



## The Children's Policy and Law Initiative of Indiana

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

### **Senate Bill 340** *Multi-Issue Youth Justice Legislation*

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

**1 Interrogations:** Prohibits the use of statements elicited from children during a custodial interrogation if the law enforcement officer or school resource officer “knowingly” lies to the child about evidence of the act, or the potential consequences. Currently, 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.

#### **Right of Children in Detention Facilities to Have Access to Family:**

Provides for weekly in person visits unless extraordinary circumstances prevent, and for a minimum of two (2) free phone calls of at least ten (10) minutes. 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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**Protecting the Identities of Children in Juvenile Court:** Limits public access to acts that would be murder or a felony, and requires the use of initials on documents that may be released to the public, both for the child facing delinquency allegations and victims. 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. Such a change would serve the rehabilitative purposes of Indiana’s juvenile delinquency code.

**Requiring the State to Prove that the Coercive Intervention of the Court is Necessary for Low-Level Offenses:**

Requires allegation and proof that the child needs care, treatment, or rehabilitation that the child is not receiving. and likely not to receive, without the coercive intervention of the court for misdemeanor delinquent offenses (except for firearm misdemeanors). The requirement for proof of these additional elements is already a part of juvenile status offenses. Similar to status offenses, low-level delinquent conduct can often be addressed by parental or school response to the delinquent behavior. The juvenile court, and participants which refer cases to the juvenile court (probation officers and prosecutors), should have legislative guidance that unnecessary justice system involvement should be avoided.

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**Ending Juvenile Life Without Parole and Raising the Age of Mitigation of Youth in Adult Court Proceedings:**

Removes sixteen (16) and seventeen (17) year-olds from the punishment of life without parole, and raises the statutorily listed age for mitigation of youth in murder proceedings from the age of eighteen (18) to twenty-five (25). 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.

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## **Sentence Modifications for Crimes Committed by Persons Less Than 18 Years of Age:**

Creates a sentence modification procedure which applies only to persons convicted of crimes committed before reaching the age of eighteen (18), that allows for judicial modification in cases after sentences served fifteen (15) years. 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. 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, there should be a special process for sentence modification in Indiana law for children convicted of crimes. Over the last decade, several other states have provided a meaningful opportunity for children to demonstrate they have been rehabilitated and deserving of release after having served designated time on their sentences.

**7 Requiring a Hearing for All Children Before They Can be Prosecuted in Adult Criminal Court:** Deletes the process for direct file into adult court, which shifts the process of transferring children to adult court to the waiver statutory process. 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 the 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.

## **Legislative Alert: Update on SB 340 as of January 14, 2022**

[SB 340](#) is now in the Senate Corrections and Criminal Law Committee, and a hearing has not been set. The committee is chaired by Senator Mike Young. Call or email Senator Young's legislative assistant, Madalynn Conner (317/232-9517, [Madalynn.Conner@iga.in.gov](mailto:Madalynn.Conner@iga.in.gov)) to speak to the senator today. Tell him that protecting children through this bill is important to you, and ask him to hear the bill. Also send emails to committee members seeking their support for a hearing. Click [here](#) for committee member contact information.