



# The Children's Policy and Law Initiative of Indiana 2022 Youth Justice Initiatives

*Policies designed to advance youth justice, protect children in the delinquency system, and disrupt the pipeline from school-to-prison*

**1 Minimum Age for Prosecution:** Indiana has no law establishing a minimum age for juvenile delinquency jurisdiction. Children of any age can be prosecuted in juvenile court. Recently, the Council for State Governments reported to the Indiana Juvenile Justice Reform Taskforce that in 2019, just in the 12 counties that use the Quest case management database, over four hundred children between the ages of 6 to 11 were referred as delinquent children. Children under 12 years old do not belong in the juvenile justice system alongside older children, who range up to 18 years of age. Such placements are not developmentally-appropriate, are harmful to a child's mental health and places them at risk for physical and psychological abuse. Indiana should establish a statutory minimum age for juvenile delinquency jurisdiction; children under the age of 12 should be excluded from the juvenile delinquency system and alternative pathways through education, mental health and child welfare should be pursued for families in crisis.

**A Minimum Age for Juvenile Detention:** In Indiana, there is no minimum age for a child to be held in a secure juvenile detention facility; and, as a result, children under 12 are frequently held in these facilities. The detention of young children has been shown to increase future involvement in crime, disrupt education, expose children to significant risks of violence and abuse, and cause lasting psychological trauma. National experts recommend that states prohibit the detainment of children under the age of 12 in juvenile detention facilities. Young children should be served by a variety of alternative placements or services that are safe, effective, and not harmful.

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**3 Expungement of Juvenile Records:** Last year, the General Assembly passed legislation that provides for the automatic expungement of juvenile delinquency records of adjudications for certain offenses that would be misdemeanors if committed by an adult. As a result, young people will not have to proactively seek an expungement of these records, as it will occur automatically around their 19<sup>th</sup> birthday. While the implementation of this legislation is in progress, the law is silent on two important points. Amending this statute is necessary to ensure a more fair and just application for children.

First, the law does not provide automatic expungement for cases where the young person was never adjudicated a delinquent child, i.e., where the charges were dismissed, found not true, or otherwise not pursued. The statute should be amended to expand the scope to include these records, for a more fair, common-sense result. In addition, the statute as written authorizes the court to deny the automatic expungement, but does not provide for notice and due process for young people who are expecting that their juvenile case would have been expunged automatically. The law should be amended to provide for such a process and better ensure the fairness of automatic expungement proceedings.

## Prohibition of the Use of Deceptive Tactics on Youth in Custodial

**Interrogations:** To elicit confessions, law enforcement officers may lie to suspects they are questioning in custody, including children. Permissible deceptive tactics include lying about the evidence and giving false impressions of leniency if the child admits. Because children’s brains are still developing, their decision-making and future planning abilities are limited. This makes them vulnerable to falling prey to the manipulation of these deceptions and falsely confessing to acts they did not commit. Around the nation, states are taking action to prohibit these psychologically coercive interrogation tactics and safeguard against false confessions. Last year, Illinois became the first state to enact such a law. By prohibiting law enforcement from lying to children they are questioning, Indiana would protect children from falsely incriminating themselves and improve the integrity and reliability of the justice system.

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**Ending Direct File:** Under Indiana Code § 31-30-1-4, a child’s case is automatically filed in adult court based on the offense a prosecutor chooses to charge the child with. This practice of “direct file” strips juvenile court judges of any discretion as to whether that child would be better served by the added protections and rehabilitative aims of the juvenile system. The practice of direct file makes our communities less safe: children placed in the adult system have 34% more re-arrests, and are re-arrested at faster rates and for more dangerous crimes than children who enter the juvenile system. Ending direct file would mean that no child in Indiana would be prosecuted in adult court without a proper hearing before a judge.

## What does this have to do with racial disparities?

**Setting a Minimum Age:** Black children are 2 times as likely as their white peers to be referred and 3 times as likely to be adjudicated delinquent. *Council on State Governments*

**Ending Direct File:** 70% of the children directly filed to adult court are Black, though Black youth make up only 35% of youth in juvenile court. *Indiana Criminal Justice Institute 2018/2019 data*

**Abolishing Juvenile Life Without Parole:** 42.4% of juvenile life without parole sentences are imposed on Black youth, though Black youth make up only 23.2% of juvenile arrests for murder. *The Sentencing Project*

**Right of Children in Detention Facilities to Have Access to Family:** Among the traumas experienced by children held in detention facilities is separation from their families, often for weeks or even months at a time. They struggle to access their families and loved ones, sometimes by virtue of their inability to afford the cost of phone calls or other means of communication. Contact and communication with their parents, guardians, and other loved ones is critical for their wellbeing and development. Moreover, children’s success in the community relies in part on the strength of their family and community relationships, making family engagement for detained youth all the more essential. Family visitation leads to less behavioral incidents for detained youth, and thus safer and less stressful detention environments. Indiana law should ensure the rights of detained children to have contact with families through in person visitation and phone calls or virtual visits, consistent with the Juvenile Detention Alternatives Initiative Detention Assessment Standards, which are designed to improve conditions of confinement in juvenile detention facilities. Enacting such fundamental protections, will improve outcomes by strengthening family engagement and creating more humane conditions and equitable treatment for detained youth.

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**7 Abolish Juvenile Life Without Parole:** The United States is the only country in the world that sentences children to life without parole. In recent years, the United States Supreme Court has written decisions reducing the number of children who receive this sentence, holding that except in cases where the juvenile demonstrates “irreparable corruption,” the practice qualifies as “cruel and unusual punishment.” Consequently, many states have abolished the practice entirely. Life sentences are inappropriate for children because (1) children’s lack of cognitive development makes them less culpable for their actions; (2) life without parole is a harsher punishment for a child, as the child has more life left to live; and (3) studies show that children are significantly more capable of rehabilitation than adults. It is impossible to determine whether a child is irreparably corrupt. The time has come for Indiana to abolish this cruel and inhumane practice.

**8 End Costs and Fees for Juvenile Prosecution:** In Indiana, parents can be held in contempt of the court for failing to pay exorbitant fines and fees associated with their child’s prosecution. Parents have been ordered to pay as much as \$52,276. *In Matter of C.K.* One single mother was ordered to pay \$8,000, despite the fact that she can only afford to pay \$20 a month and will be paying the debt for the next 35 years. *J.T. v. State.* The practice of levying these fines on families creates an onerous hardship and defeats the rehabilitative function of the juvenile court system.

**9 Protecting the Privacy of Children in Delinquency Proceedings:** Despite the prevalent understanding that juvenile court proceedings are supposed to be confidential and protective of the identities of the children involved, under Indiana law many delinquency proceedings are open to the public and the records created are public documents. Specifically, any case involving a child charged with an act that would be a felony level offense or a multiple of misdemeanor level offenses, had they been an adult, the name of the child, as well as most of the documents, are legally available to the public. In the modern age of information exchange created by the internet, these records can create permanent histories that will impact the lives of the children in these proceedings forever. To protect the children and prevent unwarranted lifelong consequences, Indiana should require the use of initials in the documents released to the public in delinquency proceedings for any child, and prevent the release of the identity of child victims as well.

**10 Sentence Modifications for Crimes Committed by Persons Less Than 18 Years of Age:** In Indiana, when a child is convicted of a crime, the sentencing laws that apply to adults generally apply to children in the same fashion despite the broadly accepted recognition that children are categorically less culpable than adults. They are less culpable due to their developmental stage, and they are more impulsive, more susceptible to peer pressure, unable to control their environments, and less likely to understand or consider the lasting consequences of their actions, both on their own lives and others. At sentencing, trial courts may give some mitigating weight to the reality that the offense was committed by a child; yet mandatory minimum sentences and sentencing enhancements can result in children receiving extremely long sentences, which can exceed the reasonable life expectancy of the child or just seem extremely harsh given the reality of the child’s life circumstances. Moreover, children are more likely to respond to rehabilitation than adults, and our criminal laws are supposed to be based on principles of reformation. Indiana does not have a process for discretionary parole release, and for most serious offenses, sentence modification opportunities are limited and can be vetoed by the prosecutor. In recognition of the distinct characteristics of children which make them less culpable and more likely to change, there should be in Indiana law a special process for sentence modification for children convicted of crimes. Over the last decade, several other states have provided a meaningful opportunity for children at the time of their offense to demonstrate they have been rehabilitated and deserving of release.