

DRAFT (NOT FOR RELEASE)

Proposed Juvenile Legislative Package for 2023

Legislative Changes for Delinquency Proceedings

(1) Prohibition of the Use of Deceptive Tactics on Youth in Custodial

Interrogations: Prohibits the use of statements elicited from children during a custodial interrogation if the law enforcement officer or school resource officer “knowingly” lies to the child about evidence of the act, or the potential consequences.

To elicit confessions, law enforcement officers may lie to suspects they are questioning in custody, including children. Permissible deceptive tactics include lying about the evidence and giving false impressions of leniency if the child admits. Because children’s brains are still developing, their decision-making and future planning abilities are limited. This makes them vulnerable to falling prey to the manipulation of these deceptions and falsely confessing to acts they did not commit. Around the nation, states are taking action to prohibit these psychologically coercive interrogation tactics and safeguard against false confessions. By prohibiting law enforcement from lying to children they are questioning, Indiana would protect children from falsely incriminating themselves and improve the integrity and reliability of the justice system.

(2) Right of Children in Detention Facilities to Have Access to Family: Provides for weekly in-person visits with families for detained youth, unless extraordinary circumstances prevent, and for a minimum of two (2) free phone calls of at least ten (10) minutes.

Among the traumas experienced by children held in detention facilities is separation from their families, often for weeks or even months at a time. They struggle to access their families and loved ones, sometimes by virtue of their inability to afford the cost of phone calls or other means of communication. Contact and communication with their parents, guardians, and other loved ones is critical for their wellbeing and development. Moreover, children’s success in the community relies in part on the strength of their family and community relationships, making family engagement for detained youth all the more essential.

(3) Protecting the Identities of Children in Juvenile Court: Limits public access to acts that would be murder or a felony, and requires the use of initials on documents that may be released to the public, both for the child facing delinquency allegations and victims.

The National Juvenile Justice Network and the Juvenile Law Center both recommend that the records of juvenile proceedings remain confidential, and to the extent that public access is allowed, those records should be redacted to protect the identities of the children involved. The focus and reason for a juvenile delinquency system is to rehabilitate children in a way that limits the negative impacts of State involvement. Most children involved in delinquent

behavior will age out of that conduct, and there is no need to provide lasting public documents that identify the child.

(4) Requiring the State to Prove that the Coercive Intervention of the Court is Necessary for Low-Level Offenses: Requires allegation and proof that the child needs care, treatment, or rehabilitation that the child is not receiving and likely not to receive without the coercive intervention of the court for misdemeanor delinquent offenses (except for firearm misdemeanors).

The requirement for proof of these additional elements is already a part of juvenile status offenses. Similar to status offenses, low-level delinquent conduct can often be addressed by parental or school response to the delinquent behavior, and where the behavior is being adequately addressed the juvenile court and participants which refers cases to the juvenile court (probation officers and prosecutors) should have legislative guidance that unnecessary justice system involvement should be avoided.

Legislative Changes for Children Prosecuted in Adult Court

In response to *Neukam v. State*, 189 N.E.3d 152 (Ind. 2022), which called into question the jurisdiction of criminal courts to hear the prosecutions of children charged with crimes that were previously delinquent acts when committed, we propose a significant overhaul of the entire system by which children alleged to have committed serious acts are held accountable and rehabilitated.

Key changes include:

--Repeal the direct file of any youth who committed their acts before reaching the age of eighteen (18) into criminal court so that every child subjected to adult court prosecution has the protections of due process, and a chance to defend against that decision.

--Modify the juvenile waiver proceedings:

- (1) to increase the minimum ages of eligibility for waiver, and limit the offenses for which it is used, while making direct file offenses waivable offenses;
- (2) limit the presumption for waiver to offenses that had previously been direct file offenses;
- (3) provide that those offenses which have been waived convert or ripen into criminal acts to assure jurisdiction by the criminal court.

--Expand the reach of the juvenile court, and available services for rehabilitation to older youth who have committed serious offenses:

- (1) by extending the reach of the juvenile court to the age of twenty-five for serious offenses committed by children;
- (2) extending the authority of the Department of Correction for these children;
- (4) modify the determinate commitment statutes so they are effective alternatives to waiver to adult court.

--Modify the alternative sentencing statute so it is a more desirable option to give children prosecuted as adults an opportunity to rehabilitate and avoid extended prison sentences.

--Create a misdemeanor sex offense that governs the inappropriate sex acts of children, subject to enhancements, to prevent over-prosecution, and limit the current child molesting statute to those 18 and older.

--Provide a meaningful opportunity for modifications for youth that have been waived to adult court, served a significant prison sentences, and can demonstrate they have been rehabilitated.

--Prohibit imposition of life without parole for all acts committed by children, no matter how heinous or aggravated.

Support for Other Legislative Changes

Minimum Age for Juvenile Court Jurisdiction: Create a minimum age for prosecution of delinquent acts, dependent in part upon the level of offense. We will be supporting the Children's Policy and Law Initiative and Youth Justice Coalition on this legislative effort.

Reduction or eradication of fees and costs in delinquency proceedings: We will be supporting the efforts of Stand for Children and Debt Free Justice on this issue.

State funding and panel for competency and sanity evaluations: We will be supporting Senator Greg Walker (and hopefully a contingency of judges) on this issue. Sen. Walker introduced the issue last session with SB 326 (2022).