

President – Tony GiaQuinta, MD, FAAP
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Executive Director – Christopher Weintraut, JD



January 28, 2020

The Honorable Michael Young
Indiana Statehouse
200 W. Washington Street
Indianapolis, Indiana 46204-2797

Dear Members of the Senate Corrections and Criminal Law Committee,

SB 449 would reduce the age from 14 years old to 12 years old for when a child may be tried in adult court for the offense of attempted murder, and it would require the child to bear the evidentiary burden against waiver. I am testifying as a pediatrician, as Co-Chairperson of the Legislative Committee of the Indiana Chapter of the American Academy of Pediatrics and as the mother of 2 boys. I hope to provide a framework that acknowledges the biological impacts of adversity without suggesting that childhood adversity is destiny. As the professional organization that represents over 800 pediatricians across the state of Indiana we urge you to oppose SB 449 which is an expansion of waiver of children to adult court. Increased access to the adult criminal justice system is not an effective deterrent to delinquent behavior by children. We believe that in the interests of better outcomes for children and their community, whenever possible, juvenile offenders should be treated in the juvenile justice system. Trying and sentencing children in the adult system is not an age appropriate, developmentally-appropriate or trauma informed justice response to youth in trouble with the law and will not improve public safety.

We know that youth have unique needs that our specialized juvenile system is designed to and equipped to handle¹: Twelve and thirteen-year-olds who are likely victims of trauma themselves are not well served and in fact can be made worse in the Adult Court, where punishment, and not rehabilitation, is the primary purpose of incarceration. The juvenile justice system is specially equipped to provide services and support to children and families with the goal of rehabilitation, and juvenile jurisdiction can extend to age 21 for children adjudicated under the age of 18 in appropriate cases. Available services for children range from treatment in the community to commitment to the Indiana Department of Correction/Division of Youth Services, and can include residential treatment facilities to address specific needs and behaviors as well as evidence-based, juvenile specific programming that is not available to children in the adult system. These services are designed so that our juvenile court judges can individually assess each youth before them and make a case-specific determination of the needs of each child and family. This type of individual assessment and treatment is categorically not available in the adult system.

¹ Meservey, F. & Skowyra, K. (2015). Caring for Youth with Mental Health Needs in the Juvenile Justice System: Improving Knowledge and Skills. National Center for Mental Health and Juvenile Justice. <https://www.ncmhjj.com/wp-content/uploads/2015/05/OJJDP-508-050415-FINAL.pdf>



Research in adolescent development shows that children are more amenable to treatment and intervention. In the adult system, children are not afforded services that provide opportunities to mitigate toxic stress, acquire critical skills, competencies and experiences essential to their success as adults. In contrast, programs specifically designed for healthy development are available in the juvenile system, and rehabilitation is the driving goal. Further,

including “attempted offenses” to apply to listed offenses under the Direct File Statute will greatly increase the number of sixteen and seventeen-year-olds who are automatically transferred into adult court upon filing of charges by a prosecutor with no judge involved in that decision. Youth at this age still have developing brains that are very resilient in the right settings with stable, protective adult relationships but this is clearly not the adult court or justice system. These youth need education, skills training and stable adult relationships in order to be rehabilitated and decrease recidivism and improve public safety.

We know that once a child is waived over to adult court, the child is often held in advance of trial in adult jails, exposed to adult offenders, or placed in isolation (solitary confinement) to protect them from assaults from older inmates. We know the permanent and detrimental impacts of solitary confinement on mental and physical health and brain development. The statistics that follow are even more concerning and add to these negative impacts.

According to the Equal Justice Initiative (EJI), children are five times more likely to be sexually assaulted in adult facilities than in juvenile facilities. It is unacceptable to put any child or youth in an environment with this level of risk.

Children held in adult facilities are up to 9 times more likely to commit suicide. The Equal Justice Initiative believes “prison confinement of children with adults is indefensible, cruel and unusual, and it should be banned.” <https://eji.org/children-prison/children-adult-prisons>

Waiving/Transferring children does not deter crime². Children who are tried in adult court experience much higher recidivism rates than children handled in the juvenile justice system or in systems of restorative justice. Research shows they are 34% more likely to commit additional and more violent offenses than those children treated for similar offenses in the juvenile system. Higher recidivism rates of youth in the adult

² Centers for Disease Control and Prevention. Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services, (2007). Available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>; University of California, Los Angeles (UCLA) School of Law. The impact of Prosecuting Youth in the Criminal Justice System: A Review of the Literature, 2010. Available at http://www.antonioacasella.eu/restorative/UCLA_july2010.pdf.



system can be attributed to a variety of reasons, including lack of rehabilitative services in the adult system and the dangers discussed previously that arise from housing youth in the adult jail environment causing further toxic stress to developing brains. We know that Adverse Childhood Events alter us at the molecular (epigenetics) level which drives changes in brain connectivity, which result in physiologic and behavioral changes, stemming from what we call toxic stress “prolonged activation of stress response systems in the absence of protective relationships”, which causes negative adaptations that allow us to manage a toxic world and help us to survive in a fight or flight mode not in a self controlled, regulated, socially connected way.

Increased recidivism is also impacted by the collateral consequences of an adult criminal conviction that disadvantages youth’s opportunities and undermines communities.³ A felony conviction is a hard thing to overcome and can follow these youth, placing barriers to obtaining school loans, education, employment, joining the military, housing, voting and other essential aspects of rehabilitation into a successful life. As a consequence, these children are more likely to reoffend once they are released as they have no hope, social capital or stable protective adult relationships.

Expanding waiver law to younger children raises cognitive development issues and correspondingly juvenile competence to stand trial. Youth do not have the same intellectual or emotional capacities as adults; and younger children experience greater risk that they would not be competent to stand trial. It is clear that children who are 12 and 13-year-old do not understand due process and how to protect their rights through the judicial process, even in the juvenile system. Moreover, children that age are seriously challenged to understand conditions and long term impact that exist in order to make a decision if they are presented with a plea agreement while in adult court. At ages 12 to 14, cognitive capability is limited, and is even more compromised if there is serious trauma in the child's life. We know that trauma can render the brain less capable of making the complex decisions that arise during adult prosecutions as the prefrontal cortex or organizing area is impacted and the fight or flight instinct overwhelms long term planning and self control.

Finally, research shows that waiver and transfer policies disproportionately impact minority youth, especially those living in urban communities. Transfer and Waiver to Adult Court disproportionately impacts children of color. Nationwide, 52% of cases in Adult Court involve African American children. Here in Indiana in 2017-18, 69% of all cases filed pursuant to the Direct File Statute involve African American children. We need to provide services to mitigate and reverse the impact of poverty and trauma and to provide restorative justice to all of our youth.

³ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, (2011).

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The Indiana Chapter of the American Academy of Pediatrics opposes any effort that will exacerbate the mass incarceration of youth of color.

These proposed changes found in SB 449 are in response to what an extremely small number of children ever do, and even these children who commit serious crimes are capable of rehabilitation, in many ways that an adult is not. We should never throw children's lives away, nor abandon public policies that have shown to keep communities safe. Having raised two boys, I know kids do stupid things, and they do not think through the consequences baseline but this is especially true of youth exposed to trauma or adverse childhood events. Caring, protective adults must think about how this impacts all children, their futures, and their potential to live productive adult lives and be a stable part of our communities. To improve public safety we need to build healthy children and stop fixing broken adults in all of our programs especially the juvenile justice system.

Sincerely,

Sarah Stelzner, MD, FAAP
Advocacy Co-Chair
Indiana Chapter of the
American Academy of Pediatrics