



CHILDREN'S POLICY AND LAW INITIATIVE OF INDIANA

Raising the Age of Waiver:

Our Children are Worth Far more than the Worst Decision They Have Ever Made

We should stop treating juvenile offenders as if they were adults, prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow.

2012 Report of U.S. Attorney General Eric Holder's National Task Force on Children Exposed to Violence

Background Information

Hundreds of laws recognize that children need more protection and supervision than adults. Children can't live on their own, get married, drink alcohol, get a tattoo, or ditch school because they are immature, impulsive, and lack the capacity to fully assess the consequences of their actions. For these same reasons, the American juvenile justice system was established more than a century ago. Unlike the adult criminal system, the goal of the juvenile system is rehabilitation and treatment, not retribution and punishment.

Indiana's current juvenile code allows children as young as 12 to be waived to adult court when they are accused of an act that would be murder if committed by an adult. For attempted murder – a Level 1 Felony – the code requires that a child be at least 14 years old to be waived into the adult system.

In the face of mounting scientific evidence that children and adults are fundamentally different in how they make decisions, many states across the country are transferring fewer children to adult court and raising the age of criminal responsibility.

In the third annual report by Indiana Criminal Justice Institute for the State Fiscal Year 2020 (July 1, 2019 - June 30, 2020) there were 23 juvenile cases waived to adult court, accounting for 14 types of offenses.

- Just over half of all waiver cases have resulted in a guilty conviction, as of October 1, 2020.
- The most common sentence received was prison. Prison sentences ranged from 1 to 55 years, with an average sentence of 9 years. Several youth also received probation, ranging in length from 1 to 7 years. Approximately 33% of guilty cases had a portion of their sentence suspended.
- Half of the cases involved Black children, 40% were White and 10% were Hispanic.
- The youngest individuals waived to adult court were fourteen years old, which accounted for 10% of the total. Fifteen, sixteen and seventeen-year-olds each made up 30%.

Prosecuting youth in adult courts and incarcerating them in adult facilities is:

Discriminatory: In 2017, Black youth were 55% of those youth transferred to adult court by juvenile court judges in the U.S. Similarly, Indiana data consistently indicates high levels of disproportionality in waiver and transfer decisions. (Indiana Criminal Justice Institute Annual Reports 2017-20)

Harmful: It's difficult to protect children in the adult system from physical abuse and mental trauma. Children in the adult system are more likely to experience physical and sexual abuse, commit suicide, and be exposed to prolonged periods of solitary confinement.

Contradicted by science: Adolescent brain development research shows that youth are more likely than adults to be permanently traumatized by harsh adult system realities. Youth are also more likely to respond positively to rehabilitation available in the juvenile system.

Impeding the Child's Opportunity to Evolve: Children are more capable of fundamental change than adults. Science has shown us that children have the capacity for fundamental change as they mature. Placing children in the adult system denies them the opportunity to evolve. Brain areas involved in desire and fear are not fully developed until age 17, and brain areas involved in reasoning and self-control are not fully developed until the mid-20's. For this reason, other countries have raised the threshold age to the adult court system to 21 and even 25. Comprehensive and age-appropriate approaches receive wide support across the political spectrum, including from conservative groups such as the American Legislative Exchange Council, R Street Institute, and the James Madison Institute.

A Barrier to Re-integration: The court records created in the adult system have more lasting collateral consequences that can serve as insurmountable barriers to children who hope to become productive community members.

A failed policy: Research tells us that youth who are prosecuted in the adult system are 34% more likely to recidivate, and they are re-arrested at faster rates and with more violent offenses than those handled by the juvenile system.

ACTION

Indiana should pass legislation to raise the minimum age of waiver from 12 to 16 years old and keep youth in juvenile court where there is an opportunity for the youth's individual needs to be considered before the collateral consequences associated with an adult court record are imposed. The adult criminal justice system was not created to serve youth. Prosecuting, sentencing, and incarcerating youth as adults will never serve the best interests of youth, and data indicates that it is both costly and harmful to the community and public safety.