

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 368

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-30-3-12 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) The following definitions apply throughout this section:**

(1) "**Juvenile arrestee**" means a child who:

- (A) is less than eighteen (18) years of age;
- (B) has been charged as an adult; and
- (C) is awaiting trial, sentencing, or other legal process.

(2) "**Sight or sound contact with adult inmates**" means any:

- (A) physical;
- (B) clear visual; or
- (C) verbal;

contact between a juvenile arrestee and an adult inmate that is not brief and inadvertent.

(b) A juvenile arrestee who is housed in a secure facility may not be held in:

- (1) an adult facility, except as provided in IC 31-37-7-2; or
- (2) a facility that permits sight or sound contact with adult inmates;

unless a court finds, after a hearing, that it is in the best interests of justice for the juvenile arrestee to be housed in an adult facility

SEA 368 — Concur



or a facility permitting sight or sound contact with adult inmates. If a court orders a juvenile arrestee to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court shall issue its decision in writing.

(c) In making a determination under subsection (b), the court shall consider:

- (1) the age of the juvenile arrestee;**
- (2) the physical and mental maturity of the juvenile arrestee;**
- (3) the present mental state of the juvenile arrestee, including whether the juvenile arrestee presents an imminent risk of harm to the arrestee or others;**
- (4) the nature and circumstances of the alleged offense;**
- (5) any prior history of delinquent or criminal acts of the juvenile arrestee;**
- (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as the safety of other detained youth; and**
- (7) any other relevant factors.**

(d) If a court determines it is in the best interests of justice for the juvenile arrestee to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court may order that the juvenile arrestee be held in an adult facility or a facility permitting sight or sound contact with adult inmates for not more than one hundred eighty (180) days.

(e) The court may extend the one hundred eighty (180) day period described in subsection (d) for one (1) or more additional sixty (60) day periods, if the court finds, in writing, that there is good cause to extend the juvenile arrestee's placement in an adult facility or a facility permitting sight or sound contact with adult inmates. However, the juvenile arrestee may waive the good cause requirement if the juvenile arrestee prefers to keep the same placement.

(f) If the court orders a juvenile arrestee to be held under subsection (d) or (e), the court shall hold a hearing at least one (1) time every thirty (30) days to review whether it is still in the interests of justice to house the arrestee in the adult facility or the facility permitting sight or sound contact with adult inmates.

SECTION 2. IC 31-37-11-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2022]: Sec. 11. If a child is found to be competent after a competency evaluation is ordered, the

SEA 368 — Concur



factfinding hearing must be commenced within the period specified by section 2 of this chapter. The date the petition is considered to be filed is the date when the child is found to be competent.

SECTION 3. IC 31-37-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2022]:

Chapter 26. Competency

Sec. 1. (a) This chapter applies to a delinquency proceeding brought pursuant to IC 31-37-1 through IC 31-37-3.

(b) In computing time under this chapter, Saturdays, Sundays, and legal holidays are not included in the computation if the time prescribed is less than fifteen (15) days.

Sec. 2. The following definitions apply throughout this chapter:

(1) "Competent" and "competency" mean the present ability of a child to:

(A) understand the nature and objectives of a proceeding against the child; and

(B) assist in the child's defense.

(2) "State institution" has the meaning set forth in IC 12-7-2-184.

Sec. 3. If, at any time before disposition, a court has reasonable grounds to believe that a child is not competent, the court shall order the child to undergo a competency evaluation as described in section 4 of this chapter, unless the child is represented by counsel and waives the competency evaluation.

Sec. 4. (a) If the court orders a competency evaluation under section 3 of this chapter, the court shall appoint one (1) disinterested person to evaluate the child's competency. However, if a party requests the appointment of an additional person to conduct an evaluation, the court shall appoint a second disinterested person to evaluate the child's competency.

(b) A person appointed under subsection (a) may be a:

(1) psychiatrist; or

(2) psychologist endorsed by the Indiana state board of examiners in psychology as health service providers in psychology;

who has expertise in determining competency in juveniles.

(c) The court shall order the competency evaluation to be performed in a location or facility that, consistent with the nature of the case and the best interests and needs of the child:

(1) imposes the fewest restrictions on the freedom of the child and the child's parent, guardian, or custodian;



(2) interferes the least with family autonomy and family life; and

(3) is as close as practicable to the home of the parents, guardian, or custodian, consistent with the best interests and special needs of the child.

The department shall not be responsible for the payment of a competency evaluation.

(d) Not later than seven (7) days from the date the court appoints a person to conduct a competency evaluation, the juvenile probation department shall provide the person appointed to conduct the competency evaluation with all relevant files in the possession of the probation department, including any preliminary investigatory records and a copy of the delinquency allegations.

(e) A person appointed to conduct a competency evaluation may consider any relevant information.

(f) Not later than fourteen (14) days upon completion of the competency evaluation, the person who conducted the evaluation shall provide a written report to the court and to all attorneys of record. The competency report shall include the following:

(1) The opinion of the person who conducted the competency evaluation as to the child's ability to understand the nature and objectives of the proceeding against the child.

(2) The opinion of the person who conducted the competency evaluation as to the child's ability to assist in the child's defense.

(3) If a person who conducted the competency evaluation determined that the child is not competent, a:

(A) description of the child's need for services; and

(B) recommendation concerning the least restrictive setting and treatment that would assist in restoring the child's competency.

The competency report may not contain any statement from the child relating to the alleged delinquent act.

Sec. 5. As soon as practicable after receiving the written competency evaluation, the court shall determine whether the child is competent for adjudication or disposition. Upon a motion by any party, the court shall conduct a hearing to determine competency.

The child has:

(1) the right to notice;

(2) the opportunity to participate personally at the hearing;

(3) the right to present evidence; and

(4) the right to be represented by counsel. If the child is



indigent, the court shall appoint counsel for the child.

The party alleging that the child is not competent has the burden of proving that the child is not competent by a preponderance of the evidence.

Sec. 6. (a) If the court determines that the juvenile is competent, the court shall proceed with the delinquency proceedings as provided by law. No statement that a child makes during an evaluation or hearing conducted under this chapter may be used against the child in any juvenile or adult proceeding.

(b) If the court determines that the juvenile is not competent, the court shall determine whether the child may attain competency within:

(1) one hundred eighty (180) days, if the child is alleged to have committed an act that would be a felony if committed by an adult; or

(2) ninety (90) days, if the child is alleged to have committed an act that would not be a felony if committed by an adult.

(c) If the court determines that the juvenile is not competent and will not attain competency within the relevant time periods as described in subsection (b), the court shall:

(1) dismiss the allegations without prejudice; or

(2) delay dismissing the allegations for not more than ninety (90) days and:

(A) refer the matter to the department and request that the department determine whether the child may be a child in need of services; or

(B) order a probation officer to:

(i) refer the child or the child's family to an entity certified or licensed by the division of mental health and addiction, or the bureau of developmental disabilities services; or

(ii) otherwise secure services to reduce the potential that the child will engage in behavior that could result in delinquent child or other criminal charges.

If the court determines that the options described in subdivisions (1) and (2) are not in the best interests of the child, the court may, if it appears to the court that a child is mentally ill, refer the matter to the court having probate jurisdiction for civil commitment proceedings under IC 12-26 or initiate a civil commitment proceeding under IC 12-26.

(d) If the court determines that the juvenile is not competent but is reasonably likely to attain competency within the relevant time



periods as described in subsection (b), the court may order the child to participate in services, other than a state institution, specifically designed to help the child attain competency, to be paid by the department subject to the requirements described in IC 31-37. If the court orders the child to receive competency attainment services, the court shall:

(1) identify a qualified provider to deliver the competency attainment services; and

(2) order a probation officer to contact that provider by a specified date to arrange for services.

(e) Not later than ten (10) days after the court identifies the qualified competency attainment services provider as described in subsection (d), the court shall transmit to the provider a copy of each competency assessment report it has received for review. The provider shall return the copies of the reports to the court upon the termination of the services.

(f) Not later than thirty (30) days after the probation officer contacts the competency attainment services provider under subsection (d), the provider shall submit to the court a competency attainment plan for the court's approval. If the court approves the plan, the court shall provide copies of the plan to the prosecuting attorney, the child's attorney, the child's guardian ad litem, if any, and the child's parents, guardian, or custodian.

(g) Competency attainment services provided to a child are subject to the following conditions and time periods measured from the date the court approves the plan:

(1) Services shall be provided in the least restrictive setting that is consistent with the child's ability to attain competency, and the safety of both the child and the community. If the child has been released on a temporary or interim order and refuses or fails to cooperate with the provider, the court may reassess the order and amend it to require a more appropriate setting.

(2) No child may be required to participate in competency attainment services for longer than is required for the child to attain competency. In addition, if a child is:

(A) in a nonresidential setting, the child may not be required to participate for more than:

(i) ninety (90) days if the child is charged with an act that would not be a felony if committed by an adult; or

(ii) one hundred eighty (180) days if the child is charged with an act that would be a felony or murder if



committed by an adult;

(B) in a residential setting that is operated solely or in part for the purpose of providing competency attainment services, the child may not be ordered to participate for more than:

- (i) forty-five (45) days if the child is charged with an act that would not be a felony if committed by an adult;**
- (ii) ninety (90) days if the child is charged with an act that would be a Level 4, Level 5, or Level 6 felony if committed by an adult; or**
- (iii) one hundred eighty (180) days if the child is charged with an act that would be murder or a Level 1, Level 2, or Level 3 felony if committed by an adult; and**

(C) in a residential, detention, or other secured setting where the child has been placed for reasons other than to participate in competency attainment services, but where the child is also ordered to participate in competency attainment services, the child may not be required to participate for more than:

- (i) ninety (90) days if the child is charged with an act that would not be a felony if committed by an adult; or**
- (ii) one hundred eighty (180) days if the child is charged with an act that would be a felony or murder if committed by an adult.**

(h) The provider that provides the child's competency attainment services shall submit reports to the court as follows:

(1) The provider shall report on the child's progress every thirty (30) days, and upon the termination of services. The report may not include any details of the alleged offense as reported by the child.

(2) If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community, the provider shall report this to the court within three (3) days of the determination.

(3) If the provider determines that the child has achieved the goals of the plan and is able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, with or without reasonable accommodations, the provider shall issue a report informing the court of that determination within three (3) days of the determination. If the provider believes that accommodations



are necessary or desirable, the report shall include recommendations for accommodations.

(4) If the provider determines that the child will not achieve the goals of the plan within the applicable period of time under this section, the provider shall issue a report informing the court of the determination within three (3) days of the determination. The report shall include recommendations for services for the child that would support the safety of the child or the community.

(i) The court shall provide a copy of any report received under subsection (h) to the following:

- (1) The prosecuting attorney.
- (2) The attorney representing the child.
- (3) The child's guardian ad litem, if any.
- (4) The child's parent, guardian, or custodian, unless the court finds that providing a copy of the report is not in the best interests of the child.

(j) Not later than fifteen (15) days after receiving a report under subsection (h), the court may hold a hearing to determine if it should issue a new order. The court may order a new competency evaluation if the court believes that it may assist the court in making its determination. The child shall continue to participate in competency attainment services until a new order is issued or the required period of participation ends.

(k) If, following a hearing held under subsection (j), the court determines that the child has not or will not attain competency within the relevant period of time under subsection (g), the court shall:

- (1) dismiss the allegations without prejudice; or
- (2) delay dismissing the allegations for not more than ninety (90) days and:
 - (A) refer the matter to the department and request that the department determine whether the child may be a child in need of services; or
 - (B) order a probation officer to:
 - (i) refer the child or the child's family to an entity certified or licensed by the division of mental health and addiction, or the bureau of developmental disabilities services; or
 - (ii) otherwise secure services to reduce the potential that the child will engage in behavior that could result in delinquent child or other criminal charges.



If the court determines that the options described in subdivision (1) or (2) are not in the best interests of the child, the court may, if it appears to the court that a child is mentally ill, refer the matter to the court having probate jurisdiction for civil commitment proceedings under IC 12-26 or initiate a civil commitment proceeding under IC 12-26.

(l) If, following a hearing held under subsection (j), the court determines that the child is competent, the court shall proceed with the delinquency proceedings as described in subsection (a).

(m) Allegations dismissed under subsections (c) and (k) do not preclude:

(1) a future proceeding against the child if the child eventually attains competency; or

(2) a civil action against the child based on the conduct that formed the basis of the allegations against the child.

(n) A referral made under subsection (c) or (k) does not establish an obligation on the division of mental health and addiction, a state institution, or the bureau of developmental disabilities services to provide services to a referred child.

(o) Proceedings under this chapter do not toll the time limits under IC 31-37-11-5.

SECTION 4. IC 31-39-8-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3.5. **(a) This section does not apply to the records of a child adjudicated a delinquent child for committing an act that would be:**

(1) a felony if committed by an adult;

(2) a violation of IC 35-47-2; or

(3) a violation of IC 35-47-10.

(b) This section applies to the records of a child adjudicated a delinquent child after June 30, 2021.

(c) When a child reaches nineteen (19) years of age, or one (1) year after the date on which the juvenile court discharges the child under IC 31-37-20-7, whichever is later, the court shall, on its own motion and without holding a hearing, order expungement of the records relating to the child's delinquency adjudication that are not excluded under subsection (a) within sixty (60) days, unless the court finds, based on the nature of the delinquent act and the needs of the child, that automatic expungement under this section would not serve the interests of justice.

(d) The expungement provisions in this section supplement and are in addition to expungement provisions located elsewhere in this



chapter. A person entitled to expungement of delinquency records under this section may also seek expungement under any other applicable section of this chapter.

SECTION 5. IC 31-39-8-6, AS AMENDED BY P.L.86-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. (a) Subject to subsections (b) and (c), the records shall be destroyed upon a grant of an expungement petition by the court, **including an expungement order issued under section 3.5 of this chapter.**

(b) Data from the records in subsection (a) shall be maintained by the court on a secure data base that does not enable identification of the offender to the public or another person not having legal or statutory authority to access the records.

(c) The records maintained in the data base under subsection (b) may be used only for statistical analysis, research, and financial auditing purposes.

SECTION 6. IC 31-41-2-1, AS ADDED BY P.L.66-2015, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. After a juvenile court has determined that a child is a dual status child, the juvenile court ~~shall~~ **may** refer the child to be assessed by a dual status assessment team **after:**

- (1) considering the reports provided pursuant to IC 31-34-7-2 or IC 31-37-8-5; or**
- (2) making a determination pursuant to IC 31-34-10-2(e) or IC 31-37-12-2(e).**

However, all children identified as a dual status child under IC 31-41-1-2(1) through IC 31-41-1-2(3), or IC 31-41-1-2(6), shall be referred to the dual status assessment team.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 368 — Concur

