

**A Guide for Parents to the Juvenile Justice
System in Indiana
“Your Child and Juvenile Court”**



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The Youth Law T.E.A.M. of Indiana

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This publication was created for the purpose of providing parents, custodians and legal guardians legally accurate and easily understandable information on the complexities of the juvenile justice system in Indiana.

About the Youth Law T.E.A.M. of Indiana

The Youth Law T.E.A.M. of Indiana was formed in 2004 to influence systemic change in the juvenile justice, education and child welfare systems within Indiana. The Youth Law T.E.A.M. serves as a youth law resource center for juvenile justice, education and child welfare professionals, as well as concerned citizens, youth and policy makers. The services of the Youth Law T.E.A.M. include **T**echnical Assistance, **E**ducation and Training, **A**dvocacy of Best Practice and Policy Recommendations, and **M**onitoring of the juvenile justice, education and child welfare systems for Compliance with State and Federal Laws and with Best Practice Standards.

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Your Child and Juvenile Court



Your child has been locked up in the juvenile detention center or ordered to appear in Juvenile Court: now what? The purpose of this handbook is to explain to you, the parent, what will happen to your child in the court system. As you go through this experience, remember that the juvenile system has been set up to help your child and, when necessary and possible, to strengthen and preserve your family.

What is a “delinquent child”?

- First, the child must be younger than eighteen (18) years of age when the delinquent act occurs. If a child is caught shoplifting the day before he turns eighteen (18), the child will be treated as a juvenile throughout the process unless his case is sent to adult court. In fact, once a case is filed, the juvenile court’s jurisdiction over a child can continue until he reaches the age of twenty-one (21) years old. The court’s authority over you, the parent, can continue until you have paid for court-ordered services provided to or for your child.
- Second, the child must commit a delinquent act.

What is a “delinquent act”?

Delinquent acts are divided into two categories:

- offenses which would be **crimes if committed by an adult**, and
- **status offenses**, which are acts that are considered **unlawful because of a person’s age**.

Examples of criminal conduct are: theft, trespass and battery. Examples of status offenses are: running away, truancy, underage drinking, curfew violations, repeat firework violation, and habitual disobedience (also called “incurrigible” or “ungovernable”).

What is special about “status offenses”?

A child who commits only a status offense is not a delinquent child unless the court also finds that the child needs help that:

- the child is not receiving;
- the child is unlikely to accept voluntarily; and
- is unlikely to be provided or accepted without court intervention.

In other words, if your child is in court only because of underage drinking, truancy, curfew violations, habitual disobedience, repeat firework violation, or running away, your child cannot be found guilty of being a delinquent child unless the judge also finds that the behavior will not be corrected unless the court is involved with your child.

Do all cases involving children go to juvenile court?

No. All status offender cases will be in juvenile court. Some cases based on certain delinquent acts which would be crimes if committed by an adult are filed directly in adult criminal court. Also, minor violations (ordinances and infractions) are not handled in juvenile court. Some examples of cases not handled in juvenile court are:

- when a child is sixteen (16) years old or older and charged with murder, kidnapping, rape, criminal deviate conduct, robbery if committed while armed with a deadly weapon or which results in bodily injury, carjacking, criminal gang activity, certain weapons charges and drug violations, the case is directly filed in adult criminal court;
- possession of tobacco (infraction);
- parking tickets (local ordinance); and
- a child who has previously had a case transferred to adult court will have all future cases alleging felony criminal misconduct filed in adult court.

Who's who in juvenile court?

INTAKE OFFICER (or Probation Officer)

In many instances, the first person you and your child will have contact with is the intake officer or probation officer. An intake officer is a probation officer who gets information about your child's case and sends it to the prosecutor and the court. The intake officer gathers facts and recommends whether a case should be dropped, sent to a diversion program, handled as an informal adjustment or filed as a delinquency petition. When a police officer or sheriff brings a child into the juvenile detention center, the intake officer decides whether the child remains locked up or is released. The intake officer is not a policeman or sheriff, but he does help the prosecutor.

PROBATION OFFICER

The probation officer is part of the court staff. He gets information about your child's case, writes court reports and makes recommendations throughout the process. He supervises and helps parties in informal adjustments. He oversees and helps children placed on probation as part of a disposition. He maintains records and deals with the collection of money due for fees and/or restitution. He is not a police officer, but he does help the prosecutor.

JUDGE/MAGISTRATE/REFEREE/COMMISSIONER

The judge presides over all hearings. Judges with too many cases for one person to handle might have a magistrate, referee or commissioner hear juvenile matters. The judge, magistrate, referee or commissioner decides what facts the law allows to be considered in your child's case. He makes orders at detention hearings, probable cause

hearings, fact-finding hearings, dispositional hearings and hearings to modify dispositions. The judge, magistrate, referee or commissioner makes decisions throughout the case that affect whether your child is locked up in the juvenile center or has other rules to follow. He also decides what programs you and your child must attend and whether you will have to pay for the programs.

PROSECUTOR

If your child is accused of committing a delinquent act, the prosecutor will represent the interests of the state. He is considered a party to the proceeding. He is under the court's authority and must obey court orders. He is allowed to file papers with the court asking the court to order you, your child or other people to do something. He can also offer evidence, question witnesses and see reports that will be used.

GUARDIAN AD LITEM or COURT APPOINTED SPECIAL ADVOCATE (GAL or CASA)

The judge may appoint an independent person to serve as guardian ad litem or court appointed special advocate to represent the best interests of your child. The GAL/CASA may interview the child, parents and anyone else who may have information about your child's needs and how to meet them. The GAL/CASA makes recommendations to the court based on his opinion of what is best for the child, which may not necessarily be what the child wants. While the judge **may** appoint a GAL/CASA, the judge is not required to do so. In fact, it is not a common practice for a GAL/CASA to be appointed in delinquency proceedings. Often the GAL/CASA is a volunteer.

DEFENSE ATTORNEY (Public Defender) (Court Appointed Counsel)

Your child has the right to be represented by an attorney who represents what your child wants. If you and your child do not agree on what information should be given to the court or desired outcomes, your child's attorney must be loyal to the desires of your child. The court must appoint a defense attorney, if one has not been hired, at the child's first court appearance. While the law states that an attorney must be appointed, as a practical matter it is best if you or your child specifically requests an attorney at the earliest opportunity. Your child's right to an attorney is not based upon your, or your child's, ability to pay. However, the court can order you to pay the county back for legal services provided to your child by a public defender.

PARENT

You are also a party to the proceedings and you must obey court orders. You have the right to be notified, in advance, of all hearings that are scheduled after the filing of a delinquency petition or after the arrest and juvenile detention center placement of your child, whichever occurs first. You should attend every court hearing. You can also give facts to the judge, question witnesses and see reports. Your right to see reports can be limited by the judge under certain circumstances. Both of the child's parents are parties,

even if the parents are divorced, separated or were never married. Step-parents are not parties.

You may hire an attorney to represent yourself. If you are unable to pay for legal services, the judge can appoint counsel for you, but the judge is not required to appoint counsel for you, and it is not common for a judge to appoint counsel for a parent in their child's delinquency proceeding.

What are your child's rights in juvenile court?

- to know, in advance, of the place and time of all scheduled hearings;
- to be present at all hearings;
- to know the nature of the charges against him;
- to know, in advance, what information will be given to the judge;
- disposition (sentencing) of his case without undue delay;
- to ask questions of witnesses (cross examine) at all hearings;
- to require witnesses to come to court or put other evidence before the court by use of the court's subpoena power;
- to offer information to the court at all hearings;
- to be represented by counsel who does not have a conflict of interest, regardless of ability to pay;
- to not be required to testify;
- to have the state prove guilt, beyond a reasonable doubt, of the commission of a delinquent act;
- to have the state prove, by a preponderance of the evidence, that he needs care, treatment and rehabilitation that will not otherwise be provided if he is charged with a status offense;
- there is no right to a trial by jury in juvenile court; and
- there is no right to post bond in order to be released from the juvenile detention center.

Can your child give up his rights on his own?

Generally, no. Your child's rights can only be given up, or waived:

- by his defense attorney, if the child knowingly and freely agrees to the waiver; or
- by his custodial parent or guardian ad litem if:
 - the parent or guardian does so knowingly and voluntarily;
 - the parent or guardian has no interest against the child's interests;
 - the parent or the guardian has meaningfully spoken with the child; and
 - the child knowingly and freely agrees to the waiver.

If you have an interest adverse to your child or if your child is detained, facing possible detention or facing possible transfer to adult court, he *must* be appointed counsel and any

waiver of the right to counsel must be made in open court, on the record , confirmed in writing and in the presence of your child's attorney.

The right to meaningful consultation with a parent or guardian can be given up by your child if he is informed of that right and waives (gives up) that right in the presence of the custodial parent, guardian or defense attorney. The waiver (giving up of rights) must also be made knowingly and of his own free will. Your child can waive his rights if he is emancipated because he has been ordered by a court to be free of parental control.

What happens if your child is arrested?

A police officer who has probable cause (a good legal reason) to believe that your child has committed a delinquent act may give your child a legal paper ordering your child to report to the juvenile court or may, under certain circumstances, arrest your child. Your child can be arrested and locked up in the juvenile detention center only if there is reasonable belief:

- your child will not appear in court for later hearings unless he is locked up; or
- your 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; or
- remaining locked up in the juvenile detention center is necessary to protect your child or the community.

Your child can be arrested and detained in a non-secure juvenile facility only if there is reasonable belief that:

- your child's parent, guardian or custodian cannot be located or is unable or unwilling to take custody of him; or
- your child asks to be locked up in the juvenile detention center and his reason is valid.

Can the police interrogate (question) your child without your permission?

As previously mentioned, your child generally cannot give up his constitutional rights, including the right not to speak against his own interests, on his own. Your child has a right to speak with you or a defense attorney before making any statements to a police officer.

Can the police officer or sheriff take your child's fingerprints and photograph?

The law allows the fingerprinting and photographing of your child if he is arrested for an act that would be a felony if committed by an adult and your child was at least fourteen (14) years of age when the act occurred. Some courts impose more restrictive standards. Further, the law allows the fingerprinting of your child for comparison purposes if latent fingerprints are found during the investigation of an offense and the police officer have probable cause (a good legal reason) to believe the prints belong to your child.

At the time of processing, the police officer must give you and your child written notice of your right to have the prints and photographs destroyed or surrendered to you, within sixty (60) days of your request, if:

- your child was arrested but no delinquency petition was filed; or
- the delinquency petition was dismissed because of mistaken identity; or
- the delinquency petition was dismissed because no delinquent act was actually committed; or
- the delinquency petition was dismissed for lack of probable cause (a good legal reason).

However, if your child has a record of prior arrests or has another charge pending, the police officer does not have to destroy the prints and photographs.

Where can your child be locked up (detained)?

If the police officer determines that the locking up (detention) of your child is necessary, the officer will take your child to a place designated by the court, probably the local juvenile detention center if you have one in your community. If your community does not have a juvenile detention center, your child will probably be taken to the sheriff's department or a local police department. The police officer must tell you and an intake officer (probation officer) at once where the child is being locked up and why the child is being locked up. The intake officer (probation officer), using the same reasons as the law enforcement officer, will review the decision to have your child locked up. The intake officer (probation officer) can change the police officer's decision and release your child or he can order your child to remain locked up until a detention hearing takes place.

The law is that your child's freedom should be restricted as little as possible. The law is also that children should have the least amount of interaction with adult criminals possible under the circumstances. If you live in a community without a juvenile detention center and your child has committed an act that would be a crime if committed by an adult, he may be locked up in a secure portion of the county jail or other adult lockup only for a maximum of six (6) hours after arrest for the limited purposes of: identification, processing, interrogation, release to parents or transfer to a juvenile detention facility. If your child is locked up for these limited purposes, he must be in an area where he cannot see or hear adult criminals. If your child has committed an act that is only a status offense, he may not be placed in a secure (locked) portion of an adult jail or lockup for any period of time. If you live in a community with a juvenile detention center and your child has committed an act that would be a crime, your child may be locked up in the local juvenile detention center until the detention hearing is held.

If the intake officer (probation officer) does not release your child from the juvenile detention center, there must be a detention hearing in front of the juvenile court judge within forty-eight (48) hours. Weekends and holidays do not count in the forty-eight (48) hour time limit. If your child has committed an act that is only a status offense, he may not be detained in a juvenile detention center until the detention hearing takes place,

unless the offense is runaway. If your child is a runaway, he may be detained in a juvenile detention facility for up to twenty-four (24) hours before and twenty-four (24) hours after his first court appearance. Weekends and holidays do not count in the twenty-four (24) hour time limit. While a status offender may not be detained in a juvenile detention center pending the detention hearing, unless the offense is runaway, he may be placed by court order in a shelter care or other non-secure (un-locked) facility.



What happens at the detention hearing?

At the detention hearing the judge will consider whether your child should be released from the juvenile detention center until future court hearings take place. The law states the judge “shall” release your child. However, your child “may” be detained in a secure juvenile detention center if the judge finds probable cause (a good legal reason) to believe your child has committed:

- a delinquent act which is a crime if committed by an adult;
- AND**
- that your child is unlikely to appear for future court dates; or
 - detention is essential to protect the child or the community.

Your child “may” be detained in a non-secure juvenile facility if the judge finds probable cause (a good legal reason) to believe your child has committed:

- a delinquent act which is a crime if committed by an adult; or
- a status offense, and is in need of help the child is not receiving, is unlikely to accept voluntarily and is unlikely to be provided or accepted without the court’s involvement;

AND

- your child’s parent or guardian can’t be located or is unable or unwilling to take custody of him; or
- return of your child to you would be contrary to the child’s welfare and harmful to the safety or health of your child; or
- your child has requested to remain in detention and the request is reasonable.

You can talk to the judge about what you think is the best place for your child to live while his case is going on. If you want the judge to release your child to you, you can talk to the judge about any restrictions you plan to put in place. If you want the judge to release your child to his other parent or a relative, that person can come to the detention hearing to explain to the judge why your child should be released to that person. If you think your child should continue to be locked up in the juvenile detention center, you can explain your reasons to the judge. You or your child can request another detention hearing if the first one does not end the way you or your child had hoped it would.

Possible outcomes at the detention hearing:

Release

The judge can release your child to your custody or to the custody of his other parent with or without specific rules to follow. The law says release is best, so if the judge has concerns about the safety of your child or the community or whether your child will show up for the next court hearing, the judge may release your child with specific rules to follow. For example, the judge can issue a no-contact order preventing your child from having contact with people who might harm, or be harmed by, your child. The judge can order that your child give up his driver’s license. The judge can order that your child not leave your home, except for specified activities such as school, church or employment. Your child can be ordered to submit to random drug tests. The law allows the judge to impose “any reasonable restrictions on the child’s actions or behaviors” to ensure the safety of the child and community and your child’s future attendance at court hearings. You and your child can be ordered to appear at court. A warrant for your arrest can be issued if you fail to appear.

Detention

Children accused of committing acts which would be crimes if committed by an adult may be locked up in the juvenile detention center if the court finds the child is unlikely to return to court or the court finds your child must be locked up to protect him or the community. Status offenders may be detained only in shelter care placements that remain unlocked, except when locking is necessary to protect the safety of the child. Children who are locked up



must be housed in the county where their families live, unless the home county does not have a suitable place for your child.

What is a preliminary inquiry?

A preliminary inquiry is an investigation by an intake officer (probation officer) into the facts and circumstances surrounding your child and the alleged delinquent act. It should include information on your child's background, current circumstances and school performance.

Parents have the right to know whether a preliminary inquiry is being made and what it is about. If your child is interviewed, you and your child must be told:

- what the investigation is about;
- that the interview is being done to help the prosecutor determine whether a petition alleging delinquency should be filed;
- that the intake officer will recommend whether to:
 - file a case; or
 - informally adjust the case; or
 - refer the case to another agency; or
 - dismiss the case;
- your child has the right to remain silent;
- any statements your child makes may be used against him in later proceedings;
- your child has the right to speak with an attorney before the interview;
- your child can stop the interview at any time and speak with an attorney;
- your child can stop talking with the intake officer at any time; and
- the court will appoint a defense attorney to represent your child if he wants an attorney and cannot afford one.

After reviewing the preliminary inquiry report, the prosecutor decides whether to file a charge against your child. Your child can also be sent to a diversion program where you and your child may agree to attend counseling or other services.

What is an informal adjustment?

After completing a preliminary inquiry, an intake officer (probation officer) can recommend an informal adjustment, instead of a delinquency petition being filed, so that

you and your child can be offered services and be supervised by probation for participation in those services. "Informal adjustments" are frequently recommended when the child has little or no history of delinquent behavior with the court and the charge is not serious. The intake officer (probation officer) must have a good legal reason to believe your child is a delinquent child. Your child and you or your child and his defense attorney must agree to the informal adjustment program. If your child successfully completes the program, he is not found to be delinquent by the court and the case is closed. Informal adjustments can be used for both status and criminal misconduct offenders. If your child was



removed from home (for example, if he was detained at the juvenile detention center), he will not be eligible for an informal adjustment.

Informal adjustments can last up to six (6) months and may be extended once for another three (3) months. The court can order you or your child to pay a monthly participation fee. If you and your child do not complete the program, the prosecutor may file a petition requesting a hearing. After the hearing, the court can order you and your child to participate in the program of informal adjustment. If your child then fails to participate, the prosecutor can file a delinquency petition and begin formal court proceedings. If you fail to do what the court ordered, the court can find you in contempt.

Miscellaneous orders

Regardless of whether a delinquency petition is filed, if a physician certifies to a court that an emergency exists, the court can order that your child be examined and treated and, if necessary, confined for up to fourteen (14) days, not including weekends or holidays, to complete the examination. If a doctor certifies that continued medical care is necessary to protect your child even after the emergency has passed, the court can order your child to undergo those medical services for a reasonable length of time. This can include court ordered placement of your child if necessary.

Juvenile courts can also issue orders to control the conduct of any person, such as a step-parent, or a school in relation to a child whose case is before the court. The juvenile court can also prevent a child from leaving the county or state.

Juvenile courts can issue an order for assessment of a child for the purpose of determining whether involuntary drug and alcohol treatment should be ordered. A parent must file a petition stating that the child is incapable of or refuses to undergo voluntary treatment. The petition must have with it an affidavit (sworn statement), signed by a psychiatrist or psychologist who recently examined or treated the child, stating the existence of reasonable grounds to believe the child is a drug or alcohol abuser. After the assessment and a hearing, if the court finds by clear and convincing evidence the facts alleged are true and that the child would benefit from court-ordered treatment, the court can order the child into in- or out-patient treatment for up to forty-five (45) days. The court can order additional terms following review hearings but must issue written findings to support the extension. The judge can also order the parents to participate in the child's treatment, but the parents must be told this at the time the petition is heard. The parents are required to pay all costs associated with use of this process, including court fees and treatment. If you think your child has a drug or alcohol problem and you can afford the costs associated with this procedure, you may be able to have your child's case handled in this way and avoid his prosecution as a delinquent child.

What happens when a Delinquency Petition is filed?

The prosecutor must ask the court for permission to file a petition alleging that your child is a delinquent. The court considers the preliminary inquiry report and other good legal reasons. If the court finds that there is a good legal reason and that it is in the best interests of the child or the public that the petition be filed, the court must approve the filing of the delinquency petition. If your child has been locked up in the juvenile detention center or placed in a shelter care facility, the delinquency petition must be filed within seven (7) days after the child is taken into custody. Weekends and holidays do not count in the seven (7) day time limit.

If your child has not been locked up in the juvenile detention center before the delinquency petition is filed, the person filing the petition may request that the child be arrested. The request must be in writing and supported with sworn testimony or an affidavit (sworn statement). In order to authorize that your child be locked up, the court must hear testimony and/or read sworn statements and make written findings that there is a good legal reason to believe the child is a delinquent child **and** that one of the grounds for detention exists. (see page 9)

The court order will say where your child is to be taken upon arrest, and the court will order that a detention hearing be held within forty-eight (48) hours of your child's arrest. Weekend and holidays do not count in the 48-hour time limit.

What happens at the initial hearing?

After a delinquency petition has been filed, the court must hold an initial hearing. An initial hearing may take place at the same time as a detention hearing. At the initial hearing, the judge must first consider whether your child has a defense attorney. If your child has not given up the right to a defense attorney, the judge must appoint a defense attorney to represent your child at that moment. There are some circumstances in which your child cannot give up the right to an attorney before one is appointed. If you have an interest adverse to your child or if your child is detained, facing possible detention or facing possible transfer to adult court, he must be appointed counsel and any waiver of the right to counsel must be made in open court, on the record and confirmed in writing, and in the presence of your child's attorney.

In cases involving an act that would be a crime if committed by an adult, the court will ask whether the prosecutor plans to ask permission to waive, or transfer, your child's case to adult court. If the prosecutor intends to seek waiver, the court is not allowed to let your child admit or deny the charge. Instead, a waiver hearing is scheduled.

If the case will remain in juvenile court, the judge must tell you and your child of your rights and the consequences that can be imposed upon you and your child if your child is found to be a delinquent child. The judge must advise you, the parent, that if your child is adjudicated a delinquent child:

- you may be required to participate in programs designed to help your child;
- you may be ordered to pay for part or all of the services provided to you and your child; and
- you have the right to dispute whether you should be ordered to participate in and pay for services.

The court will then ask whether your child admits or denies the statements in the petition alleging him to be a delinquent child. If your child says nothing, the judge will assume your child denies the charge. If your child admits the statements in the delinquency petition, the court shall make a court order finding that your child is a delinquent child and schedule a dispositional hearing (sentencing hearing). The dispositional hearing can be held right away if everyone agrees. If your child denies the statements in the delinquency petition or says nothing, the court will schedule a fact-finding hearing or trial. If everyone agrees, the trial may be held immediately after the initial hearing.

What is waiver?

If the prosecutor feels that your child should be tried as an adult, he may ask the judge to waive (transfer) jurisdiction to the adult criminal court. If waiver is granted, your child will be charged as an adult and tried in the adult criminal court. If your child has been locked up in the juvenile detention center, the waiver hearing must be held within twenty (20) days of the filing of the delinquency petition. Weekends and holidays do not count in this time limit. If your child is not locked up, the waiver hearing must be held within sixty (60) days after the petition is filed. Again, weekends and holidays do not count in the time limit. A child who is on house arrest or electronic monitoring is not considered “locked up” for purposes of this time limit. The time limits may be extended if your child or his attorney requests a continuance. If your child does not admit the allegations at the initial hearing, the state may file a petition to waive jurisdiction to adult court at any time until the first witness is sworn at the fact-finding hearing.

The law allows waiver in some cases and favors it in others. The law requires a “full investigation and hearing” in all cases except where the child has already been convicted of a crime in adult court. The prosecutor has the burden of proving that the case should be waived. The standard of proof is “by a preponderance of the evidence,” which means the evidence must establish that it is more likely than not that the charges are true. If the court grants the prosecutor’s waiver motion, the judge will order your child locked up in the adult jail, or released on bond, pending further hearings in adult criminal court. If the court denies the state’s waiver motion, a fact-finding hearing must be held within ten (10) days. Weekends and holidays do not count in this time limit.

What happens at the fact-finding hearing?

If your child’s case is not waived and he does not admit the charges in the delinquency petition, the court must hold a fact-finding hearing or trial. The fact-finding hearing can

be held immediately after the initial hearing if your child, your child's attorney, you, and the prosecutor all agree. If your child is locked up in the juvenile detention center or placed in a shelter care facility, the fact-finding hearing must be held within twenty (20) days of the filing of the delinquency petition. Weekends and holidays do not count in this time limit. If your child is not locked up, the fact-finding hearing must be held within sixty (60) days after the petition is filed. Again, weekends and holidays do not count in the time limit. A child who is on house arrest or electronic monitoring is not considered "locked up" for purposes of this time limit. This time limit may be extended if your child or his attorney requests a continuance.

A fact-finding hearing is a trial. The trial will be decided by a judge, not a jury. There is no right to a trial by jury in juvenile cases in Indiana. The prosecutor questions witnesses to prove the charges against your child. Your child's defense attorney can question witnesses to prove that the charges against your child are not true. If the court decides that the charges are true, the court will find that your child is a delinquent child (sometimes this is called "entering a true finding"). The court will order a predispositional report and schedule a dispositional hearing. The standard for a delinquent act which the court must use is "beyond a reasonable doubt." For status offenses, in addition to finding "beyond a reasonable doubt" that your child committed the delinquent act, the court must also find by a "preponderance of the evidence" (more likely than not) that your child needs help that:

- the child is not receiving;
- the child is unlikely to accept voluntarily; and
- is unlikely to be provided or accepted without court intervention.

If the court finds that the allegations are not true, your child is released from the court's jurisdiction.

Alternatively, the court can delay its delinquency finding for up to twelve (12) months. A child who is locked up in a juvenile detention center must be released within forty-eight (48) hours of the hearing's conclusion. A child so released may be placed in a shelter care facility. If you or your child requests that the court make a ruling, the court must decide the case within thirty (30) days of your request.

What is a predispositional report?

If the court finds that your child is a delinquent child, a probation officer will be ordered to prepare a report. The report must state what your child's needs are and how these needs can best be met. The court will also decide where your child should live. The other parties, including you and the guardian ad litem, may prepare their own reports and give them to the court.

Any time after a delinquency petition has been filed, the court can order your child to undergo mental or physical examinations to provide information to the court regarding the need for treatment.

The probation officer who prepares the report may, or can be court-ordered to, confer with people who have knowledge about your child's needs. For example, workers from the local mental health center may be included in the process. If your child is known to be eligible for special education services, a representative from the child's school must be included in a predispositional conference if one is held.

Parental participation

The probation officer or caseworker who prepares the report also considers whether and how you, the parent, should participate in the recommended program. Your income will be investigated to determine whether, and to what extent, you are able to pay for any services provided to your child. You must provide the court with a completed child support worksheet form. The prosecutor, a probation officer, a representative from the Department of Correction, or a court appointed guardian ad litem or court appointed special advocate can file a petition with the court requesting court ordered parental participation. The petition can request that you be ordered to do any or all of the following:

- get help in fulfilling parental obligations;
- provide specific care, treatment or supervision for your child;
- work with a person providing care, treatment or rehabilitation for your child;
- not contact the child, either directly or through someone else.

A hearing on a Petition to Require Parental Participation may be held at the same time as a detention hearing, the dispositional hearing, or any later hearing to change the disposition. The court must advise you that failure to participate as ordered can lead to the termination of the parent-child relationship and possible adoption of the child without your consent. Willful refusal to pay for services as ordered can result in a judgment being entered against you for the amount owed. Some of your wages can be taken (or garnished) to pay the debt.

Considerations

The predispositional report must explore which court ordered placements or programs least restrict the child's freedom and interfere least with family life.

The juvenile court judge may order a mental or physical examination of your child as well as an examination of you, if you agree.

If the probation officer feels that placement away from your home is appropriate, he must consider whether the child should be placed with a suitable and willing blood or adoptive relative before considering other out-of-home placements.

Copies of report

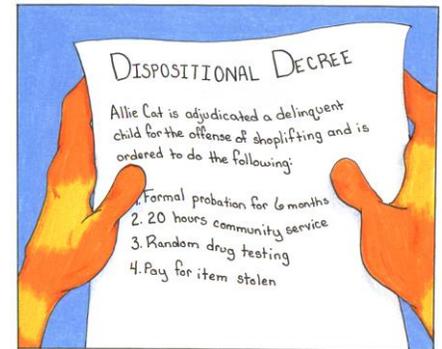
Copies of the report must be made available, in advance, to each of the child's attorneys, court-appointed guardian ad litem and/or court appointed special advocate. If you, the parent, are represented by an attorney, the report must also be given to your attorney. Copies may be given to you and your child unless the court states, on the record, that the report contains information that should not be released to you or your child. In that case, the court may give a summary of the report to you and your child.

Contents of report

The report must include a description of all the possible things the court can order which the probation officer or caseworker considered. The report shall have an evaluation of each option as compared to the recommended plan. The report shall also have information about any person who assisted in the preparation of the report.

What happens at the dispositional hearing?

The probation officer who prepared the predispositional report must be present at court and available to testify. All parties must have a fair chance to dispute any part of a report admitted into evidence. Factual summaries may be substituted for actual reports which the court decides are inappropriate for you and your child to receive.



If it appears to the court that your child is mentally ill, the court may, but is not required to, send the case to another court able to decide mental health commitment proceedings (placement in a mental hospital for ongoing treatment) or its own mental health commitment. The delinquency petition may be dismissed or proceed in either case.

Following the hearing, the court will issue a dispositional decree stating what your child's needs are, how they can best be met, whether and how you are to participate in programs and the court's reasons for the disposition.

The judge will also advise you and your child regarding the possibility that the disposition can be modified, or changed, at a later date.

Possible outcomes at the Dispositional Hearing

OUTCOMES FOR ALL CASES

Parental participation

Regardless of the type of case, and in addition to any other dispositional decree that is entered, the juvenile court judge may order you to:

- get help fulfilling parental obligations;
- provide specified care, treatment or supervision for your child;
- work with a person who is providing care, treatment or rehabilitation for your child;
- participate in a program operated by or through the Department of Correction;
- pay for services provided to you or your child.

The law presumes that you should pay for your child's care and treatment. You may be excused from paying for services which are provided to your child if the court finds that you are unable to pay or that ordering payment would be unjust.

Also, if a child is removed from your home and placed in a child caring institution, a foster family home or the home of a relative, each parent can be ordered to pay child support to the Department of Child Services. Support orders already in effect due to a dissolution of marriage or paternity case will be assigned to the Department of Child Services. Support funds are used to reimburse the Department of Child Services for the per diem (money) the Department of Child Services pays to the placement.

If the court finds that ordering child support based on the guidelines would be inappropriate or unfair or that the Department of Child Services is not required to pay money to the placement, the court can either not enter a support order or enter an order not based on the child support guidelines.

You can be ordered to pay for all, or part, of any services provided to your child during out-of-home placement, above and beyond an amount recommended by support guidelines. This reimbursement is in addition to child support.

Emancipation

The juvenile court may emancipate your child if it finds that your child:

- wants to be free from parental control and protection;
- no longer needs that control and protection;
- has sufficient money for his own support;
- understands the consequences of being free from parental control and protection;
- and
- has an acceptable plan for independent living.

Emancipation can be complete or partial, and the court must order specific terms. An emancipated child still must attend school (if required) and do what the juvenile court orders. Emancipation may be used along with any other compatible dispositional order.

OUTCOMES FOR STATUS OFFENSES



If your child is a delinquent child based upon a status offense, the court can enter one or more of the following dispositional decrees:

- order supervision of your child by the probation department or county office of the Department of Child Services;
- order your child to receive outpatient treatment at a social service agency, a psychological, psychiatric, medical or educational facility or from an individual doctor or therapist;
- remove your child from your home and place him in a different home or shelter care facility;
- award wardship to another adult person or shelter care facility;
- partially or completely emancipate your child;
- order you or your child to receive family services;
- order a person who is a party, including you, the parent, not to contact or have others contact your child.

If your child is a status offender, the court may not place your child in a secure (locked) facility or in the Department of Correction. Also, the court may not place your child outside your child's county of residence unless suitable placement is not available in your child's home county.

If your child's delinquency is based on an act of truancy, or if he has previously been adjudicated a delinquent child due to truancy, the court must also order the Bureau of Motor Vehicles to invalidate your child's driver's license or permit for at least ninety (90) days but not longer than one year.

OUTCOMES FOR DELINQUENT ACTS WHICH WOULD BE CRIMES

If your child's delinquency is based on an act that would be a crime if committed by an adult, the juvenile court may enter one or more of the following decrees (court orders):

- order supervision of your child by the probation department or county office of the Department of Child Services;
- order registration as a "sex and violent offender" if the act he committed is one of several acts specified by law;
- order your child to receive outpatient treatment at a social service agency, a psychological, psychiatric, medical or educational facility or from an individual doctor or therapist;
- order your child to give up his driver's license to the court for a specified period of time;.

- order your child to pay restitution;
- partially or completely emancipate your child;
- order your child to attend an alcohol and drug services program;
- order your child to perform community service for a specified period of time;
- award wardship to:
 - the Department of Correction (DOC) for housing in a correctional facility for children; or
 - a community-based correction facility for children, where confinement may be all the time or off-and-on, for example, only nights and weekends; or
 - a person or shelter care placement;
- remove your child from his home and place him in another home or shelter care facility;
- place your child in a secure private facility for children licensed by the state;
- order a person named in a protective order not to contact or have others contact your child.

If your child is under seventeen (17) years of age, the court can order your child to be locked up in a juvenile detention center for a maximum of ninety (90) days or the maximum term that could have been imposed on an adult who committed the same act, whichever is less. If your child is seventeen (17) years of age or older, the ninety (90) day provision is extended to one hundred twenty (120) days.

Your child may be locked up in a juvenile detention center for more than thirty (30) days only if the center provides recreation, education, counseling and health care as well as other services designed to preserve the family and help the child adjust to community life upon release. Whenever possible, a child should be placed in the child's county of residence.

If your child is removed from your home and placed in foster care or another facility, the court must approve a permanency plan for your child. The court also has to look at whether reasonable efforts have been made to prevent the need for your child's removal from home.

If your child is removed from your home and placed in another home or in a facility (except for secure detention facilities), the probation department will work with you to come up with a case plan within sixty (60) days from the date your child is placed.

COMMITMENT TO THE DEPARTMENT OF CORRECTION (DOC)

Your child cannot be committed to the DOC if he is less than twelve (12) years of age or older than eighteen (18) years of age at the time of the dispositional decree (court order). An exception to that rule is made for children who are ten (10) or eleven (11) years of age and who commit an act that would be murder if committed by an adult.

Fixed sentences

Generally a child is committed to the DOC for an indefinite period of time with the length of confinement determined by the DOC. However, in some situations, courts can impose fixed sentences, which the DOC cannot reduce. In addition to these sentences, the court can impose any other disposition specified for non-status offenders.

If your child, who is at least thirteen (13) years of age and less than sixteen (16) years of age,:

- commits murder, kidnapping, rape, criminal deviate conduct or armed robbery causing serious bodily injury or bodily injury; and
- the court finds there is clear and convincing evidence that the child is likely to repeat such an act,

the court can sentence your child to the DOC for a fixed period that is not longer than the date the child becomes eighteen (18) years of age.

If your child, who is at least fourteen (14) years of age, has committed a sex offense, including kidnapping, the court can also order that your child register as a sex offender. There must first be a hearing, and if your child has been confined as part of his disposition, the hearing must be held after he is released from confinement. If the court finds, by clear and convincing evidence, that the child is likely to repeat such an offense, the court will order your child to register as a sex offender.

Similarly, if your child, who is at least fourteen (14) years of age,:

- commits an act which would be a felony against a person; or
- commits a Level 1, Level 2, Level 3, or Level 4 felony that is a controlled substances offense or burglary as a Level 1, Level 2, Level 3, or Level 4 felony; and
- has two unrelated juvenile delinquency findings for acts that would be felonies if committed by an adult;

the court can place your child in any authorized facility for not more than two years.

Other consequences of adjudication (delinquency finding)

If your child is adjudicated (found by the court to be delinquent) based on certain sex crimes or illegal drug violations, the juvenile court will order your child to be screened for HIV. If two test results are positive, the reports must be sent to the state department of health for victim notification and counseling.

The juvenile court can or, depending upon the circumstances, must suspend or invalidate your child's driving privileges for a period of time. Circumstances specified for such court orders include: driving away from a gas pump without paying, certain controlled substance violations and criminal mischief involving graffiti.

A delinquency finding is not the same thing as a criminal conviction. While your child is not considered a criminal, the lines between delinquency adjudications and criminal

convictions are beginning to blur. Juvenile adjudications can be used to increase sentences imposed later in life; registration as a sex offender can continue beyond the age of eighteen (18) years; credibility as a witness can be attacked on the basis of certain juvenile adjudications; and an adjudication can have a negative effect on military and government careers.

What happens next?

The juvenile code requires courts to regularly review cases to prevent children from getting “lost” in the system. The probation department must periodically prepare a report describing what progress has been made toward meeting the goals of the dispositional decree. If the probation officer plans to recommend a change in the court’s order, a report regarding the requested change(s) must be submitted to the court and a formal hearing requested. The parent should receive a notice of the hearing.

Periodic review of dispositional decrees

The juvenile court must hold a formal court hearing every twelve (12) months from the date of your child’s removal from home or original dispositional decree, whichever is earlier. Formal court hearings can be held more often, at the court’s discretion.

At the hearing, the court must decide whether the decree should be changed and whether the present placement is in your child’s best interest. In doing so, the court may consider:

- what family services have been offered;
- how much you have improved your parenting skills;
- how often you have visited your child and reasons if there is infrequent visitation;
- how well you have cooperated;
- the child’s recovery from any injuries suffered;
- whether additional services are required for you or your child; and
- the extent to which your child has been rehabilitated (improved his behavior).

Periodic review of continued court involvement

The juvenile court must hold a formal court hearing every eighteen (18) months on the question of whether the court’s jurisdiction (involvement) over you and your child should continue. Time runs from the date of the original dispositional decree or removal of your child from you, whichever occurred first. Hearings can be held more often if ordered by the court.

The prosecutor has the burden of proving, by a preponderance of the evidence (that it is more likely than not that), court involvement should continue. To do so the prosecutor must show that:

- the goals of the dispositional decree have not been met; and
- there is a probability of success if the decree is continued, with or without change.

If the court does not grant the prosecutor's request to continue jurisdiction, it may:

- authorize a petition for termination of the parent-child relationship; or
- discharge you or your child (release you or your child from court jurisdiction).

If the court finds that the dispositional orders have taken care of your child's problems, the court must close your child's case.



How is a dispositional decree changed?

A juvenile court's jurisdiction (involvement) of a delinquent child may continue until your child becomes twenty-one (21) years of age, unless the court closes your child's case at an earlier time or guardianship of your child is awarded to the Department of Correction (DOC). During the court's jurisdiction, a motion to change any dispositional decree may be made by:

- the court;
- your child;
- you;
- the probation officer;
- the prosecutor;
- any person providing court-ordered services to you or your child; or
- your child's guardian ad litem.

A motion to modify (change) the court's orders is often based on charges that your child has not followed the terms of his probation or placement. A motion to modify can result

in a more severe court order. If someone requests an emergency change in your child's residence, the court can issue a temporary order changing the placement. If the court does so, notice of the change must be given to all affected persons, including you. If anyone, including you, requests a hearing, one must be held. Your child and you, the parent, have the same rights at a hearing to change the disposition as at the original dispositional hearing.

What can happen at a hearing to change the dispositional decree?

The same court orders which the court can make at the original dispositional hearing can be ordered.

Are juvenile proceedings and records confidential?

Proceedings in juvenile court can be closed to the public to protect the child from undesired public scrutiny. If your child is charged with murder or an act that would be a felony if committed by an adult, the judge must open the proceedings. If the allegations or a defense to the allegations involve matters of a sexual nature, the court can keep the public out of the courtroom for the protection of a child witness or victim.

The law aims to protect juvenile offenders' privacy and avoid making them look bad.

COURT RECORDS are available, without a court order, only to:

- the court staff, including the judge;
- a party or the party's attorney, (except when the judge has determined that you or your child may not see all or part of a report);
- authorized representatives from the Department of Correction and state or county office of the Department of Child Services;
- a parent in a divorce or custody proceeding that involves the child;
- a judge or authorized staff member in a court that needs the information for a presentence investigation in that court;
- the prosecuting attorney or any authorized staff member.

Limited information, including the child's name, is available to the public without a court order when the child is:

- charged with an act that would be murder or a felony if committed by an adult; or
- twelve (12) years old or older and accused of committing two separate acts which would be misdemeanors if committed by an adult; or
- under twelve (12) years old and accused of committing five (5) separate acts which would be misdemeanors if committed by an adult.

If your child is found to be delinquent under the above circumstances, his photograph may also be released to the public.

Information that is not to be released without a court order, such as predispositional reports and motions concerning psychological evaluations, must be placed inside an envelope marked “confidential” and placed inside the court’s file.

The juvenile court may grant any person providing services to your child or your family permission to see the court’s records. The court can also grant permission to see files on a case-by-case basis to other people depending on the circumstances.

The juvenile court may grant access to its records about your child to a school upon receiving a written request from the school stating that release of your child’s records are necessary to serve his educational needs or to protect the health or safety of another student, employee or volunteer at the school. The court must provide notice of the release to the child and his parents and order the school to keep the information confidential. However, the school can release those same records to another school. The school can also release the information to person with the consent of the child’s parent. Anyone who receives information in this way is required to keep the information confidential.

A juvenile court must grant access to limited information if the information is to be used during cross-examination in a criminal trial or delinquency fact-finding hearing. Victims or their families may be granted access for the purpose of suing you or your child.

POLICE AND SHERIFF RECORDS pertaining to the commission of status offenses are confidential. When your child is accused of conduct that would be a crime if committed by an adult, the following information is open to the public:

- what the offense is about, including the time, location and property involved;
- the identity of any victim;
- a description of how your child was caught;
- a description of any instrument of physical force used;
- the identity of officers involved, except for undercover units;
- the age and sex of any child who is caught or who is being looked for by police officers or sheriffs;
- the **identity of your child** if he is suspected of committing an offense over which a juvenile court does not have jurisdiction or he is sixteen (16) years old and suspected of committing an act that would be a felony.



Police and sheriff records pertaining to juveniles are available, without specific permission from the agency’s director, to

- police officers acting within the scope of their duties;
- the judge or other authorized staff of juvenile court;
- a party to a juvenile court proceeding (including you, the parent) or the party’s attorney;
- a criminal court judge or authorized staff member if the record is to be used in a presentence report in that court;

- the prosecutor or any authorized staff member;
- the attorney for the Department of Child Services or any authorized staff member;
- any authorized staff member of the Department of Child Services ombudsman.

Permission to see police or sheriff records can be granted by the head of the police or sheriff department on a case-by-case basis depending on the circumstances.

Police or sheriff agencies must allow any party to a criminal or delinquency proceeding, including you or your child, to see police records if they are to be used for cross-examination or to discredit a person's reputation, if the person places his reputation in issue in that delinquency or criminal proceeding.

A victim of a delinquent act may obtain the name of a juvenile suspect in order to pursue a civil lawsuit to obtain money for the victim's losses.

The public has a right to inspect records relating to the detention of juvenile offenders in secure facilities.

Will your child's juvenile record be erased when he reaches adulthood?

Not necessarily. Juvenile court records are not automatically erased, or expunged, when your child reaches twenty-one (21) years of age. The law allows any person to submit a petition for expungement at any time, asking the juvenile court to remove, from court and police files and any files maintained by a person who provided court-ordered services to a child, all records pertaining to the child's involvement in juvenile court. In deciding whether to grant the request, the court may consider:

- the best interests of your child;
- the age of your child at the time the records were made;
- what the case was about;
- whether there was an informal adjustment or a court finding;
- the disposition of the case;
- how your child participated in any services;
- the length of time since your child has had contact with the juvenile court or any police agency;
- whether your child has a criminal record; and
- your child's current status.

If the court orders the records expunged, the judge must order each police agency and person, who provided court-ordered treatment for your child, to send their records to the court. The records can be destroyed or given to your child.

Suggestions for Parents

1. This booklet is not intended to substitute for advice of an attorney. Therefore, when a specific problem exists within your family or with your child, it is advisable to consult with an attorney.
2. Attend all scheduled juvenile court hearings and probation officer meetings, and arrive on time.
3. Your child has the right to an attorney regardless of your ability to pay. Legal representation for your child is highly recommended in all delinquency proceedings.
4. If your child is locked up in the juvenile detention center, inform the probation officer concerning any medications prescribed for your child's physical or mental health and ask for help to have your child receive his medication while he is in the juvenile detention center.
5. Inform the detention center staff and your child's attorney of any special education needs your child has, and work with them to ensure your child's academic progress is not negatively affected by his stay at the center.
6. Advise the probation officer and your child's public defender of any changes in your address and telephone number so that you can receive notice of hearings.



