

# **THE ROLE OF PROBATION OFFICERS IN CIVIL CASES**

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I have recently been called by other Chief Probation Officers asking about Civil investigations being conducted by probation officers. In January 2005, the Monroe Circuit Court Board of Judges began utilizing probation officers to perform various duties related to Civil cases. Since that time, our probation officers have been conducting investigations and preparing reports for our judges in various Civil cases including Paternity, Divorce, and CHINS (Children in Need of Services).

At this time, there is no specific training provided by the Indiana Judicial Center for conducting Civil case investigations. Therefore, our probation officers have relied on their skills and experience conducting adult Presentence Investigations and juvenile Preliminary Inquiries/Pre-dispositional Reports.

Additionally, there is no Indiana “form” for a probation officer to follow to write these Civil case reports. Without a state form to use as a guide, and with no formal training conducting these Civil investigations, our probation officers have resorted to “trial and error.” While probation officers know that an average adult Presentence Investigation should take about eight (8) hours to complete, they had no idea how to gauge the time it should take to conduct a Civil court investigation. Because probation officers are accustomed to being very thorough in conducting their work, they found that these Civil investigations could “go on forever.” After a couple of investigations took more than 50 hours to complete, we have tried to limit the time spent on Civil investigations as much as possible.

Between January 1, 2005 and June 8, 2007, the Monroe County Probation Department was ordered to complete 69 Civil/Family Court investigations. Our probation officers found that the average Paternity investigation took 15 hours to complete while the average investigation in Divorce cases took 20 hours to complete. On average, probation officers spent 16.60 hours per Civil/Family Court investigation. This is a significant use of limited probation officer work time. Civil/Family Court investigations, on average, take more than two (2) times the average time for an Adult Presentence Investigation and more than 11 times the average time for a Juvenile Preliminary Inquiry.

It is a fair assessment to say that our judges are well satisfied with the quality of the investigations and reports completed by probation officers in Civil cases. The Civil Division judges would like to have more probation officer time available for these Civil investigations. However, with limited probation officer resources, the Board of Judges has agreed that adult Presentence Investigations and juvenile Preliminary Inquiries come first. The Civil Division judges have been willing to scale back their requests for probation officers to conduct these investigations. At this time, the judges have voluntarily limited the investigations to cases involving significant parental substance abuse and/or allegations of abuse/neglect.

The following collection of current Indiana laws includes a variety of duties which may be performed by probation officers.

## **PROBATION OFFICERS IN PATERNITY CASES**

### **IC 31-14-10 Chapter 10. Hearing to Determine Support, Custody, and Parenting Time Following Determination of Paternity**

#### **IC 31-14-10-1 Hearing to determine support, custody and parenting time following initial determination of paternity; order to probation officer or caseworker to prepare report**

Sec. 1. Upon finding that a man is the child's biological father, the court shall, in the initial determination, conduct a hearing to determine the issues of support, custody, and parenting time. Upon the request of any party or on the court's own motion, the court may order a **probation officer** or caseworker to prepare a report to assist the court in determining these matters. *As added by P.L.1-1997, SEC.6. Amended by P.L.68-2005, SEC.15.*

#### **IC 31-14-10-2 Consultation with **probation officer** or caseworker; referral of child for evaluation**

Sec. 2. The **probation officer** or caseworker may do the following:

(1) Consult with any person who may have information about the child and the child's potential custodial arrangements.

(2) Upon approval of the court, refer the child for professional diagnosis and evaluation.

(3) Without consent from the child's parent or guardian, consult with and obtain information concerning the child from:

- (A) medical;
- (B) psychiatric;
- (C) psychological; or
- (D) other;

persons who have knowledge of the child. *As added by P.L.1-1997, SEC.6.*

### **IC 31-14-13 Chapter 13. Custody Following Determination of Paternity**

#### **IC 31-14-13-5 Supervision of placement**

Sec. 5. The court may order the **probation department**, the county office of family and children, or any licensed child placing agency to supervise the placement to ensure that the custodial or parenting time terms of the decree are carried out if:

(1) both parents or the child request supervision; or

(2) the court finds that without supervision the child's physical health and well-being would be endangered or the child's emotional development would be significantly impaired. *As added by P.L.1-1997, SEC.6.*

*Amended by P.L.68-2005, SEC.17.*

## **PROBATION OFFICERS IN DIVORCE CASES**

### **IC 31-17-2 Chapter 2. Actions for Child Custody and Modification of Child Custody Orders**

#### **IC 31-17-2-12 Investigation and report concerning custodial arrangements for child**

Sec. 12. (a) In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:

- (1) The court social service agency.
- (2) The staff of the juvenile court.
- (3) The **local probation department** or the county office of family and children.
- (4) A private agency employed by the court for the purpose.
- (5) A guardian ad litem or court appointed special advocate appointed for the child by the court under

IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).

(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and
- (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing. *As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-18 Continuing supervision**

Sec. 18. If both parents or all contestants agree to the order or if the court finds that, in the absence of the order, the child's physical health might be endangered or the child's emotional development significantly impaired, the court may order:

- (1) the court social service agency;
- (2) the staff of the juvenile court;
- (3) the **local probation department**;
- (4) the county office of family and children; or
- (5) a private agency employed by the court for that purpose;

to exercise continuing supervision over the case to assure that the custodial or parenting time terms of the decree are carried out. *As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.34.*

# **PROBATION OFFICERS IN CHILDREN IN NEED OF SERVICES (CHINS) CASES**

## **IC 31-34 ARTICLE 34. JUVENILE LAW: CHILDREN IN NEED OF SERVICES**

### **IC 31-34-18 Chapter 18. Predispositional Report**

#### **IC 31-34-18-1 Predispositional report; recommendation of care, treatment, or rehabilitation of child; alternative reports**

Sec. 1. (a) Upon finding that a child is a child in need of services, the juvenile court shall order a **probation officer** or a caseworker to prepare a predispositional report that contains a:

- (1) statement of the needs of the child for care, treatment, rehabilitation, or placement; and
  - (2) recommendation for the care, treatment, rehabilitation, or placement of the child.
- (b) Any of the following may prepare an alternative report for consideration by the court:
- (1) The child.
  - (2) The child's:
    - (A) parent;
    - (B) guardian;
    - (C) guardian ad litem;
    - (D) court appointed special advocate; or
    - (E) custodian. *As added by P.L.1-1997, SEC.17. Amended by P.L.55-1997, SEC.14.*

#### **IC 31-34-18-1.1 Consultation with experts; participants in conference**

Sec. 1.1. (a) The person preparing the report under section 1 of this chapter:

- (1) may; or
  - (2) if directed by the court, shall; confer with individuals who have expertise in professional areas related to the child's needs in the areas of appropriate care, treatment, rehabilitation, or placement for a child in need of services.
- (b) A conference held under this section may include representatives of the following:
- (1) The child's school.
  - (2) The probation department.**
  - (3) The department.
  - (4) A community mental health center located in the child's county of residence.
  - (5) A community mental retardation and other developmental disabilities center located in the child's county of residence.
  - (6) Other persons as the court may direct. *As added by P.L.55-1997, SEC.15. Amended by P.L.145-2006, SEC.307*

#### **IC 31-34-18-2 Predispositional report; participation by parent, guardian, or custodian; out-of-home placement with blood or adoptive relative caretaker**

Sec. 2. (a) In addition to providing the court with a recommendation for the care, treatment, or rehabilitation of the child, the person preparing the report shall consider the necessity, nature, and extent of the participation by a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child.

(b) If a **probation officer** or caseworker believes that an out-of-home placement would be appropriate for a child in need of services, the probation officer or caseworker shall consider whether the child should be placed with the child's suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering other out-of-home placements for the child. *As added by P.L.1-1997, SEC.17.*

## **CHILDREN IN NEED OF SERVICES (CHINS) (continued)**

### **IC 31-34-18-3 Financial reports**

Sec. 3. The **probation officer** or caseworker shall also prepare a financial report on the parent or the estate of the child to assist the juvenile court in determining the person's financial responsibility for services provided for the child or the person. As added by P.L.1-1997, SEC.17.

### **IC 31-34-18-6.1 Predispositional report; contents**

Sec. 6.1. (a) The predispositional report prepared by a **probation officer** or caseworker shall include the following information:

- (1) A description of all dispositional options considered in preparing the report.
- (2) An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines described in section 4 of this chapter.
- (3) The name, occupation and position, and any relationship to the child of each person with whom the preparer of the report conferred as provided in section 1.1 of this chapter.
- (b) If a **probation officer** or a caseworker is considering an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the probation officer or caseworker shall conduct a criminal history check (as defined in IC 31-9-2-22.5) for each person who is currently residing in the location designated as the out-of-home placement. The results of the criminal history check must be included in the predispositional report.

(c) A **probation officer** or caseworker is not required to conduct a criminal history check under this section if:

(1) the **probation officer** or caseworker is considering only an out-of-home placement to an entity or facility that:

- (A) is not a residence (as defined in IC 3-5-2-42.5); or
- (B) is licensed by the state; or

(2) placement under this section is undetermined at the time the predispositional report is prepared.

*As added by P.L.55-1997, SEC.19. Amended by P.L.70-2004, SEC.19; P.L.234-2005, SEC.181; P.L.145-2006, SEC.308.*

## **IC 31-34-20 Chapter 20. Dispositional Decrees**

### **IC 31-34-20-1 Entry of dispositional decrees**

Sec. 1. Subject to section 1.5 of this chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the **probation department** or the county office or the department.
- (2) Order the child to receive outpatient treatment:
  - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
  - (B) from an individual practitioner.
- (3) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship to a person or shelter care facility.
- (5) Partially or completely emancipate the child under section 6 of this chapter.
- (6) Order:
  - (A) the child; or
  - (B) the child's parent, guardian, or custodian; to receive family services.
- (7) Order a person who is a party to refrain from direct or indirect contact with the child.
- (8) Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence. *As added by P.L.1-1997, SEC.17. Amended by P.L.70-2004, SEC.21; P.L.145-2006, SEC.311; P.L.146-2006, SEC.50; P.L.52-2007, SEC.10.*

## **CHILDREN IN NEED OF SERVICES (CHINS) (continued)**

### **IC 31-34-20-1.5 Placement in household with certain individuals prohibited; exceptions; criminal history checks**

Sec. 1.5. (a) Except as provided in subsection (d), the juvenile court may not enter a dispositional decree placing a child in another home under section 1(3) of this chapter or awarding wardship to a county office or the department that will place the child with a person under section 1(4) of this chapter if a person who is currently residing in the home in which the child would be placed under section 1(3) or 1(4) of this chapter has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in IC 31-27-4-13.

(b) The juvenile court shall order the **probation officer** or caseworker who prepared the predispositional report to conduct a criminal history check (as defined in IC 31-9-2-22.5) to determine if a person described in subsection (a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in IC 31-27-4-13. However, the juvenile court is not required to order a criminal history check under this section if criminal history information under IC 31-34-4-2 or IC 31-34-18-6.1 establishes whether a person described in subsection (a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in IC 31-27-4-13.

(c) A **probation officer** or caseworker is not required to conduct a criminal history check under this section if:

(1) the **probation officer** or caseworker is considering only an out-of-home placement to an entity or a facility that:

(A) is not a residence (as defined in IC 3-5-2-42.5); or

(B) is licensed by the state; or

(2) placement under this section is undetermined at the time the predispositional report is prepared.

(d) A court may enter a dispositional decree placing a child in another home or award wardship to a county office if:

(1) a person described in subsection (a) has:

(A) committed an act resulting in a substantiated report of child abuse or neglect; or

(B) been convicted or had a juvenile adjudication for:

(i) reckless homicide (IC 35-42-1-5);

(ii) battery (IC 35-42-2-1) as a Class C or D felony;

(iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;

(iv) arson (IC 35-43-1-1) as a Class C or D felony;

(v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;

(vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or

(vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction

was entered in another state; and

(2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that the dispositional decree placing a child in another home or awarding wardship to a county office is in the best interest of the child.

However, a court may not enter a dispositional decree placing a child in another home or award wardship to a county office or the department if the person has been convicted of a felony listed in IC 31-27-4-13 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(e) In making its written finding under subsection (d), the court shall consider the following:

(1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.

(2) The severity of the offense, delinquent act, or abuse or neglect.

(3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable. *As added by P.L.70-2004, SEC.22. Amended by P.L.234-2005, SEC.183; P.L.145-2006, SEC.312; P.L.1-2007, SEC.207.*

## **CHILDREN IN NEED OF SERVICES (CHINS) (continued)**

### **IC 31-34-21 Chapter 21. Review of Dispositional Decrees; Formal Review Hearings**

#### **IC 31-34-21-3 Progress report required before case review**

Sec. 3. Before a case review under section 2 of this chapter, the **probation department** or the department shall prepare a report in accordance with IC 31-34-22 on the progress made in implementing the dispositional decree. As added by P.L.1-1997, SEC.17. Amended by P.L.145-2006, SEC.315.

### **IC 31-34-22 Chapter 22. Reports Required for Reviewing Dispositional Decrees**

#### **IC 31-34-22-1 Progress report; modification report**

Sec. 1. (a) Before a case review under IC 31-34-21-2 or hearing under IC 31-34-21-7, the **probation department** or the department shall prepare a report on the progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out-of-home, or reuniting the family.

(b) Before preparing the report required by subsection (a), the **probation department** or the department shall consult a foster parent of the child about the child's progress made while in the foster parent's care.

(c) If modification of the dispositional decree is recommended, the **probation department** or the department shall prepare a modification report containing the information required by IC 31-34-18 and request a formal court hearing. *As added by P.L.1-1997, SEC.17. Amended by P.L.138-2007, SEC.75.*

## **PROBATION OFFICERS & RESTRICTIVE PLACEMENTS**

### **IC 31 Family Law**

#### **IC 31-9-2-103 "Referring agency"**

Sec. 103. "Referring agency", for purposes of IC 31-38, means:

- (1) a juvenile court;
- (2) a court having civil jurisdiction;
- (3) a community mental health center or managed care provider (as defined in IC 12-7-2-127(b));
- (4) a county office of family and children; or
- (5) a school corporation; that proposes to make a restrictive placement or recommend a restrictive placement to a person with the authority to make a restrictive placement. *As added by P.L.1-1997, SEC.1.*

### **IC 31-38-2 Chapter 2. Review of Proposed Restrictive Placements of Children by Local Coordinating Committees**

#### **IC 31-38-2-4 Presence of probation officer at committee meeting**

Sec. 4. If the referring agency is a court, a **probation officer** familiar with the proposed restrictive placement must be present at the committee meeting convened under section 2 of this chapter when the restrictive placement proposed by the court is being considered. *As added by P.L.1-1997, SEC.21.*

#### **IC 12-19-1-12 Placement of delinquent children in foster family homes; approval**

Sec. 12. A county office may place and supervise delinquent children in foster family homes only with the **approval of all** of the following:

- (1) The juvenile court.
- (2) The **probation department**.
- (3) The county office. *As added by P.L.2-1992, SEC.13. Amended by P.L.4-1993, SEC.164; P.L.5-1993, SEC.177; P.L.61-1993, SEC.61; P.L.1-1994, SEC.68.*



# **ROLE OF PROBATION OFFICERS IN MISCELLANEOUS CIVIL MATTERS**

## **IC 12-26 ARTICLE 26. VOLUNTARY AND INVOLUNTARY TREATMENT OF MENTALLY ILL INDIVIDUALS**

### **IC 12-26-8-9 Progress reports; case reviews**

Sec. 9. A juvenile court that commits a child under this article shall require the county office or the **probation department** for the court to report to the court on the progress made in implementing the commitment at least every six (6) months. If the committed child is a child in need of services, the county office shall perform case reviews of the child's commitment under IC 31-34-21. As added by P.L.2-1992, SEC.20. Amended by P.L.4-1993, SEC.206; *P.L.5-1993, SEC.219*; *P.L.1-1997, SEC.89*.

## **IC 31-35 ARTICLE 35. JUVENILE LAW: TERMINATION OF PARENT-CHILD RELATIONSHIP**

### **IC 31-35-1-7 Inquiry on parents' absence; investigation of fraud, duress, and competency to consent; order for child's care pending outcome of case**

Sec. 7. (a) Before the court may enter a termination order, the court:

(1) must inquire about the reasons for the parents' absence; and

(2) **may require an investigation by a probation officer** to:

(A) determine whether there is any evidence of fraud or duress; and

(B) establish that the parents were competent to give their consent.

(b) An investigation conducted under subsection (a) must be entered on the record under oath by the person responsible for making the investigation.

(c) If there is any competent evidence of probative value that:

(1) fraud or duress was present when the written consent was given; or

(2) a parent was incompetent; the court shall dismiss the petition or continue the proceeding.

(d) The court may issue any appropriate order for the care of the child pending the outcome of the case. *As added by P.L.1-1997, SEC.18.*



# **GENERAL PROBATION OFFICER DUTIES**

## **IC 11-13 ARTICLE 13. PROBATION AND PAROLE**

### **IC 11-13-1 Chapter 1. Probation Administration**

#### **IC 11-13-1-3 Probation officers; mandatory duties**

Sec. 3. A probation officer shall:

- (1) conduct prehearing and presentence investigations and prepare reports as required by law;
- (2) assist the courts in making pretrial release decisions;
- (3) assist the courts, prosecuting attorneys, and other law enforcement officials in making decisions regarding the diversion of charged individuals to appropriate noncriminal alternatives;
- (4) furnish each person placed on probation under his supervision a written statement of the conditions of his probation and instruct him regarding those conditions;
- (5) supervise and assist persons on probation consistent with conditions of probation imposed by the court;
- (6) bring to the court's attention any modification in the conditions of probation considered advisable;
- (7) notify the court when a violation of a condition of probation occurs;
- (8) cooperate with public and private agencies and other persons concerned with the treatment or welfare of persons on probation, and assist them in obtaining services from those agencies and persons;
- (9) keep accurate records of cases investigated by him and of all cases assigned to him by the court and make these records available to the court upon request;
- (10) collect and disburse money from persons under his supervision according to the order of the court, and keep accurate and complete accounts of those collections and disbursements;
- (11) assist the court in transferring supervision of a person on probation to a court in another jurisdiction; and
- (12) perform other duties required by law or as directed by the court. *As added by Acts 1979, P.L.120, SEC.6.*

### **IC 31-31-5 Chapter 5. Juvenile Court Probation Officers**

#### **IC 31-31-5-1 Appointment of probation officers and other employees**

Sec. 1. The judge of the juvenile court shall appoint a chief probation officer and may appoint other probation officers and an appropriate number of other employees to assist the probation department. *As added by P.L.1-1997, SEC.14.*

#### **IC 31-31-5-4 Duties of probation officers**

Sec. 4. A probation officer shall, for the purpose of carrying out the juvenile law:

- (1) conduct such investigations and prepare such reports and recommendations as the court directs and keep a written record of those investigations, reports, and recommendations;
- (2) receive and examine complaints and allegations concerning matters covered by the juvenile law and make preliminary inquiries and investigations;
- (3) implement informal adjustments;
- (4) prepare and submit the predisposition report required for a dispositional hearing under the juvenile law;
- (5) supervise and assist by all suitable methods a child placed on probation or in the probation officer's care by order of the court or other legal authority;
- (6) keep complete records of the probation officer's work and comply with any order of the court concerning the collection, protection, and distribution of any money or other property coming into the probation officer's hands; and
- (7) perform such other functions as are designated by the juvenile law or by the court in accordance with the juvenile law. *As added by P.L.1-1997, SEC.14.*