



Indiana Public Defender Council Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

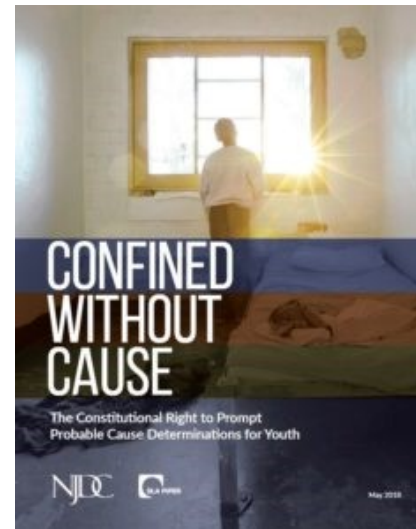
LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

July 2, 2018

A National Juvenile Defender Center issue brief calls for reform to require courts in every jurisdiction to hold juvenile probable cause hearings immediately, and never longer than 48 hours after arrest.

“Confined Without Cause: The Constitutional Right to Prompt Probable Cause Determinations for Youth” <http://njdc.info/wp-content/uploads/2018/05/Confined-Without-Cause.pdf> discusses unique harms to juveniles from detention and argues children must receive a probable cause determination within 48 hours at the very latest.

One of the primary issues noted is the difference among states’ probable cause determination proceedings. The authors observe, despite “well-established U.S. Supreme Court precedent* that the government must make a probable cause determination for detained persons within 48 hours of an arrest,” many states don’t comply with the 48 hour rule, including states (like Indiana) that exclude weekends and holidays in the 48 hour limit.



In this issue

- Juvenile caselaw update
- Added JTIP training July 25th.
- Collaborative effort trains psychologists on juvenile competency evaluations and waiver evaluations.

*Cty of Riverside v. McLaughlin, 500 U.S. 44, 58 (1991)

JUVENILE CASE REVIEW

Indiana Supreme Court Decisions:

Miranda and school interrogations

B.A. v. State, 49S02-1709-JV-567

<https://www.in.gov/judiciary/opinions/pdf/06201801lhr.pdf>
(6/20/18) (Ind.)

Facts: “Here, in response to a bomb threat on a bathroom wall, thirteen-year-old B.A. was escorted from his bus and questioned in a vice-principal’s office. Officers hovered over B.A. and encouraged him to confess, but no one gave him Miranda warnings.” BA moved to suppress the statements and the evidence from his interview, arguing that he was entitled to Miranda warnings and officers ignored Indiana’s juvenile waiver statute. Ind. Code § 31-32-5-1 The trial court denied the motion and found BA delinquent on false reporting, a Level 6 felony if committed by an adult, and institutional criminal mischief, a Class A misdemeanor if committed by an adult.

B.A. appealed and the Court of Appeals affirmed, holding Miranda warnings were not required because the school administrator questioned B.A. for an educational purpose. *B.A. v. State*, 73 N.E.3d 720, 730 (Ind. Ct. App. 2017). The Indiana Supreme Court granted transfer, heard oral argument (October 30, 2017) and issued this decision along with *D.Z. v. State* on June 20th.

Holding: Delinquency adjudication reversed. B.A. was in police custody, under police interrogation, and entitled to Miranda warnings. The Court held, “there is no ‘educational purpose’ exception to Miranda” and when students are placed in custody and interviewed by school resource officers, “officers must give Miranda warnings and follow Indiana’s juvenile waiver statute before asking questions.” The Court rejected a bright line analysis to determine when a student is in custody, but held, Miranda’s “totality of the circumstances” test applies and gave examples of factors that may be relevant, including number of officers present, setting, what the student is told about the interview; length of interview; student’s age; and relationship of the parties. The “interrogation” analysis turns on police knowledge and actions and the suspect’s perceptions.

D.Z. v. State, 18S-JV-295

<https://www.in.gov/judiciary/opinions/pdf/06201802lhr.pdf>
(6/20/18) (Ind.)

In DZ, the Court affirmed the delinquency adjudication where DZ’s questioning was by a school administrator with no police officer present and the Court found the school administrator was not acting as an agent of police in this case.

Facts: Assistant Principal Dowler and School Resource Officer Flynn investigated writing on a school bathroom wall. Dowler called D.Z. into his office for a closed-door discussion. “With only the two of them in the room, Dowler detailed his investigation and said that he knew D.Z. was the culprit. D.Z. remorsefully responded that he didn’t know why he did it, that he knew it was wrong, and that he didn’t have anything against the girls named in the graffiti. Assistant Principal Dowler suspended D.Z. for five days and told Officer Flynn of D.Z.’s confession. Flynn then went into Dowler’s office to talk to D.Z., who again confessed. At the end of that conversation, Flynn told D.Z. that he was being charged with a crime. The next month, the State filed a delinquency petition alleging that D.Z. committed criminal mischief and harassment. At the fact-finding hearing, the parties agreed that D.Z.’s incriminating statements to Officer Flynn should be suppressed since D.Z. was never Mirandized. But they disagreed about the earlier statements to Assistant Principal Dowler. The juvenile court admitted them over D.Z.’s objection.”

DZ appealed and the Court of Appeals reversed, finding the statements to the school administrator should have also been suppressed because D.Z. was under custodial interrogation. *D.Z. v. State*, 96 N.E.3d 595, 599–603 (Ind. Ct. App. 2018).

Holding: Affirmed. The Ind. Supreme Court granted transfer, vacating the Court of Appeals decision, and held “when police officers aren’t present, a clear rule applies: students are neither in custody nor under interrogation, *unless school officials are acting as agents of the police.*” (emphasis added)



Attorneys from both cases, Josh Pollack (BA) and Jeff Ear (DZ) will be presenting at the IPDC annual Juvenile Defender Seminar on November 9th (Indianapolis) on litigating school interrogations after BA and DZ.

J.R. v. State, 18S-JV-285

<https://www.in.gov/judiciary/opinions/pdf/06251801per.pdf>

(6/25/18) (Ind.)



J.R. was found delinquent for committing acts that would be dangerous possession of a firearm and carrying a handgun without a license (“CHWOL”), had they been committed by an adult. On appeal, J.R. argued the pat down search violated his state and federal constitutional rights and that the adjudications on both counts violated double jeopardy.

The Court of Appeals held the pat-down search did not violate J.R.’s rights. Although the parties agreed on the double jeopardy issue and that the adjudication for CHWOL should be vacated, the Court of Appeals sua sponte held as a matter of law, a delinquency adjudication cannot be based on CHWOL. *J.R. v. State*, 89 N.E.3d 408 (Ind. Ct. App. 2017), reh’g granted, 94 N.E.2d 702 (Ind. Ct. App. 2018), vacated. Both sides sought transfer.

The Ind. Supreme Court held oral argument and then summarily affirmed the parts of the Court of Appeals’ original opinion that rejecting J.R.’s challenge to the pat-down search, and because the parties agreed on the double jeopardy violation, remanded to the trial court to vacate the CHWOL. The Court did not affirm the Court of Appeals holding that a delinquency adjudication cannot be based on CHWOL. In a footnote, the Court noted the question of whether a delinquency adjudication can be based on dangerous possession of a handgun (IC 35-47-10-3) because it is not an act that would be an offense if committed by an adult (IC 31-37-1-2), but did not address this issue because the parties did not raise or argue it.

Indiana Public Defender Council (IPDC) Free Regional Juvenile Trainings

2018 Training Schedule

The remaining 2018 IPDC JTIP regional training schedule and can be found on IPDC's website at www.in.gov/ipdc/ Registration will open approximately 6 weeks prior to each training. All IPDC JTIP trainings are free to public defenders handling delinquency cases.



Marion County training added

"To Plea or Not to Plea" July 25

The vast majority of juvenile delinquency cases are resolved by way of an admission to the allegations. Therefore, it is critical that juvenile defense attorneys understand the law related to admissions and pleas, know when and how to advise youth in deciding whether to enter a plea and ensure that youth make only knowing, voluntary and intelligent waiver of the right to trial.

During this 3 hour CLE which includes 1 hour of ethics credit, ethical considerations regarding the defender's obligations to provide effective assistance of counsel during the plea negotiation stage will be explored. Defenders will develop skills and strategies for communicating and negotiating with other stakeholders in the juvenile justice system with the goal of achieving the client's stated outcome.

Defenders will review the advantages and disadvantages of pleas, including long term collateral consequences. And defenders will explore ways to counsel youth clients regarding plea considerations that take into account and overcome developmental barriers that may exist.

July 25 Marion County 1:00-4:30 p.m. (EST)

37 Place
2605 E 25th St
Indianapolis, IN 46218

Register at: <https://goo.gl/forms/uB35NZTpmjuzg1o02>

Collaborative effort trains Indiana psychologists on juvenile competency and waiver evaluations

Last month, forensic clinical psychologist Dr. Antoinette Kavanaugh (<https://drkavanaugh.com/>) trained several Indiana psychologists on juvenile competency evaluations and waiver evaluations at IU McKinney School of Law.

IPDC's Juvenile Defense Project coordinated this collaborative effort. The law school hosted the training. Indiana University School of Medicine handled the registration and got CE approval. JDAI paid for Dr. Kavanaugh and for lunch. Advertising was done through the School of Medicine and JDAI. Joel Wieneke, the Project's Post-Disposition Unit Coordinator, presented sections on juvenile competency and waiver law.

Dr. Kavanaugh stressed throughout the training that psychologists are at a disadvantage and lack adequate guidance because Indiana is one of just a few states that does not have a juvenile competency law in place.

For more information and a list of psychologists attending the training, contact IPDC's Juvenile Defense Project. <https://www.in.gov/ipdc/public/2332.htm>

