



Indiana Public Defender Council Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

March 19, 2018
March 26, 2018

Educate Yourself About Immigration Consequences to Juvenile Clients

NJDC's "Immigration Issues in Juvenile Proceedings"

Delinquency arrests, charges, or adjudications may result in immigration consequences to juvenile clients or their families. This issue brief is a must read tool for juvenile defenders and includes practice tips, strategies, and resources.

Public defenders are cautioned to always consult with an immigration attorney if you think your client could be at risk for immigration consequences and/ or is potentially eligible for immigration relief.

The full brief can be downloaded:

http://njdc.info/wp-content/uploads/2017/12/Immigration-Brief_Final.pdf

For additional resources on immigration consequences visit:

<http://njdc.info/immigration/>

NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Another resource for public defenders is **National Immigrant Justice Center (NIJC)'s Defenders Initiative** where public defenders can submit email inquiries regarding potential immigration consequences that clients may be facing. By completing an online form, defenders can schedule a training or ask a question about how your client's case may impact his or her immigration status.

<http://www.immigrantjustice.org/resources/defendersinitiative>

For more resources on immigration consequences for criminal defendants, visit the **Immigrant Defense Project**.

<https://www.immigrantdefenseproject.org/>



In This Issue

- Educate Yourself About Immigration Consequences to Juvenile Clients
- Caselaw update
- Training



Juvenile Case Review

No Juvenile Delinquency Appellate Decisions since March 12 issue.

Other cases of interest

Carl T. Wilson v. State of Indiana, 49A04-1706-CR-1201

<http://www.in.gov/judiciary/opinions/pdf/03221801msm.pdf>

3/22/2018 (Ind.Ct.App.)

Reversed trial court's denial of Motion to Suppress.

Police, responding to a 911 complaint about a car parked on the unoccupied side of a duplex, came across a car parking in a nearby lot. Wilson exited the car as officers approached and then bent back into the car and reached toward the center console. Officers drew their weapons and ordered Wilson to show his hands, then patted him down and handcuffed him for officer safety. Without giving Wilson Pirtle or Miranda advisements, officers asked Wilson for permission to search, and he said they could.

Held: Wilson was under arrest for the purposes of a Fourth Amendment analysis because police handcuffed him and drew their weapons. "What may have begun as an investigatory stop quickly

transformed into an arrest." Where police lacked probable cause to arrest Wilson prior to searching his car and seizing drugs, the trial court abused its discretion by denying Wilson's Motion to Suppress. And Wilson's consent to the search could not have been valid because he was not given required warnings.

In re the Adoption of E.B.F., J.W. v. D.F., 18S-AD-167

<http://www.in.gov/judiciary/opinions/pdf/03231801shd.pdf>

3/23/18

In a 3-2 decision, the Supreme Court reversed an adoption, holding Mother's consent was required. Mother did not consent to the adoption, but the Greene Circuit Court granted Stepmother's Petition to Adopt, finding consent for the adoption was not required where Mother failed to communicate with the child for over a year while she was in treatment for substance use. The Indiana Court of Appeals affirmed. The Supreme Court reversed, holding Mother's consent was necessary where her lack of communication while she was in recovery was justifiable and that Father and Stepmother had thwarted what attempts mother had made to communicate with child.

Because being around a child while recovering from drug dependency and an abusive relationship may not be in the best interest of either the child or the recovering mother, and because Mother demonstrated that she made a good-faith effort at recovery, with significant progress within a reasonable amount of time, we find that Mother had justifiable cause to not communicate with Child during that one-year period.

Note: the Supreme Court found "Mother turned her life around in what we find was a reasonable amount of time—less than one year." This case could have an impact on TPRs where parents are making progress, especially with addictions, yet DCS pursues termination at the earliest point possible.

Dissent by Justice Slaughter, joined by Justice Massa



Legislative Changes

In case you missed it, it's not over! The Governor called a special session to be held mid-May to clean up what was, so to speak, left on the floor.

In addition to the juvenile data bill, school discipline bill, many DCS bills, and others highlighted in previous newsletters, the following criminal bills passed this session.

SEA 12 Sex offenders. Provides that, unless a court has granted a waiver, a sex offender who establishes a residence: (1) with the intent to reside at the residence; (2) within a one mile radius of the residence of the victim of the offender's sex offense; and (3) knowing the location of the victim's residence; commits invasion of privacy. Prohibits a sex offender from attending a house of worship located on school property while classes, extracurricular activities, or other school activities are being held.

SEA 203 Provides that the crimes of: (1) murder; (2) voluntary manslaughter; (3) involuntary manslaughter; and (4) feticide; may be committed against a fetus in any stage of development. Specifies that the offenses do not apply to a: (1) lawfully performed abortion; or (2) pregnant woman with respect to a fetus carried by the woman. Provides, with certain exceptions, that a person who commits a felony that causes the termination of a pregnancy may receive an additional sentence of six to 20 years.

HEA 1033 Treatment of out-of-state convictions in sentencing. Provides that, for purposes of law regarding death sentences and sentences for felonies and habitual offenders, a Level 6 felony conviction includes a conviction in another jurisdiction for which the offender might have been imprisoned for more than one year but less than two and one-half years

HEA 1057 Pretrial diversion. Provides that the initial user fee amount for a diversion agreement involving a misdemeanor is \$50. Provides that the initial user fee amount for a diversion agreement involving a felony is \$75. Allows a court to impose on a person an additional program fee or cost that is reasonably related to the person's rehabilitation. Prohibits a monthly user fee from being collected beyond the maximum length of a possible sentence. Makes conforming amendments.

HEA 1250 Battery offenses. Adds the following offenses to the statutory definition of "crime of violence": (1) Battery as a Level 2 felony. (2) Battery as a Level 3 felony. (3) Battery as a Level 4 felony. (4) Battery as a Level 5 felony. Adds a bailiff of any court and a special deputy to the definition of "public safety official" for purposes of the battery statute. Makes conforming amendments.

HEA 1270 In addition to changes to the human and sexual trafficking laws, this bill amends IC 35-45-1-5 to create a new defense to the felony of maintaining a common nuisance. *New language in bold.*

(c) A person who knowingly or intentionally maintains a common nuisance commits maintaining a common nuisance, a Level 6 felony.

(d) It is a defense to a prosecution under subsection (c) that:

(1) the offense involves only the unlawful use or keeping of:

(A) less than:

(i) thirty (30) grams of marijuana; or

(ii) five (5) grams of hash oil, hashish, or salvia; or

(B) an item of drug paraphernalia (as described in IC 35-48-4-8.5) that is designed for use with, or intended to be used for, marijuana, hash oil, hashish, or salvia; and

(2) the person does not have a prior unrelated conviction for a violation of subsection

(c).

HEA 1359 Drug dealing resulting in death. Makes manufacturing or dealing certain controlled substances resulting in the death of a user: (1) a Level 1 felony if the controlled substance is cocaine, methamphetamine, or a schedule I, II, or III controlled substance; (2) a Level 2 felony if the controlled substance is a schedule IV controlled substance; and (3) a Level 3 felony if the controlled substance is a schedule V controlled substance or a synthetic drug or synthetic drug lookalike substance. Makes conforming amendments.

