

On June 5, 2020, Chief Justice Loretta H. Rush put into words the recognition that Indiana’s entire legal system needs to take action to ensure equal justice for all. As a part of this plea, Chief Justice Rush highlighted the reality that children have been unequally impacted by harsher and more severe penalties than their white counterparts. Her words are statistically supported by the 2018 Report on Equity in Indiana’s Juvenile Justice System, which tracks disproportionate minority contact juvenile justice system.

The Indiana Public Defender Council is charged by statute to maintain contact with all branches of Indiana government to “benefit criminal defense as part of the fair administration of justice in Indiana.” Moreover, public defenders are recognized by law to give voice to the voiceless, and as necessary to level the imbalanced scales of justice. “The right to representation by counsel is not a formality. It is not a grudging ritualistic requirement. It is of the essence of justice.” *Kent v. United States*, 383 U.S. 541 (1966). Because of our paramount role in the system of justice, we would be remiss to remain silent, conducting business as usual at this time.

While inequities play out in the legal system, they often begin in the code of laws that empower that system. In order to promote equality under law, IPDC encourages serious consideration of the juvenile code as a whole to ensure that the discretion given to judges, prosecutors, and jailers are accompanied by appropriate due process protections, and guidance which can be used to check that discretion when it becomes unbalanced.

Juvenile Justice Reforms That Could Help:

- (1) **End Direct File:** Indiana Code § 31-30-1-4 creates a list of several offenses that if committed by a sixteen or seventeen-year-old child, that child is automatically prosecuted in adult court. The statistical data reported by the Indiana Criminal Justice Institute for 2018 and 2019, shows that the majority of children placed in adult court are done so under this statute, and approximately 70% of the children “direct filed” are black. No child should be prosecuted in adult court without first having a judicial hearing to determine the appropriateness of that prosecution, with all of the components of due process—notice and opportunity to be heard by counsel, opportunity to challenge the State’s case, and an opportunity to appeal the decision to place the child in adult court as a final appealable order.

- (2) **Abolish Juvenile Life Without Parole:** The United States Supreme Court has recognized that in most cases, life without parole imposed upon a juvenile offender is cruel and unusual punishment, and several of our sister states have abolished the practice either by legislation or judicial interpretation of their state constitution. It is without dispute that: (1) children are less culpable than adults; (2) it is extremely difficult, if not impossible to determine whether a child cannot be rehabilitated—nearly all can; and (3) the punishment of life without parole is a more harsh penalty for a child than for an adult. The Indiana Constitution prohibits cruel and unusual punishment, as well as disproportionate penalties. No juvenile offender should face life without parole in Indiana.
- (3) **Minimum Ages and Statutory Guidance for Competency Determinations:** Indiana is one of the few states that have yet to enact a statutory scheme for addressing the competency of children to be prosecuted as delinquents, and Indiana has no floor for prosecution as a delinquent child, or placement in a detention facility. As a result, children with serious mental disabilities, and/or extremely immature children can face prosecution and detention for acts that they may not even know and understand are wrong. Even where these children and their families need the intervention of the State to protect the children and the community, many cases should be more appropriately handled by the child welfare system. Prosecution as a delinquent child carries stigmas and consequences that no child unable to fully understand the wrongfulness of their conduct should have to bear.
- (4) **End Jailing of Children in County Jails:** In several counties children waived to adult court or direct filed into adult court are being held in the county jails. To protect them, they are often isolated, but they are sometimes housed with adult inmates. Jails do not provide adequate education, and services for these kids who are subjected to a highly traumatic circumstance. Further, the federal Juvenile Justice Reform Act of 2018 requires that states end to practice of housing children in adult facilities, and Indiana stands to lose approximately \$700,000 a year if that practice is not ended by 2021.
- (5) **Automatic Expungement:** A common misconception of juvenile delinquency is that it cannot follow the child into adulthood, but this is not true. Juvenile delinquency offenses are not automatically expunged upon successful completion of juvenile rehabilitation, and many records of juvenile delinquency are made available to the public. There is a process to petition for the expungement, and even the destruction of juvenile court records, but to accomplish these goals court proceedings must be initiated by the child, and there are little or no resources dedicated to assisting with the filing and litigating these petitions. As a result, juvenile expungements are under-

utilized, especially by those with less familiarity with the law and limited resources. And, recognizing that the juvenile justice system has been disproportionately used against children of color, it is time to reduce the impact of that disproportionate minority contact.

- (6) **Minimize School Policing and Increase Training:** In many schools, police officers have become a daily feature of student life. Law enforcement presence in schools should be limited, and prohibited for school discipline matters. Absent a real and immediate threat to safety, school discipline should be handled by teachers and school administrators. Additionally, when law enforcement intervention is needed, the law enforcement officers should have significant training in de-escalation techniques and dealing with children and adolescents, including those with special needs and from various cultural and racial backgrounds.
- (7) **Make Possession of Marijuana a Status Offense:** Under Indiana law, the possession of marijuana is a delinquent act that subjects children to secure detention and sometimes results in their commitment to the DOC. By moving possession of marijuana to a status offense, it would still be a delinquent act, and a child can still be prosecuted and face significant consequences, but the court could not impose secure detention, or a DOC commitment as a result.