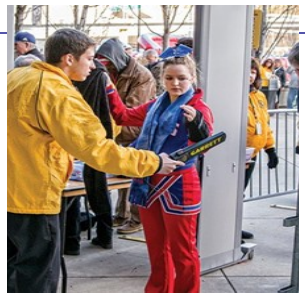
Indiana Public Defender Council
Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

JUVENILE DELINQUENCY NEWS AND UPDATES

August 13, 2018



Students, safety, and new questions as the school year begins

Across Indiana, the school year has begun for most students, and the issue on everyone's mind is school safety. During May's one-day special legislative session, Indiana legislators increased an existing school safety improvements grant program from $10 million to $15 million annually. In early July, prompted by a school shooting in Noblesville, Gov. Eric Holcomb's Office announced a new state program offering one hand held metal detector device per every 250 students in a school corporation at no cost to the districts. The Indianapolis Star reported that nearly all of Indiana's public school districts have now requested the devices. "According to the governor's office, 94 percent of all traditional public school corporations had requested the devices, along with many public charter and private schools." https://www.indystar.com/story/news/education/2018/07/23/metal-detector-wands-requested-almost-every-indiana-school-district/821052002/

Most schools do not have walk through metal detectors installed at school entrances, and wanding every student as they enter the building doesn't seem to be practical or doable for hundreds of students coming to school at the same time. This means, handheld metal detectors will most likely be used on a case-by-case basis. Some schools have indicated they will provide the wands to school resource officers to use on individual students. https://fox59.com/2018/07/29/in-focus-governor-provides-metal-detectors-to-indiana-schools/

Although the Fourth Amendment prohibits unreasonable searches and seizures at public schools and school functions, a search conducted by school personnel does not require a warrant/probable cause, and the reasonable suspicion standard applies - "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" New Jersey v. T.L.O., 469 U.S. 325, 333 (1985). So what about school resource officers (SROs)? Indiana caselaw holds the *T.L.O.* reasonableness standard applies when a school resource officer is acting on his own initiative and acting "to further educationally related goals"; however, the ordinary warrant requirement applies where "outside" police officers initiate, or are predominantly involved in, a school search of a student or student property for police investigative purpose. *T.S. v. State*, 863 N.E.2d 362, 371 (Ind.Ct.App. 2007) Therefore constitutional challenges to these searches will most likely be whether they were justified at their inception (how was this student chosen) or to the scope of any search following the wanding. See "Defending Clients Who Have Been Searched and Interrogated at School" http://njdc.info/wp-content/uploads/2013/11/Defending-Clients-Who-Have-Been-Searched-and-Interrogated-at-School.pdf

Learn what guidance Indiana schools and SROs have received on the use of the devices:

On July 31st,the Indiana School Board Association (ISBA) provided guidelines meant to help schools use the metal detector wands legally to conduct searches. The ISBA guidance document may be found at this link. https://gallery.mailchimp.com/8134ab71fa4d5aa8794bbf147/files/5f2d3e3c-eeae-4f71-8ede-71dec2ec68b5/MetalDetectorSearches2018.pdf

ISBA has also developed policies and procedures relating to the legal requirements of a metal detector search conducted by school officials and/or law enforcement officers. Those policies and procedures can be found at https://mailchi.mp/isba-ind.org/guidance-on-the-use-of-metal-detectors-in-schools-999879?e=ad47462931&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

In This Issue:

JD CASELAW UPDATE

Court of Appeals strongly encourages courts to afford juvenile delinquents the opportunity to address the court before pronouncing disposition, but holds failure to do so did not amount to fundamental error.

***D.M. v. State of Indiana*, 49A02-1711-JV-2708A (8/8/18)**
https://www.in.gov/judiciary/opinions/pdf/08081801cld.pdf

AFFIRMED D.M. appealed his disposition, ordering him to the DOC. D.M. admitted to battery by bodily waste/F6. At the dispositional hearing, the juvenile court did not specifically ask D.M. whether he wanted to address the court to make a statement of allocution. Although the Court of Appeals found it "undisputable that the better practice in this case would have been for the juvenile court to have specifically asked D.M. if he wanted to make a statement before pronouncing disposition", the failure to do so did not amount to fundamental error. The Court of Appeals found the failure to inform D.M. of his right to elocution likely had no effect on the outcome and did not deprive D.M. of due process because D.M.'s attorney argued against DOC at the disposition hearing, DM had a lengthy juvenile history, and D.M. had failed in the past to comply with curfews.

Memorandum Decisions*

Although knowledge that property is stolen may be established by circumstantial evidence, it can't be inferred solely from the unexplained possession of recently stolen property.

D.W. v. State (mem. dec.) 49A02-1712-JV-2849 (07/18/18)

https://www.in.gov/judiciary/opinions/pdf/07181801jsk.pdf

REVERSED. D.W., along with 2 other juveniles, was found asleep in a stolen van. The van was parked at an apartment complex and the interior was damaged, the child safety seats were missing, and there were various personal items in the van that did not belong to the owners. D.W. was asleep in the middle seat. D.W. was adjudicated delinquent for committing offenses that would be Level 6 felony receiving stolen auto parts, 1 Level 6 felony theft, 2 and Class A misdemeanor criminal trespass, if committed by an adult.

The Court of Appeals reversed, finding the State had not presented sufficient evidence to support the true findings where there was no evidence that D.W. knew the van was stolen. Although knowledge that property is stolen may be established by circumstantial evidence, it can't be inferred solely from the unexplained possession of recently stolen property. Fortson v. State, 919 N.E.2d. 1136, 1143 (Ind. 2010)

*Ind. App. R. 65(D). Precedential Value of Memorandum Decision. Unless later designated for publication in the official reporter, a memorandum decision shall not be regarded as precedent and shall not be cited to any court except by the parties to the case to establish res judicata, collateral estoppel, or law of the case.

Prophylactic use of restraints in a juvenile delinquency proceeding is not allowed, but no fundamental error where it was not objected to and no showing it affected the proceedings.

T.L. v. State, (mem. dec.) 18A-JV-250 (07/31/18)
https://www.in.gov/judiciary/opinions/pdf/07311801mr.pdf

AFFIRMED. T.L. appealed her disposition ordering her to DOC following her admission to L5 battery with a deadly weapon if committed by an adult. T.L. argued the juvenile court committed reversible error when it decided T.L. would wear restraints during her combined admission and dispositional hearing. The Court of Appeals found T.L. had waived the restraints issue by failing to object at the hearing. The Court reviewed for fundamental error and held, although the trial court didn't comply with 31-30.5-2-1(a) requiring the juvenile court to consider any recommendations from the authority transporting the juvenile to court and make a determination on the record that the juvenile is dangerous or potentially dangerous in order to justify placing or maintaining a juvenile defendant in restraints, T.L. couldn't show she was deprived of a fair hearing where there was no jury to be influenced by the sight of her in shackles and there was no showing that shackling affected her decision to admit to the charges.

Court is permitted to incorporate the findings of a probation dispositional report in dispo order.

N.L. v. State, (mem. dec.) 45A05-1712-JV-2879 (07/26/18)
https://www.in.gov/judiciary/opinions/pdf/07261802par.pdf

AFFIRMED. Juvenile appealed the juvenile court's order, modifying his probation and ordering him to be a ward of the Department of Correction. N.L. needed psychiatric treatment. He went through a myriad of placements and probation conditions and was sent to DOC when no other placements would accept him. He argued on appeal the juvenile court's order did not conform with the statutory requirements of IC 31-37-18-9(a) because the order failed to contain tailored written findings and conclusions and did not include reasons for the disposition.

The Court of Appeals found no error, noting the current version of I.C. § 31-37-18-9(c) (effective in 2006) allows the juvenile court to incorporate a finding or conclusion from a dispositional report as a written finding or conclusion in the court's order and here, the juvenile court had adopted and incorporated the probation report.

"Scrivener's error" in Petition was not fundamental error.

C.M. v. State (mem. dec.) 49A02-1712-JV-2762 (07/18/18)
https://www.in.gov/judiciary/opinions/pdf/07181801mpb.pdf

AFFIRMED. C.M. appealed his adjudication for committing an act that would be Level 3 felony attempted child molesting. C.M. argued his due process rights were violated where the Delinquency Petition alleged he committed a substantial step toward the commission of Attempted Child Molesting, Level 3 Felony. CM argued on appeal that he was charged with a "non-existent offense" of "attempted attempted child molesting." The Court of Appeals held C.M. waived the issue by not objecting or moving for dismissal of the petition. CM could not demonstrate fundamental error where the language on the petition was merely a scrivener's error, and there was no indication that the parties were confused about the charge or that C.M. was misled by the petition or unable to formulate a defense.

Commitment to DOC was not an abuse of discretion

D.F. v. State, (mem. Dec.) 18A-JV-610 (8/10/18)
https://www.in.gov/judiciary/opinions/pdf/08101802ewn.pdf

Despite previous recommendations by probation and DOC's diagnostic service that D.F. should receive treatment for his substance use in a residential treatment facility, Court of Appeals decline to find abuse of discretion where the juvenile court ordered D.F. to DOC after he ingested part of a Suboxone pill while on a home pass from the treatment facility and the treatment facility discovered that "D.F. was writing letters to a female resident that contained 'highly descriptive sexual content' and were 'borderline predatory in nature.'" The Court of Appeals noted the juvenile court had tried home detention and then residential treatment before ordering D.F. to DOC.

Indiana Public Defender Council (IPDC) Free Regional Juvenile Trainings

2018 Training Schedule

The 2018 IPDC JTIP regional training schedule and registration links can be found on IPDC's website at www.in.gov/ipdc/ Registration will open approximately 6 weeks prior to each training. All IPDC JTIP trainings are free to public defenders handling delinquency cases.

Registration now open for September Regional JTIP training:

Disposition Advocacy

This 3 hour interactive training will focus on skills to advocate effectively for clients at the disposition hearing, consistent with the clients' stated interests. Defenders will understand statutory, common and constitutional law governing disposition; understand the range of disposition options available in their local jurisdictions, and learn to identify and develop creative disposition alternatives. Defenders will explore ways to write effective and compelling memoranda in aid of disposition; and to conduct effective evidentiary disposition hearings, including cross-examination of probation and other government witnesses and presentation of defense witnesses.

September 14th **Marion County** 1:00-4:30 p.m. EST
Ivy Tech Lawrence Campus.

Registration Link: http://bit.ly/JTIPSept14

September 21st **Tippecanoe County** 1:00-4:30 EST
Tippecanoe County Government Center

Registration Link: http://bit.ly/JTIPsept21

September 28th **Lawrence County** 1:00-4:30 EST
Lawrence County Public Defender's Office

Registration Link: http://bit.ly/JTIPSept28

Magistrates can enter final orders in JD cases

A little noticed provision in HEA 1270 (effective July 1, 2018) gives Magistrates the ability to enter final orders in civil cases. Previously, magistrates did not have the authority to enter final judgments in civil cases, including juvenile cases. And final orders had to be signed by the trial court judge. *In re D.F.*, 83 N.E.3d 789, 794-95 (Ind. Ct. App. 2017). Here's the change:

SECTION 47. IC 33-23-5-8, AS AMENDED BY P.L.127-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:
Sec. 8.

Except as provided under sections 5(14) and 9(b) of this chapter, a magistrate
~~(1)~~does not have the power of judicial mandate.~~and~~
~~(2) may not enter a final appealable order unless sitting as a judge pro tempore or a special judge.~~