

Probable Cause for Incurrigibility

IC 31-37-2-4 Delinquent act; habitual disobedience of a parent, guardian, or custodian

A child commits a delinquent act if, before becoming eighteen (18) years of age, the child habitually disobeys the reasonable and lawful commands of the child's parent, guardian, or custodian.

The school or parents may make a referral to the probation department for incurrigibility (the common term used for habitually disobeying the reasonable and lawful commands of the child's parent, guardian, or custodian). Based on consultations with the prosecuting attorney, schools and local counselors, the following information must be contained in an incurrigibility referral beginning July 1, 2004:

- *Intake Information for Delinquency* form (attached).
- A report enumerating the dates the child was incurrigible, including a detailed account of the behavior and action taken by the parent, guardian, or custodian – there must be a minimum of eight occurrences in a reasonable time period (e.g., school year for school, or one month in the home).
- The child's behavior must be a disruption to the order of the welfare or safety to the home or educational setting. The child's behavior must demonstrate subversion to the authority and the responsibility of parents, guardians, or custodians. Such behavior is manifest when a child refuses to submit to disciplinary consequences of a prior behavior.
- A statement from the school regarding what corrective actions they took on each occasion prior to referring the child to be incurrigible; or a statement from a licenses counselor or therapist with whom the parent has sought intervention that the child has not responded to voluntary intervention and requires the coercive intervention of the court.

Documentation of the Child's Behavior

The *Behavior Form* on page two (2) of this form is provided to assist parents to show habitual acts of incurrigibility. Parents/Guardians/Custodians may use additional sheets of paper, if needed, to detail your child's reaction to your instructions. In order for the Court to find incurrigibility, the child must demonstrate that he/she has "habitually" disobeyed reasonable and lawful commands, therefore, the more documented history of incurrigible acts, the better able the State can prevail in showing the Court that the child is incurrigible.

Completion of a Counseling Program

The child and his/her parents/guardians/custodians must have completed a qualified counseling program designed to address incurrigibility. Before the probation department can proceed, it must have a letter or report from the counseling program recommending the need for court intervention.

A qualified counseling program includes any person or program that administers certified individual or family therapy. The probation department cannot recommend which program to attend, but most qualified programs are listed in the yellow pages of the phone book under Mental Health Services.

Completion of the *Intake Information for Delinquency Form*

The *Intake Information for Delinquency* form, found on page three (3), is the official document needed to refer a child to the probation department. All applicable lines must be completed and returned with the *Behavior Form* and the written recommendations of the counselor (sections A and B above).

Parents/Guardians/Custodians will be expected to participate with all the juvenile Court's orders and requirements, including costs associated with treatment or placement

Due process will be followed, meaning the child's and parent's rights will be respected, including representation by an attorney if desired. While all parties will have an opportunity to make statements, the juvenile court will make the final determination of appropriate action for the child and the parents/guardians and custodians.

