearing served purpose of assuring that delinquency petition was not frivolous).

In re C.K., 695 N.E.2d 601 (Ind.Ct.App. 1998) (no need for further inquiry into case prior to filing delinquency petition, when the court already has affidavit of probable cause).

In re Tacy, 427 N.E.2d 919 (Ind.Ct.App. 1981) (delinquency petition is deemed "filed," for purposes of tolling 20 day time period in which waiver or fact-finding hearing must be held, only after petition is "authorized" by the court pursuant to Ind. Code 31-6-4-9(b)).

Davies v. State, 171 Ind. App. 487, 357 N.E.2d 914 (1976) (even if a petition satisfies the jurisdictional requirements of the Juvenile Code, a petition which fails to state the offense with sufficient certainty fails to provide a sufficiently definite statements of the facts to afford notice to the child may violate due process).

C.C. v. State, 826 N.E.2d 106 (Ind.Ct.App. 2005) (juvenile adjudicated delinquent, by appearing at scheduled proceedings, thereby submitting himself to personal jurisdiction of the juvenile court, waived appellate consideration of his contention that juvenile court failed to make specific findings regarding probable cause or best interests in strict compliance with statutory prerequisites for obtaining jurisdiction).