

Kids In Adult Court

Honorable Nancy L. Gettinger
Magistrate, LaPorte County Circuit Court

- A little bit of history...just enough to give you a backdrop from which can understand what is going on today.
- Waiver of juveniles into adult court....that is youth under 18 who end up in adult rather than juvenile court...and I am also including what we refer to as direct file case, that are actually not waivers, but another way kids get into adult court and we will talk about that more in few minutes.
- The different types of waivers in Indiana. I want you to understand that it is not a question of one size fits all and there are a couple of different circumstances under which a child might be waived into adult court.
- I will talk just a little bit about the procedure or process involved in getting kids waived
- Current trends or ways of thinking about this process.

What I Hope To Cover Today....

- The right to receive notice of charges
- The right to obtain legal counsel
- The right to confrontation and cross-examination
- The privilege against self-incrimination
- The right to receive a transcript of the proceedings, and
- The right to have an appellate court review the lower court's decision.

U.S. Supreme Court Establishes Constitutional Rights for Juveniles.....

1. Concurrent jurisdiction laws allow prosecutors discretion on whether they file a case in juvenile or criminal court. We do not have anything like that in Indiana.
2. Statutory exclusion laws grant criminal courts original jurisdiction over certain classes of cases involving juveniles. We do have that within our statute in Indiana and we refer to those as "direct file" cases. Those cases never darken the doorstep of the juvenile court.
3. And the third type are judicial waiver or transfer laws authorize or require juvenile court judges to remove certain youth from juvenile court jurisdiction to be tried as adults in criminal court. This is pretty much what we have in Indiana. In our state there are two categories for judicial waiver: permissive or presumptive.

Three Types of "Transfer" Laws In US

IC 31-30-1-4

Juvenile court lacks jurisdiction if...

(1) Child is at least 16 years of age

(2) Alleged to have committed the following

- a. IC 35-41-5-1(a) (attempted murder);
- b. IC 35-42-1-1 (murder);
- c. IC 35-42-3-2 (kidnapping);
- d. IC 35-42-4-1 (rape);
- e. IC 35-42-4-2 (criminal deviate conduct);
- f. IC 35-42-5-1 (robbery) if:
 - 1. the robbery was committed while armed with a deadly weapon; or
 - 2. the robbery results in bodily injury or serious bodily injury;
- g. IC 35-42-5-2 (carjacking);
- h. IC 35-45-9-3 (criminal gang activity);
- i. IC 35-45-9-4 (criminal gang intimidation);
- j. IC 35-47-2-1 (carrying a handgun without a license), if charged as a felony;
- k. IC 35-47-10 (children and firearms), if charged as a felony;

“Direct File”

IC 35-47-5-4.1

Dealing in a sawed-off shotgun

-- OR --

**Any offense that may be joined under with any
crime listed above**

“Direct File”

- Child is arrested
 - How old is the child?
 - At least 16?
 - Is the child going to be charged with one of the crimes listed in the statute?
- If the answers are yes, then it is a direct file in adult criminal court
 - Child does not come to juvenile court
 - Child is likely detained in the jail
 - May bond out

Process For Direct File

- Prosecutor reviews the police report, may talk to victims, the probation department, etc. and decides to file a Petition Alleging Delinquency and asks the court to authorize the filing.
 - If the child is detained, must occur within seven (7) days, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody.
 - Does the child meet the criteria for a presumptive or permissive waiver?
 - Does the prosecutor want to seek waiver? does not require court authorization.
- Then prosecutor files a petition asking for waiver of juvenile court jurisdiction
- Court holds a hearing twenty (20) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed, if the child is detained.
- If court grants waiver, the child is transferred to the jail and the prosecutor files the charging information.
- If waiver is denied, the court proceeds to Fact-Finding on the Delinquency Petition within 10 days.

Process For Filing In Juvenile Court

IC 31-37-11-1

If a child is in detention, a petition alleging delinquency must be filed not later than seven (7) days, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody

IC 31-37-11-2

If a child is in detention; and a petition has been filed a fact-finding hearing or a waiver hearing must be commenced not later than twenty (20) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed.

If a child is not in detention and a petition has been filed the hearing must be commenced not later than sixty (60) days excluding Saturdays, Sundays, and legal holidays, after the petition is filed.

Timelines...

IC 31-37-11-3

If waiver is denied, the fact-finding hearing must be commenced not later than ten (10) days, excluding Saturdays, Sundays, and legal holidays, after the denial.

Timelines...

IC 31-30-3-2
Heinous or aggravated act,
or act as part of repetitive pattern of delinquent acts

After a full investigation and hearing, the juvenile court **may** waive jurisdiction if :

- (1) the child is charged with an act that is a felony that is heinous or aggravated, with greater weight given to acts against the person than to acts against property
- (2) is a part of a repetitive pattern of delinquent acts, even though less serious
- (3) the child was at least fourteen (14) years of age when the act charged was allegedly committed
- (4) there is probable cause to believe that the child committed the act; and
- (5) the child is beyond rehabilitation under the juvenile justice system

AND

- (6) it is in the best interests of the safety and welfare of the community that the child stand trial as an adult.

Permissive Waiver

IC 31-30-3-3

Act that would be felony relating to controlled substances

After a full investigation and a hearing, the court may waive jurisdiction if it finds that:

- (1) the child is charged with an act that, if committed by an adult, would be a felony under IC 35-48-4;
(Offenses Relating to Controlled Substances)
- (2) there is probable cause to believe that the child has committed the act;
- (3) the child was at least sixteen (16) years of age when the act was allegedly committed; and
- (4) it is in the best interests of the safety and the welfare of the community for the child to stand trial as an adult.

Permissive Waiver

- Case specific and fact sensitive
- Child has the burden that he should not be waived, but prosecutor beware
- The seriousness of the crime along with demeanor, public security
- What the juvenile court has to offer in terms of rehabilitation.
- Age of the child...if now 18 what can probation do?
- Escalation of behaviors
- Motive
- Remorse

Factors To Consider...

IC 31-30-3-4

Act that would be murder

Upon motion of the prosecuting attorney and after full investigation and hearing, the juvenile court shall waive jurisdiction if it finds that:

(1) the child is charged with an act that would be murder if committed by an adult

(2) there is probable cause to believe that the child has committed the act and

(3) the child was at least ten (10) years of age when the act charged was allegedly committed...

unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

Presumptive Waiver

IC 31-30-3-5

Acts that would be Class A or Class B felonies, involuntary manslaughter, or reckless homicide

Sec. 5. Except for those cases in which the juvenile court has no jurisdiction in accordance with IC 31-30-1-4, the court shall, upon motion of the prosecuting attorney and after full investigation and hearing, waive jurisdiction if it finds that:

- (1) the child is charged with an act that, if committed by an adult, would be:
 - (A) a Class A or Class B felony, except a felony defined by IC 35-48-4;
 - (B) involuntary manslaughter as a Class C felony under IC 35-42-1-4; or
 - (C) reckless homicide as a Class C felony under IC 35-42-1-5;
- (2) there is probable cause to believe that the child has committed the act;
and
- (3) the child was at least sixteen (16) years of age when the act charged was allegedly committed;

unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

Presumptive Waiver

IC 31-30-3-6

Act that would be felony and prior felony or non-traffic Misdemeanor conviction

Upon motion by the prosecuting attorney, the juvenile court shall waive jurisdiction if it finds that:

The child is charged with an act which would be a felony if committed by an adult **and the child has previously been convicted** of a felony or a non-traffic misdemeanor.

Presumptive Waiver

IC 31-30-1-2

Applicability of juvenile law to certain offenses

The juvenile law does not apply to the following:

-- a child who is alleged to have committed an act that would be a felony if committed by an adult and has previously been waived under IC 31-30-3 to a court having felony jurisdiction.

Presumptive Waiver

Miller v. Alabama

Miller became part of a quartet of cases decided in recent years in which the U.S. Supreme Court said that juveniles who commit crimes are different than adults, and that difference should be recognized.

Roper v. Simmons

The death penalty for defendants who committed the criminal act while under the age of eighteen was abolished. As any parent knows," wrote Justice Anthony Kennedy for the 5-4 majority, youths are more likely to show "a lack of maturity and an underdeveloped sense of responsibility" than adults. "... These qualities often result in impetuous and ill-considered actions and decisions." He also noted that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," causing them to have less control over their environment.

U.S. Supreme Court Cases

Graham v. Florida

In 2010, the Court held that it was Cruel and Unusual Punishment to sentence a juvenile to life without a parole for a non-homicide crime

J.D.B. v. North Carolina

In 2011, courts were directed that the admissibility of confessions and the comprehension of *Miranda* warnings had to be analyzed in terms of the child's age.

U.S. Supreme Court Cases

- Adolescent brain development
- More severe and determinate sentences
- More treatment options in juvenile court
- Stigma
- Sealing and expunging records harder

Advocate's Concerns For Youth In Adult Court

- Minors have the right to a jury trial in adult court
- Juries in adult court may be more sympathetic to a minor.
- Juveniles can bond out.
- In some jurisdictions where dockets and jails are crowded, the court may be inclined to dispose of the juvenile's case more quickly and impose a lighter sentence.
- Since treatment dollars are limited, should we not concentrate on using those dollars for kids who truly are amenable to rehabilitation?

Positive Aspects Of Waiver

If I can be of further assistance or answer any specific questions I would be happy to do so.

Nancy L. Gettinger

LaPorte Circuit Court

ngettinger@laportecounty.org

Contact Information