



# Indiana Public Defender Council Juvenile Defense Project

*Improving Juvenile Defense Services in Indiana*

LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

April 8, 2019

## Legislative Update

Time is winding down. This week is a deadline week, and bills must be heard and the committee report submitted to and adopted by the full House (Tuesday, April 9) or Senate (Thursday, April 11). Monday, April 15, 2019 is the last day for 3rd reading of Senate bills in House and Tuesday, April 16, 2019 is the last day for 3rd reading of House bills in the Senate.



Read on to see juvenile delinquency related bills that are still alive.

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## Waiver of 12 and 13 year olds charged with attempted murder.

In response to the Noblesville shooting, Sen. Houchin introduced SB 279 which sailed through the Senate, but has stalled in the House thanks to efforts of the Children's Policy and Law Initiative and many groups that oppose the bill, including IPDC and several national and local organizations.

**SB 279** is assigned to the House Courts and Criminal Code Committee, but has not been scheduled for hearing. See <https://www.theindianalawyer.com/articles/49817-bill-in-response-to-noblesville-school-shooting-stalls-amid-concerns>

Allows presumptive waiver for 12 and 13 year olds charged with attempted murder. Prohibits a person who has been adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony if committed by an adult (serious delinquent) from possessing a firearm unless the person is at least: (1) 26 years of age, in the case of less serious acts; or (2) 28 years of age, in the case of more serious acts. Makes possession of a firearm by a serious delinquent a Class A misdemeanor, and increases the penalty to a Level 6 felony for a second or subsequent offense. Prohibits the expungement of the juvenile records of a serious delinquent unless the person is at least 26 or 28 years of age, depending on the seriousness of the underlying delinquent acts.

**HB 1114 Interfering with law enforcement.** <http://www.iga.in.gov/legislative/2019/bills/house/1114#digest-heading>

Although SB 279 hasn't been scheduled to be heard in Committee, the attempted murder/waiver of 12 and 13 year olds portion of the Bill was added as an amendment to HB 1114 (interfering with law enforcement) on second reading. HB 1114 is scheduled for third reading in the Senate today, April 8th. If it passes, then HB 1114 will go to the conference committee process.

Provides that a person commits interfering with law enforcement, a Class B misdemeanor, if the person enters a crime scene or similar location that is marked off with barrier tape, other markers, or a physical barrier. Increases the penalty if the person uses a vehicle, draws or uses a deadly weapon, or causes injury or death to another person. Provides that resisting or interfering with law enforcement is enhanced to a Level 6 felony if the person uses a vehicle to commit the offense. (Under current law, the felony enhancement to resisting law enforcement applies only if the person flees from law enforcement using a vehicle.) Permits, under certain circumstances, a juvenile court to waive to adult court a child at least 12 years of age who is charged with attempted murder.

Indiana Lawyer ran an article last week explaining these goings on and the controversy around the bill:

[http://mycourts.in.gov/arguments/default.aspx?  
&id=2349&view=detail&yr=&when=&page=1&court=sup&search=&direction=%](http://mycourts.in.gov/arguments/default.aspx?&id=2349&view=detail&yr=&when=&page=1&court=sup&search=&direction=%)

## House Bill 1006

Department of child services. Provides that an older youth who received foster care is eligible to receive collaborative care services until the individual becomes 21 years of age. Provides that the caseload of a family case manager may not be more than: (1) 12 active cases relating to initial assessments; (2) 12 families in active cases relating to ongoing in-home services; or (3) 13 children in active cases relating to ongoing services who are in out-of-home placements. Requires the department of child services (department) to initiate an assessment immediately, but not later than two hours (rather than one hour, under current law), after receiving a report of child abuse or neglect if the department believes the child is in immediate danger of serious bodily harm. Requires the department to provide a report concerning an assessment or investigation of a report of suspected child abuse or neglect not later than 45 days after the department initiates the assessment if the report of suspected child abuse or neglect was received from certain entities. Provides that a child is a child in need of services if the child's parent, guardian, or custodian has failed to supply the child with necessary food, clothing, shelter, medical care, education, or supervision: (1) when the parent, guardian, or custodian is financially able to do so; or (2) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so. (Current code does not consider financial ability.)

## Enrolled Senate Bill 596

Voluntary preventative programs for juveniles. Provides that the Indiana Supreme Court may establish a two-year pilot program to assist juvenile court judges in five Indiana counties in providing voluntary preventative programs for at-risk children. Requires nonjudicial state agencies to assist the Indiana Supreme Court in the implementation of the pilot program. Requires the Supreme Court office of judicial administration to report to the legislative council specified information regarding the pilot program.

<http://iga.in.gov/legislative/2019/bills/senate/596>

## Engrossed Senate Bill 29

School materials for juvenile detainees. Provides that, if a child is or will be detained in a juvenile detention facility (facility) for more than seven calendar days, the school corporation must, upon the child's parent or facility's request, provide to the facility the school materials for the grade level or courses that the child is or would be enrolled in if the child were not detained. Requires the school corporation, upon the child's parent or facility's request, to deliver the school materials at least once every seven calendar days, excluding any days that are not student instructional days.

<http://www.iga.in.gov/legislative/2019/bills/senate/29#digest-heading>

Enrolled Bill: Final copy of a bill or joint resolution which has passed both Houses of Congress in identical form.

Engrossed: Bill that has been prepared in a final form for its submission to a vote of the lawmaking body after it has undergone discussion and been approved by the appropriate committees.



## Caselaw update

### **The Court of Appeals upholds juvenile courts decisions NOT to waive in 2 interlocutory appeals.**

Prof. Joel Schumm successfully represented juveniles from Vigo and Elkhart counties in interlocutory appeals filed by the State. In each case, the issue raised by the State was whether the juvenile court abused its discretion in failing to waive the child to adult court in a presumptive waiver situation. The Court of Appeals found in both that the juveniles had presented evidence that rebutted the presumption in favor of waiver.

The Court of Appeals denied the juveniles' motion to dismiss in both cases and held that the State can challenge a juvenile court's denial of a waiver petition in an interlocutory appeal, but also held the child must be released if not tried within 10 days of the trial court's denial of the waiver petition.

"[W]e read Sections 31-37-11-3 and 35-38-4-2(6) as follows: the State may seek interlocutory review of a juvenile court's denial of a motion to waive jurisdiction, but the juvenile shall be released from custody pursuant to Indiana Code section 31-37-11-7 during the appeal if the ten-day limit is exceeded."

Congrats to Joel and to trial attorneys Angie Grogan and Karrie McClung.

*State of Indiana v. D.R.*, 02/13/19, reh'g pending.

Court of Appeals Case No. 18A-JV-1608

<https://www.in.gov/judiciary/opinions/pdf/02131901jts.pdf>

*State of Indiana v. J.T.*, 04/02/19

Court of Appeals Case No. 18A-JV-1491

<https://www.in.gov/judiciary/opinions/pdf/04021901js.pdf>

## Indiana Supreme Court grants transfer and sets oral argument to decide whether the juvenile court erred by having juveniles appear at their disposition modification hearings via video conference where they did not sign a written waiver of the right to appear at the hearing in person.

C.S., Jr. v. State and Z.T. v. State are both Elkhart County cases in which the juvenile court adjudicated the child delinquent and entered a dispositional order. The court in each case later held a disposition modification hearing at which the juvenile appeared via video conferencing. In each case, the court ordered the juvenile placed in the Indiana Department of Correction.

The Court of Appeals affirmed in each case and held the juvenile's appearance via video conferencing complied with the statute requiring the juvenile be given an opportunity to be heard. See [C.S., Jr. v. State](#), 110 N.E.3d 433 (Ind. Ct. App. 2018), vacated; [Z.T. v. State](#), No. 18A-JV-1656 (Ind. Ct. App. Dec. 5, 2018), vacated.

Oral argument is Thursday, April 25, 2019 at 9:00 AM. Watch it live or recorded at <http://mycourts.in.gov/arguments/default.aspx?&id=2349&view=detail&yr=&when=&page=1&court=sup&search=&direction=%20ASC&future=False&sort=&judge=&county=&admin=False&pageSize=20>

## US Supreme Court will consider impact of Montgomery v. Louisiana on discretionary juvenile LWOP in *Mathena v. Malvo* case

Docket no. 18-217

The US Supreme Court granted cert in the "DC sniper" case.



Issue: Does Malvo deserve a new sentencing under Miller and Montgomery where no judge ever considered whether Malvo's crime represented "irreparable corruption" ?

Lee Boyd Malvo, now 34, was sentenced to life in prison in without parole in 2003 for his role in the 2002 DC area sniper attacks that killed 10 people and injured several others. Malvo worked with John Allen Muhammad, who was 41 at the time of the shootings and who brought Malvo into the country illegally. Muhammed was sentenced to death and executed in 2009. Malvo was 17 years old at the time of the shootings. The jury decided against the death penalty and recommended LWOP.

In 2012, in *Miller v. Alabama*, the Court found that sentencing a child to mandatory life without parole, regardless of the offense, violates the Eighth Amendment because LWOP is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption." In sentencing defendants 17 and younger, judges must consider whether a juvenile's crime reflects "irreparable corruption" or simply "the transient immaturity of youth." In *Montgomery v. Louisiana*, the Court held *Miller* must be retroactively applied.

Some courts have interpreted the rulings to mean that only *mandatory* life without parole laws are unconstitutional, and that those that offer a judge discretion (like Indiana's) are not.

Larry Newton's Petition for Cert is now on hold. *Newton v. Indiana*, 17-1511, asks whether *Miller v. Alabama* applies to discretionary sentences of life without parole imposed for juvenile offenses. Newton has been downgraded to a "hold" for the grant in *Mathena v. Malvo*. According to SCOTUSblog's Relist Watch, this means Newton will get the benefit of a ruling in Malvo's favor, but he Newton will not have an opportunity to make an oral argument or participate in the case except as an amicus.