



Indiana Public Defender Council Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

JUVENILE DELINQUENCY NEWS AND UPDATES

Week of October 1, 2018



Georgetown Professor Kristin Henning on “raising race” at IPDC’s Annual Juvenile Defender Seminar November 9th

“Defenders for Racial Justice: Overcoming Blind Spot Bias & Raising Race in the Juvenile Case.”

IPDC is thrilled to have Professor Kristin Henning as our keynote speaker for this year’s annual Juvenile Defender Seminar. Professor Henning has been a driving force in local, regional and national juvenile justice reform, particularly in addressing race and the juvenile justice system. Professor Henning is the Agnes N. Williams Research Professor of Law and Director of the Juvenile Justice Clinic and Initiative at Georgetown Law, where she supervises law students and represents youth accused of delinquency in the D.C. Superior Court. She was previously the Lead Attorney for the Juvenile Unit of the D.C.

Public Defender Service and is currently the Director of the Mid-Atlantic Juvenile Defender Center. She also worked closely with McArthur’s Juvenile Indigent Defense Action Network to develop the Juvenile Training Immersion Program (JTIP) national training curriculum for juvenile defenders that IPDC has been using to provide free regional trainings over the past two years. She has published numerous articles and essays on race, policing and the juvenile justice system. **Join us on November 9th**, when Professor Henning will train juvenile defenders to identify and address implicit bias and raise racial justice arguments on behalf of clients, focusing on litigation strategies that incorporate racial justice arguments including Fourth Amend issues and all other stages of the case.

Indiana – racial and ethnic disparities is a statewide issue. A 2012 comprehensive report reviewed data from more than 205,000 juvenile cases in Indiana. Researchers reviewed Information about all the key decision points (except arrest) for every juvenile case that was referred to each of the 92 juvenile courts in the state during the study period.

The report found minority youth in Indiana, “were significantly more likely to be *referred to the juvenile court*, more likely to be *held in secure detention prior to adjudication*, more likely to *have a delinquency petition filed against them*, and more likely to be *committed to the Indiana Department of Correction* than their White peers.. Minority youth were also significantly less likely to *receive a diversion* and less likely to be *given a probation disposition* than their White counterparts.

Over half the counties in Indiana had at least one significant disproportionate minority contact finding for at least one of the racial or ethnic groups, in at least one of the years, for at least one of the decision points. Researchers noted because 49% of counties did not have any significant differences between groups didn’t meant there were no concerns, but just that the populations base of the particular groups and/or the number of observations was not large enough to perform an analysis.

View the full report here: https://www.in.gov/cji/files/Y_DMC_Study_Phase_1.pdf

In This Issue: **Raising Race** p. 2

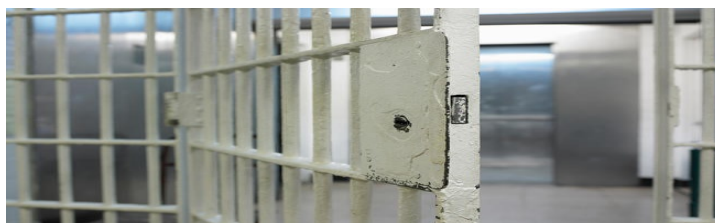
Caselaw update p. 3

Free Lunchtime Webinar CLE October 19th p. 4

More JTIP and IPDC’s Annual Juvenile Defender Seminar p. 5

Raising Race

Recent national reports address racial and ethnic disparities in other areas.



Prosecution of youth as adults

47 percent of the youth transferred from juvenile courts to adult courts are black, despite the fact that black children make up approximately 14 percent of the total youth population, according to “The Color of Justice Transfer” a new report from the National Association of Social Workers & Campaign for Youth Justice. Why this great disparity? The report looks at the way youth are transferred to adult court – by statutory exclusion; judicial waiver; and prosecutorial waiver. And addresses potential responses, including legislation requiring the study and measurement of the racial and ethnic impact of sentencing on minority children and involving professionals (social workers, psychologists and mental health professionals) in the decision to charge children as adults. Read the full report here: <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0>



School discipline

The Government Accountability Office, studying Department of Education civil rights data, found black students are punished more often and receive harsher punishments than white students “regardless of the type of disciplinary action, level of school poverty or type of public school attended.” The 2018 report found the greatest disparities occurred with punishment that resulted in suspension or expulsion. And the results were true at regular public schools, charter schools, magnet schools and alternative schools. <https://www.gao.gov/assets/700/690828.pdf>

Finally, while black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest. <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

JD CASELAW UPDATE



Ind. Supreme Court: Juvenile can't waive his right to be present at fact-finding by not showing up for hearing.

R.R. v. State, 18S-JV-230, Ind. (9/13/18)

<https://www.in.gov/judiciary/opinions/pdf/09131801ggs.pdf>

R.R. was not present at the fact-finding hearing, and the trial court, over objection, tried him in absentia, found R.R. violated his probation, and adjudicated him a delinquent for auto theft and false informing. On appeal, R.R. argued that (1) juveniles have a due-process right to be present at such hearings, and (2) the trial court violated this right by holding the hearing in his absence. The Indiana Supreme Court reversed. The majority of the Court did not hold R.R. had a due process right to be present but "assum[ed] without deciding that R.R. is correct on the first issue and agree[d] with him on the second."

Held: The Court held a juvenile can waive his or her right to be present at a fact-finding hearing, but that the waiver must be comply with IC 33-32-5-1. Neither R.R.'s attorney nor his parent waived his right to be present, and R.R. was not emancipated and so could not waive the right himself.

Ind. Court of Appeals: Juvenile is not required to be physically present for either a disposition or modification hearing.

C.S. v. State, 18A-JV-862, Ind.Ct.App. (9/19/18)

<https://www.in.gov/judiciary/opinions/pdf/09191802ehf.pdf>

C.S. was committed to DOC on what would have been an A misdemeanor dangerous possession of a firearm if committed by an adult. He admitted and was sent to DOC for a diagnostic evaluation. The team that completed C.S., Jr.'s diagnostic evaluation, a DOC psychologist, and a social worker all recommended residential placement. Probation, on the other hand, recommended DOC commitment, in part because while in the juvenile detention center prior to being sent to the DOC for his evaluation, C.S. "had attempted to commit suicide and displayed aggressive behavior." At the disposition hearing, the juvenile court heard evidence supporting the probation department's recommendation for DOC. C.S. was not brought to court for his hearing, and he appeared by video conference from the juvenile detention center. He did not sign a written waiver of his right to appear at the hearing in person. At the end of the hearing, the juvenile court committed C.S. to the DOC.

Held: Trial court did not abuse its discretion by committing C.S. to DOC. The Court of Appeals listed circumstances considered by the service providers and, determined that the service providers recommendations (even though they recommended residential placement) and the probation officer's opinion that C.S. was too great a risk for community placement supported the court's order.

Held: A delinquent child is not required to be physically present for either a dispositional or modification hearing. C.S. relied on *Hawkins v. State*, 982 N.E.2d 997, 1002-03 (Ind. 2013) (A criminal defendant has a right to be "personally present" at sentencing and that a trial court "may conduct a sentencing hearing at which the defendant appears by video, but only after obtaining a written waiver of his right to be present and the consent of the prosecution."). The Court of Appeals concluded in juvenile delinquency cases, the rules relating to the sentencing of criminal offenders does not apply. Instead, the Court looked at the juvenile statutes and held, although IC 31-37-18-1.3 requires that a juvenile be given notice of and an opportunity to be heard during a dispositional hearing, "[n]othing in the statute, however, requires that the delinquent child be physically present for either a dispositional or modification hearing."

IPDC Juvenile Project's 3rd

Free Lunchtime CLE



SUPPRESSING JUVENILE STATEMENTS

This live one-hour webinar will take public defenders step by step through challenging the admissibility of a juvenile client's statement. Beginning with a discussion of caselaw on custody determinations, the webinar will cover how to argue a statement was not voluntary; how to evaluate and litigate whether a juvenile statement is knowing and intelligent; and how to challenge meaningful consultation. Participants will learn creative ways to demonstrate the state has not met its burden for each requirement and why it's critical that counsel force the state to meet its high burden before allowing in client statements.

Presenters: Rachel Roman-Lagunas and Jill Johnson

1 hour CLE credit

Cost: Free to public defenders

October 19th 12:00-1:00 p.m. EST

Register at: <https://tinyurl.com/yagg2yge>

Log on instructions will be e-mailed prior to the webinar.

For more information, please contact

Amy Karozos, IPDC Juvenile Defense Project Director

Ofc: (317) 232-0106

E-mail: akarozos@pdc.in.gov



Free Regional JTIP Trainings

Remaining 2018
Trainings:

Disposition Advocacy

Dec. 14th
Warsaw, IN
11:30 am - 3:30 pm
Lunch provided

Register at:

[https://tinyurl.com/
ya794yjp](https://tinyurl.com/ya794yjp)



Join us for **IPDC's Annual Juvenile Defender Seminar** **November 9th**

Garrison Conference Center, Fort Harrison State Park
6002 N. Post Road
Indianapolis, Indiana 46216

To register and view agenda, visit: <https://www.in.gov/ipdc/2447.htm>

Zealous Advocacy, Fair Treatment and Better Outcomes

Challenging School Statements after B.A. and D.Z.

Jeff Earl, Attorney at Law, Lewis & Earl, Danville, IN
Josh Pollack, Juvenile Division, Marion County Public Defender Agency

Residential Treatment Centers - Notes from Inside

Melissa Keyes, Legal Director at Indiana Disability Rights

Defenders for Racial Justice: Overcoming Blind Spot Bias & Raising Race in the Juvenile Case

Prof. Kristin Henning, Director, Juvenile Justice Clinic, Georgetown Law

Spoken Word Presentation

Special guest

DOC Commitments: Correcting Misconceptions; Advocating for the Disposition Your Client Wants; Accessing the Services Your Client Needs

Joel Wieneke, Post-Disposition Coordinator, IPDC Juvenile Defense Project
Jill Johnson, Training Coordinator, IPDC Juvenile Defense Project
Rachel Roman-Lagunas, Training Coordinator, IPDC Juvenile Defense Project
Kristin Fouse, Social Worker, Juvenile Division, Marion Co. Public Defender Agency

Juvenile Caselaw Update

Deborah Markisohn, Appellate Division, Marion County Public Defender Agency

Ethics and the Juvenile Defender

James Bell, Attorney at Law, Paganelli Law Group, Indianapolis, IN