Indiana Public Defender Council
Juvenile Defense Project
Improving Juvenile Defense Services in Indiana
June 18, 2018

The aftermath of another school shooting- Indiana lawmakers to review juvenile waiver laws

A teacher and a student were injured in a shooting May 25 at Noblesville West Middle School, in Hamilton County. The suspect is a 13 year old boy, also a middle school student. Reporters seemed shocked and the prosecuting attorney expressed frustration, that because the victims survived, the 13 year old cannot be charged as an adult. Now, Indiana lawmakers have vowed to review our state's waiver laws. https://www.indystar.com/story/news/2018/06/06/noblesville-school-shooting-prompts-lawmakers-review-juvenile-laws/677660002/

Juvenile public defenders need to have a voice in this review. Some important talking points:

- The state comparison data is tricky because most states have multiple laws addressing when juveniles can be tried as adults. It is accurate to say that the majority of states (at least 27 states) have a minimum age at which a juvenile can be waived/transferred to adult court. The lowest of those that do have minimum ages is 10, but only 2 states set the bar that low. Most set it older than Indiana's minimum age of 12.

- The Office of Juvenile Justice and Delinquency Prevention publishes a Statistical Briefing Book. The last update was 2016 and answers some comparison questions about state waiver/transfer laws. https://www.ojjdp.gov/ojstatbb/structure_process/faqs.asp#4 The data isn't completely accurate - the OJJDP chart includes Indiana as one of 24 states that have at least one mechanism for trying juveniles as adults without a minimum age restriction. As was highlighted in this recent case, Indiana's minimum age restriction is 12 in the case of a murder charge and 14 or 16 depending on the circumstances and charges. https://www.ojjdp.gov/ojstatbb/structure_process/qa04105.asp?qaDate=2016

- Reliable data and state comparisons can be found in DOJ's September 2011 report of the Juvenile Offenders and Victims National Report Series. "Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting" https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf (This report was done back when Indiana's waiver law for murder set the minimum age at 10)

- Some important considerations if lawmakers review our waiver/transfer laws are that public safety is not served by putting more kids in the adult criminal system. Campaign for Youth Justice has a recent report that addresses the importance of keeping youth in the juvenile system, including the public safety benefits. "Youth Transfer: The Importance of Individualized Transfer Review" was issued March 2018) https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf

Case Law Update

2 Not for Pub* JD Decisions

G.K. v. State, 49A02-1711-JV-2540
https://www.in.gov/judiciary/opinions/pdf/05301801tac.pdf
5/30/18 (Ind. Ct. App) (Memorandum Dec.)
REVERSED
G.K. was alleged delinquent on 3 counts: Count 1, level 6 felony receiving stolen auto parts; Count 2, level 6 felony theft by knowingly or intentionally exerting unauthorized control over vehicle safety seats; and Count 3, class A misdemeanor criminal trespass by knowingly or intentionally interfering with the possession or use of the car owner's property without his consent. Following his fact-finding hearing, the juvenile court entered a true finding on Count 3 and a "not true" finding on Counts 1 and 2. Later, the court entered an order setting the case for a hearing to "clarify the court's order on true findings of Counts 1 and 2." At the hearing, the Magistrate said he had made a mistake in omitting true findings on Counts 1 and 2 and proceeded to enter true findings on those Counts.

G.K. appealed arguing the true findings on Counts 1 and 2 violated the federal and State protections against double jeopardy as he had already been found not true on the same counts. The Court of Appeals agreed, relying on *Evans v. Michigan,* 568 U.S. 313, 318 (2013) to hold the double jeopardy protections bar retrial, or in this case true findings, following acquittal, even if the acquittal is made in error. True findings on Counts 1 and 2 ordered vacated and case remanded for new disposition hearing.

D.H. v. State, 36A01-1708-JV-2033
https://www.in.gov/judiciary/opinions/pdf/06121802rrp.pdf
6/12/18 (Ind. Ct. App.) (Memorandum Dec.)
AFFIRMED
D.H. was adjudicated delinquent for committing three acts that would be Level 4 felony child molesting if committed by an adult. The allegations were that, when he was 11 and again when he was 13, he "inappropriately touched" his sister who is 3 years younger.

On appeal, D.H. argued the juvenile court lacked jurisdiction where the court failed to make a preliminary inquiry into the case before filing a delinquency petition as required by Ind. Code 31-37-8-1(c). The Court of Appeals, relying on *Collins v. State*, 540 N.E.2d 85, 87 (Ind. Ct. App. 1989), trans. Denied, held "because D.H. was alleged to be a delinquent child based upon an act that would constitute a serious crime if committed by an adult, no further inquiry in addition to that contained in the probable cause affidavit was necessary."

D.H. also argued there was insufficient evidence that he had the intent to arouse or satisfy his sexual desires. "Rather, according to D.H., 'Indiana should not make children into criminals for peer exploration.' (D.H.'s Br. at 16)." Slip Op., p. 6. The Court of Appeals noted that the fact that one child touched another child's genitals would not be sufficient to prove the required intent to satisfy sexual desires, but, applying the circumstances found to be relevant in the much different case of In *T.G. v. State*, 3 N.E.3d 19, 24 (Ind. Ct. App. 2014), trans. Denied, found the evidence was sufficient as the presence of other circumstances indicated D.H.'s intent to arouse or satisfy his sexual desires.

The Court of Appeals also reiterated the position that a child under the age of 14 could be adjudicated delinquent for child molesting, stating, "This Court has previously pointed out that the child molestation statute does not contain a minimum age for the perpetrator of the offense. In *State v. J.D.*, 701 N.E.2d 908, 910 (Ind. Ct. App. 1998), trans. denied, we concluded the 'Legislature intended that the child molesting would apply to offenders regardless of their age and would even apply to offenders who f[e]ll within the protected age group set forth in the statute.'"

* 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.

CHINS and DCS News

Court of Appeals reverses CHINS where DCS failed to prove the children were seriously endangered by mother's actions or inactions.

A.M. v. Indiana Dept. of Child Services, 45A04-1711-JC-2634 https://www.in.gov/judiciary/opinions/pdf/05311801ewn.pdf 5/31/2018, (Ind.Ct.App.)

REVERSED DCS has the burden of proving, not just the acts – here a one-time domestic violence, positive drug screens, messy house that had been corrected – but must prove that the children were seriously endangered by the parent's actions or inactions.

DCS filed petitions alleging that the children were CHINS due to the incident of domestic violence, the conditions of B.V.'s house, Mother's unstable housing, Mother's refusal to take a drug test (the FCM testified Mother was a "chronic user" of marijuana), and the presence of drugs (marijuana plants) in father's house. Mother argued on appeal that the trial court erred in adjudicating the children to be CHINS because there was insufficient evidence that her children were seriously endangered by her actions or inactions. The Court of Appeals agreed and tossed out a great quote:

> We must conclude that evidence of one parent's use of marijuana and evidence that marijuana has been found in the family home, without more, does not demonstrate that a child has been seriously endangered for purposes of Indiana Code Section 31-34-1-1. Indeed, DCS did not present any evidence that either Mother's drug use or the presence of marijuana in the home have seriously endangered the Children.

And the Court held where Mother and the children had moved away from Father at the time of the CHINS, and Mother filed for a protective Order against Father, "DCS has not presented sufficient evidence to show that the single incident of domestic violence seriously endangered the Children."

DCS report released, agency to receive $25 million to address findings

On June 18th, the Child Welfare Policy and Practice Group released the results of their review of DCS along with recommendations. The full report can be found online at: https://www.in.gov/dcs/3924.htm

At the same time, Gov. Holcomb announced $25 million from the state's surplus would be transferred to the agency to address some of the problems identified – in particular, the additional funds will be used to increase staff and salaries of the "boots on the ground" in an effort to improve morale and prevent the high turnover rate of case managers, supervisors and attorneys.

The report gives a frank assessment of existing problems, including our extraordinarily high rate of removing children. Key findings include that Indiana's rate of children in out-of-home care was over twice the national average. During the same time period (2005-2017), Ohio, Michigan and Illinois all experienced decreases in the number of children in out-of-home care. And Indiana's rate of referral to child protection was the 3rd highest in the United States. Of the referrals it received, Indiana completes a substantially greater number of assessments or investigations than do most states.

While DCS's practice model was identified as a strength, several DCS policies were found to be problematic. For example, it was noted that policy seems to encourage removal for "exigent circumstances" over consideration of other options that might protect the child while avoiding the trauma associated with his or her placement outside of the family.

A couple of notable recommendations are:

> DCS should reclaim the family-centered practice model that it adopted shortly after its formation. This will require: (1) a return to valuing and consistently soliciting and using the input of families and their support systems both in ongoing casework and in regular child and family team meetings; (2) learning to recognize and mobilize family protective
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> factors that can help promote child safety even when some safety threats exits; (3) achieving an understanding of the harmful effects of child removal and disrupted attachment for children as a counterbalance in considering whether removal is the safest course of action to address safety threats; and (4) increasing both the number and skill level of peer practice coaches available to staff.

> And

> Indiana should re-examine its broad definitions of neglect and the term "custodian" against those of neighboring states and other states that more narrowly define these terms, either to: (1) exclude neglect which is based solely on poverty or limited, onetime lapses in parental judgment; (2) limit the definition of custodian to one who is assigned consistent caregiving responsibility (e.g., a day care provider) by the child's legal parent; (3) redefine sexual abuse assessments under the purview of DCS as those in which a caregiver is the alleged perpetrator; and (4) require that the statutory elements of a report be met for DCS to initiate an assessment regardless of the ages of the children involved.

JTIP trainers Jill Johnson and Rachel Roman-Lagunas presenting "To Plea or Not to Plea" in Vigo County on June 15th.

Still time and spots left to register for this Friday's IPDC Juvenile Defense Project's FREE regional juvenile defender training. The topic is "To Plea or Not to Plea."

The training is open to all public defenders handle delinquency cases whether at trial level or on appeal and whether you represent kids full time, part time, or when needed. The training has been approved for 3 CLE hours, including one hour of ethics. To provide the best training experience, space is limited. Please use the registration links below to sign up, and please share with other attorneys handling juvenile delinquency cases.

Juvenile Training Immersion Program 'To Plea or Not to Plea'

This 3 hour interactive CLE includes 1 hour of ethics credit. The training will explore ethical considerations regarding the defender's obligations to provide effective assistance of counsel during the plea negotiation stage. Defenders will develop skills and strategies for communicating and negotiating with other stakeholders in the juvenile justice system with the goal of achieving the client's stated outcome. Defenders will review the advantages and disadvantages of pleas, including long term collateral consequences. And defenders will explore ways to counsel youth clients regarding plea considerations that take into account and overcome developmental barriers that may exist.

Presenters: Jill Johnson and Rachel Roman-Lagunas

3 hours CLE credit (includes 1 hour of ethics) Cost: Free to public defenders handling juvenile delinquency cases

June 22nd Lake County Welcome and lunch 11:30 a.m. (CST)

Training 12:00 p.m. – 3:30 p.m. (CST)

Lake County Juvenile Justice Complex

3000 W. 93rd Ave

Crown Point, IN 46307

Register at: https://goo.gl/forms/kmjzGro33qNezgls2

For more information, please contact

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