



Indiana Public Defender Council Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

March 5, 2012
March 12, 2018



Confinement for low level or non-violent offenses is bad for kids and bad for public safety

“Nearly a quarter of juveniles in out-of-home placements in 2015 were not confined for serious or violent crimes. Research has generally found that confining juveniles fails to reduce recidivism and can actually worsen outcomes for some young people.”

Information released by Pew Charitable Trust confirms the rampant use of juvenile confinement for non-serious, non-violent acts.

www.pewtrusts.org/publicsafety

States are increasingly harnessing their administrative data to help inform decision-making. See how Indiana compares in a new 50-state assessment from Pew's data as a strategic asset project explores these efforts, including programs to identify youth most at risk of recidivism.



In This Issue

- Juvenile Case Review
- Legislative update
- Netflix Series follows girls in Indiana DOC/DYS

Juvenile Case Review

Set for IN Supreme Court oral argument April 20th, Owen Valley H.S.

J.W. v. State of Indiana (33A04-1708-JV-1934)

Seventeen-year-old J.W. was arrested and charged with False Informing when he gave a false name to police and emergency room personnel after a reported suicide attempt. J.W. pled guilty, and was committed to the Department of Correction. The Court of Appeals dismissed J.W.'s appeal, holding in an unpublished decision that a juvenile cannot directly appeal his own guilty plea in a delinquency matter and should instead seek relief under Trial Rule 60. *J.W. v. State*, 2017 WL 6273184 (Ind. Ct. App. Dec. 11, 2017), trans. pending.

<http://www.in.gov/judiciary/supreme/2572.htm>

Appellate counsel for J.W. is Cara Wieneke .

Published Decisions

All in a day's work: In record time, appellate counsel Deb Markisohn had oral argument and got a decision in *T.H. v. State* last Friday.

T.H. v. State, 18S-JV-80 3/9/2018

Per curiam. Evidence was insufficient to support T.H.'s adjudication for what would be class A misdemeanor criminal mischief if committed by an adult where the State failed to prove the loss was at least \$750. T.H. was charged with throwing brick through a car window. The owner testified at the FF hearing that she took the car to a dealership and got an estimate. The document was admitted as State's Exhibit 1. Given the multiple unexplained anomalies in the exhibit, no reasonable trier of fact could find the element of the amount of the loss beyond a reasonable doubt. Transfer granted, adjudication affirmed but remanded to be modified to criminal mischief, class B misdemeanor.

<http://www.in.gov/judiciary/opinions/pdf/03091801pc.pdf>

Not for Pub

H.D.P. v. State of Indiana

47A04-1710-JV-2351 (2-28-2018)(Not for Pub.)

Imposition of Restitution Order and Detention Costs Affirmed. H.D.P. argued both that the juvenile court abused its discretion when ordering restitution and detention costs, and that his attorney provided ineffective assistance of counsel by agreeing to those without specific evidence or an inquiry as to his ability to pay. The court ordered H.D.P. to pay \$176.00 in court costs, \$8,707.10 in restitution, and \$400 in detention costs. The COA held that his counsel's statements that he agreed to pay restitution and that he agreed "with the recommendation made by Probation" made H.D.P.'s claims on appeal "invited error", which is distinguishable from recent cases where restitution has been held to be a part of a sentence, and therefore appealable despite no objection before the trial court. Further, the COA held that the invited error foreclosed any claim of fundamental error. The COA disposed of H.D.P.'s ineffective assistance of counsel claim by finding that H.D.P. did not meet his burden by presenting any evidence that H.D.P. told his counsel that he could not pay for the restitution, that the restitution was not attributable to his acts, or that he did not agree with the probation officer's recommendation.

In a footnote, the COA explained that H.D.P. did not have standing to challenge the imposition upon his mother to guarantee the payment of the restitution.

More Not for Pub

A.M. v. State of Indiana, 20C01-1504-JD-139 (2-28-2018)(Not for Pub.)

Disposition Modification after Probation Violation Ordering Order Commitment to D.O.C. Affirmed. A.M was initially adjudicated for battery resulting in bodily injury, which would be a Class A misdemeanor if he were an adult, in June 2015. Since then he had four probation violations, and had received informal probation, formal probation, electronic monitoring, therapeutic services, and residential-treatment. Most recently, A.M. had been adjudicated for resisting arrest, and found in violation of probation for failing to attend summer school as required. The COA affirmed noting the several opportunities A.M. had received to rehabilitate himself.

<http://www.in.gov/judiciary/opinions/pdf/02281804nhv.pdf>

D.P. v. State of Indiana, 69A04-1710-JV-2531 (3-9-16) (Not for Pub)

COA affirmed disposition modification that committed D.P. to the Department of Corrections. Although D.P. was in college, working two jobs, and had not violated the rules of his placement, he had not progressed in his program and had four prior probation violations. The COA affirmed, and stated, “Like all the other chances D.P. was given, he chose to squander this one.”

<http://www.in.gov/judiciary/opinions/pdf/03091801mm.pdf>

A.E. v. State of Indiana, 20A03-1707-JV-1727 (3-9-18) (Not for Pub)

COA affirmed disposition modification ordering A.E.’s commitment to DOE. A.E. was both trafficked and was said to have attempted to recruit another girl to be trafficked. The court wanted to send her to Youth Opportunity Center (YOC), believing that a residential treatment facility specializing in sex trafficking would be a better placement for A.E. than the DOC. Probation reported that YOC would not accept the child because she had engaged in trafficking recruiting activities. Lutherwood, the only other facility to offer programs specific for sex trafficking victims in Indiana, also could not accept A.E. because she lived too far away.

A.E. argued the juvenile court abused its discretion in committing her to DOC as there appeared to be other options for treatment and that her probation officer made only minimal effort to find appropriate placement. The COA disagreed, holding “the evidence in the record supports the juvenile court’s determination that A.E. needs to be in a residential placement. We further find no evidence suggesting that A.E.’s probation officer was anything other than diligent in her attempt to locate a residential facility suited to the situation. ...Under these circumstances, the juvenile court did not err by finding it had no option other than to commit A.E. to the DOC.“

<http://www.in.gov/judiciary/opinions/pdf/03091801jgb.pdf>

**Keeping kids on probation for years on offenses that would be misdemeanors seems to be a recurring trend, as does sending kids to the D.O.C. for either failing to attend school, or misbehaving at school while on probation. Please keep advocating for proportional punishments, and necessary individualized treatment!

Wednesday, March 14, 2018 is the last day for adjournment of both houses. To see whether these bills made it to the finish line to become law, check online at: <https://iga.in.gov/legislative/2018/bills/>

Legislative update - what is still alive?

Positive school discipline bill (HB 1421).

According to the 2016 School Corporation Annual Performance Report, approximately 10% of Marion County students were suspended at least once during the 2015--2016 school year. During the 2012-2013 school year, the most recent data collected and reported for the entire state, 1 in 10 Indiana students were suspended or expelled. African American students were suspended at a rate of 1 in 5.

HB 1421 addresses the overuse of suspension and expulsion that results in thousands of lost education days for Indiana students every year. The Bill is intended to encourage a change in culture in schools and reduce suspension rates by mandating that schools' discipline plans reflect evidence-based positive discipline practices. Children's Policy and Law Initiative of Indiana released the following talking points in support:

Juvenile Data Bill (HB 1228)

HN 1228 addresses improving the data on youth in adult court. The Bill requires the criminal justice institute to track more detailed data on youth direct filed and youth waived to adult court, including outcomes of the cases, and to publish the information annually.

See **pages 6 & 7** for additional pending legislation of interest to juvenile public defenders, including DCS, adult criminal, and healthcare matters.



“Girls Incarcerated” was released on Netflix on March 2, 2018. The eight-episode documentary series was filmed inside Madison Juvenile Correctional Facility. The series follows the stories of several girls committed to the Indiana Department of Correction, Division of Youth Services.

The documentary was filmed in the spring and summer of 2017, before the girls’ DOC/DYS facility was moved to LaPorte to what was formerly Camp Summit, a juvenile boot camp for boys.

DOC/DYS is now down to four facilities:

LaPorte Juvenile Correctional Facility (only facility for girls)
John Galipeau, Warden
(219) 326-1188
jgalipeau@idoc.in.gov

Logansport Juvenile Intake Facility (boys intake)
Lori Harshbarger, Warden
(574) 753-5549
lharshbarger@idoc.in.gov

Logansport Juvenile Correctional Facility
Lori Harshbarger, Warden
(574) 753-7571
lharshbarger@idoc.in.gov

Pendleton Juvenile Correctional Facility
Alison Yancey, Warden
(765) 778-3778
ayancey@idoc.IN.gov

Pending 2018 Legislation of Interest to Juvenile Defenders

Review date 3-13-18

Health

HB 1007 Expanding mental health access. Requires the office of Medicaid policy and planning to implement a centralized credentials verification organization and credentialing process. Allows the division of mental health and addiction to grant approval for nine additional opioid treatment programs

Adult Criminal

SB 74 Controlled substances. Adds the substance Mexedrone to the definition of "synthetic drug" and adds additional controlled substances to the existing statutory list of depressants, hallucinogens, and opiates classified as schedule I.

SB 203 Crimes resulting in the loss of a fetus. 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.

HB 1270 Criminal law matters. Various changes to human trafficking statutes, including removing from the sexual trafficking statute the element that a solicitor must know that a person is a human trafficking victim before committing the offense. Expands the rape shield statute to include victims of human trafficking and certain other offenses. Adds an element to the defense of prosecution under the offenses of sexual misconduct with a minor and promotion of sexual trafficking of a younger child. Prohibits certain defenses to a prosecution of making an unlawful proposition. Requires law enforcement to notify the department of child services of a possible child trafficking victim in certain sexual offenses. Provides a defense to the crime of maintaining a common nuisance if: (1) the location was not primarily used for specified unlawful acts; (2) the charged offense involves less than a specified quantity of marijuana, hashish, hash oil, or salvia or involves paraphernalia; and (3) the person does not have a prior unrelated conviction for maintaining a common nuisance.

HB 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.

SB 64 Sentence modification. Requires a court to advise a defendant, before accepting a guilty plea, that the court will be bound by terms of a plea agreement both at the time of sentencing and with respect to sentence modification. Provides that a court may not, without the consent of the prosecuting attorney, reduce the sentence of a person sentenced under a plea agreement if the reduction was not authorized by the plea agreement. Provides that the prohibition against including a waiver of the right to sentence modification in a plea agreement does not prohibit finding that a person has waived the right to have a court modify a sentence in a manner contrary to the plea agreement.

DCS

HB 1406 Department of child services. Provides for the collection of certain past due annual support fees by the child support bureau (bureau) and the clerk of the circuit court. Provides that the department of child services may: (1) initiate an action to determine paternity for a child who is the subject of a child in need of services proceeding; or (2) refer the case to the local prosecuting attorney's office to file a paternity action.

SB 402 Juvenile reports. Requires CHINS predispositional and dispositional reports be provided at least 48 hours before a hearing.

DCS Cont'd

SB 128 Change of placement of a child in need of services. Requires that, before changing the out-of-home placement of a child who has been in the same out-of-home placement for at least one year, the department of child services (department) must file a motion requesting a change in placement and provide notice to the persons affected.

SB 135 Department of child services notifications for schools. Requires the department of child services to notify the individual designated as the point of contact for a child's school if the child is removed from the child's home. Provides immunity from civil liability for: (1) a guardian ad litem program; (2) a court appointed special advocate program; (3) an employee of or volunteer for a guardian ad litem program or court appointed special advocate program; and (4) an individual acting as a contracted guardian ad litem; when a child is placed on a waiting list for guardian ad litem or court appointed special advocate services

SB 404 Operating while intoxicated. Removes the minimum age requirement for a person to be convicted of operating a vehicle while intoxicated causing death, and specifies that the defense to certain operating while intoxicated offenses involving the use of a controlled substance only applies if the defendant consumed the controlled substance in accordance with a valid prescription.

SB 428 Department of child services. Requires the department of child services (department) to describe in a child's case plan any efforts made by the department to coordinate with school officials in developing the case plan, if efforts to coordinate with school officials are made. Requires the department to provide information to the court to be made part of the court record if the department receives information that indicates that a parent, guardian, or custodian may have violated a dispositional order.

SB 381 Children in need of services. Provides that a child who is: (1) a victim of certain offenses; and (2) unlikely to receive necessary care, treatment, or rehabilitation without the intervention of the court; is a child in need of services. Provides that a child who: (1) lives in the same household as an adult who committed an offense against another child who lives in the household that resulted in a conviction or judgment; or (2) lives in the same household as an adult who has been charged with an offense against another child who lives in the household and is awaiting trial; and is unlikely to receive necessary care, treatment, or rehabilitation without the intervention of the court is a child in need of services.

SB 431 Immunity for reports of suspected abuse or neglect. Provides immunity from civil and criminal liability for: (1) a person who assists with or participates; and (2) a health care provider who provides professional intervention; in an investigation by the department of child services resulting from a report that a child may be a victim of child abuse or neglect. Provides that the immunity provisions do not apply (1) to actions brought against qualified health care providers for medical malpractice; or (2) for a person who has acted with gross negligence or willful or wanton misconduct. Provides that: (1) an adult protective services unit conducting an investigation; or (2) a department of child services (department) caseworker conducting an assessment; who observes, or has reason to believe, that an animal is a victim of animal cruelty, abandonment, or neglect may make a report to the local law enforcement agency or local animal control officer. Provides that: (1) an adult protective services unit; or (2) a department caseworker; who makes a report of animal cruelty, abandonment, or neglect is immune from civil and criminal liability. Makes conforming amendments.

Laws you didn't know you needed:

SB24 Student possession and use of sunscreen. Provides that a student may possess and use a topical, non-aerosol sunscreen product while on school property or at a school sponsored event or activity without being required to: (1) have a physician's note or prescription.

SB 65 Instruction on human sexuality. Requires written consent before students may receive instruction on human sexuality.

SB 158 Scleral tattooing. ". Prohibits the act of performing or offering to perform scleral tattooing.