



February 12, 2021

SENATE BILL No. 368

DIGEST OF SB 368 (Updated February 9, 2021 1:45 pm - DI 106)

Citations Affected: IC 31-30; IC 31-37; IC 31-39.

Synopsis: Juvenile justice. Provides for the automatic expungement of certain juvenile offenses. Prohibits a juvenile arrestee who meets certain requirements from being housed with adult inmates prior to trial, with certain exceptions. Establishes a procedure for determining juvenile competency. Makes conforming amendments.

Effective: July 1, 2021; July 1, 2023.

Tallian, Breaux

January 12, 2021, read first time and referred to Committee on Corrections and Criminal Law.
February 11, 2021, amended, reported favorably — Do Pass.

SB 368—LS 6947/DI 106



February 12, 2021

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 BILL No. 368

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

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

1 SECTION 1. IC 31-30-3-12 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 12. (a) As used in this section, "juvenile arrestee"**
4 **means a child who:**
5 (1) **is less than eighteen (18) years of age;**
6 (2) **has been charged as an adult; and**
7 (3) **is awaiting trial, sentencing, or other legal process.**
8 (b) **A juvenile arrestee who is housed in a secure facility may not**
9 **be held in:**
10 (1) **an adult facility, except as provided in IC 31-37-7-2; or**
11 (2) **a facility that permits sight contact with adult inmates;**
12 **unless a court finds, after a hearing, that it is in the best interests**
13 **of justice for the juvenile arrestee to be housed in an adult facility**
14 **or a facility permitting sight contact with adult inmates. If a court**
15 **orders a juvenile arrestee to be housed in an adult facility or a**
16 **facility permitting sight contact with adult inmates, the court shall**
17 **issue its decision in writing.**

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

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

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

22 (e) The court may extend the one hundred eighty (180) day
23 period described in subsection (d) for another one hundred eighty
24 (180) days if the court finds, in writing, that there is good cause to
25 extend the juvenile arrestee's placement in an adult facility or a
26 facility permitting sight contact with adult inmates. However, the
27 juvenile arrestee may waive the good cause requirement if the
28 juvenile arrestee prefers to keep the same placement.

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

34 SECTION 2. IC 31-37-11-11 IS ADDED TO THE INDIANA
35 CODE AS A NEW SECTION TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2021]: **Sec. 11. If a child is found to be**
37 **competent after a competency evaluation is ordered, the**
38 **factfinding hearing must be commenced not later than ten (10)**
39 **business days after the competency determination.**

40 SECTION 3. IC 31-37-26 IS ADDED TO THE INDIANA CODE
41 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2023]:



1 **Chapter 26. Competency**

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

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

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

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

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

12 **(B) assist in the child's defense.**

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

15 **Sec. 3. If:**

16 **(1) a child is less than fourteen (14) years of age; or**

17 **(2) at any time before disposition, a court has reasonable**
 18 **grounds to believe that a child is not competent;**

19 **the court shall order the child to undergo a competency evaluation**
 20 **as described in section 4 of this chapter, unless the child is**
 21 **represented by counsel and waives the competency evaluation.**

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

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

29 **(1) psychiatrist; or**

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

33 **who has expertise in determining competency in juveniles and who**
 34 **is not an employee or a contractor of a state institution.**

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

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

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

42 **(3) is as close as practicable to the home of the parents,**



- 1 guardian, or custodian, consistent with the best interest and
 2 special needs of the child.
- 3 (d) Not later than seven (7) days from the date the court
 4 appoints a person to conduct a competency evaluation, the juvenile
 5 probation department shall provide the person appointed to
 6 conduct the competency evaluation with all relevant files in the
 7 possession of the probation department, including any preliminary
 8 investigatory records and a copy of the delinquency allegations.
- 9 (e) A person appointed to conduct a competency evaluation may
 10 consider any relevant information.
- 11 (f) Not later than fourteen (14) days upon completion of the
 12 competency evaluation, the person who conducted the evaluation
 13 shall provide a written report to the court and to all attorneys of
 14 record. The competency report shall include the following:
- 15 (1) The opinion of the person who conducted the competency
 16 evaluation as to the child's ability to understand the nature
 17 and objectives of the proceeding against the child.
- 18 (2) The opinion of the person who conducted the competency
 19 evaluation as to the child's ability to assist in the child's
 20 defense.
- 21 (3) If a person who conducted the competency evaluation
 22 determine that the child is not competent, a:
- 23 (A) description of the child's need for services; and
 24 (B) recommendation concerning the least restrictive setting
 25 and treatment that would assist in restoring the child's
 26 competency.
- 27 The competency report may not contain any statement from the
 28 child relating to the alleged delinquent act.
- 29 Sec. 5. (a) As soon as practicable after receiving the written
 30 competency evaluation, the court shall determine whether the child
 31 is competent for adjudication or disposition. Upon a motion by any
 32 party, the court shall conduct a hearing to determine competency.
 33 The child has:
- 34 (1) the right to notice;
 35 (2) the opportunity to participate personally at the hearing;
 36 (3) the right to present evidence; and
 37 (4) the right to be represented by counsel. If the child is
 38 indigent, the court shall appoint counsel for the child.
- 39 Except as provided in subsection (b), the party alleging that the
 40 child is not competent has the burden of proving that the child is
 41 not competent by a preponderance of the evidence.
- 42 (b) There is a presumption that a child less than eleven (11)



1 years of age is not competent, and the party alleging that the child
 2 is competent has the burden of proving by a preponderance of the
 3 evidence that the child is competent.

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

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

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

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

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

20 **(1) dismiss the allegations without prejudice; or**

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

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

26 **(B) order a probation officer to:**

27 **(i) refer the child or the child's family to an agency**
 28 **funded by the division of mental health and addiction, or**
 29 **an agency funded by the bureau of developmental**
 30 **disabilities services; or**

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

34 **(d) If the court determines that the juvenile is not competent but**
 35 **is reasonably likely to attain competency within the relevant time**
 36 **periods as described in subsection (b), the court may order the**
 37 **child to participate in services specifically designed to help the**
 38 **child attain competency, to be paid by the department. If the court**
 39 **orders the child to receive competency attainment services, the**
 40 **court shall:**

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



- 1 **(2) order a probation officer to contact that provider by a**
 2 **specified date to arrange for services.**
- 3 **(e) Not later than ten (10) days after the court identifies the**
 4 **qualified competency attainment services provider as described in**
 5 **subsection (d), the court shall transmit to the provider a copy of**
 6 **each competency assessment report it has received for review. The**
 7 **provider shall return the copies of the reports to the court upon the**
 8 **termination of the services.**
- 9 **(f) Not later than thirty (30) days after the child contacts the**
 10 **competency attainment services provider under subsection (d), the**
 11 **provider shall submit to the court a competency attainment plan**
 12 **for the court's approval. If the court approves the plan, the court**
 13 **shall provide copies of the plan to the prosecuting attorney, the**
 14 **child's attorney, the child's guardian ad litem, if any, and the**
 15 **child's parents, guardian, or custodian.**
- 16 **(g) Competency attainment services provided to a child are**
 17 **subject to the following conditions and time periods measured from**
 18 **the date the court approves the plan:**
- 19 **(1) Services shall be provided in the least restrictive setting**
 20 **that is consistent with the child's ability to attain competency,**
 21 **and the safety of both the child and the community. If the**
 22 **child has been released on a temporary or interim order and**
 23 **refuses or fails to cooperate with the provider, the court may**
 24 **reassess the order and amend it to require a more appropriate**
 25 **setting.**
- 26 **(2) No child may be required to participate in competency**
 27 **attainment services for longer than is required for the child to**
 28 **attain competency. In addition, if a child is:**
- 29 **(A) in a nonresidential setting, the child may not be**
 30 **required to participate for more than:**
- 31 **(i) ninety (90) days if the child is charged with an act that**
 32 **would be a misdemeanor if committed by an adult; or**
 33 **(ii) one hundred eighty (180) days if the child is charged**
 34 **with an act that would be a felony or murder if**
 35 **committed by an adult;**
- 36 **(B) in a residential setting that is operated solely or in part**
 37 **for the purpose of providing competency attainment**
 38 **services, the child may not be ordered to participate for**
 39 **more than:**
- 40 **(i) forty-five (45) days if the child is charged with an act**
 41 **that would be a misdemeanor if committed by an adult;**
 42 **(ii) ninety (90) days if the child is charged with an act**



- 1 that would be a Level 4, Level 5, or Level 6 felony if
 2 committed by an adult; or
 3 (iii) one hundred eighty (180) days if the child is charged
 4 with an act that would be murder or a Level 1, Level 2,
 5 or Level 3 felony if committed by an adult; and
 6 (C) in a residential, detention, or other secured setting
 7 where the child has been placed for reasons other than to
 8 participate in competency attainment services, but where
 9 the child is also ordered to participate in competency
 10 attainment services, the child may not be required to
 11 participate for more than:
 12 (i) ninety (90) days if the child is charged with an act that
 13 would be a misdemeanor if committed by an adult; or
 14 (ii) one hundred eighty (180) days if the child is charged
 15 with an act that would be a felony or murder if
 16 committed by an adult.
 17 (h) The provider that provides the child's competency
 18 attainment services shall submit reports to the court as follows:
 19 (1) The provider shall report on the child's progress every
 20 thirty (30) days, and upon the termination of services. The
 21 report may not include any details of the alleged offense as
 22 reported by the child.
 23 (2) If the provider determines that the current setting is no
 24 longer the least restrictive setting that is consistent with the
 25 child's ability to attain competency and the safety of both the
 26 child and the community, the provider shall report this to the
 27 court within three (3) days of the determination.
 28 (3) If the provider determines that the child has achieved the
 29 goals of the plan and is able to understand the nature and
 30 objectives of the proceeding against the child and to assist in
 31 the child's defense, with or without reasonable
 32 accommodations, the provider shall issue a report informing
 33 the court of that determination within three (3) days of the
 34 determination. If the provider believes that accommodations
 35 are necessary or desirable, the report shall include
 36 recommendations for accommodations.
 37 (4) If the provider determines that the child will not achieve
 38 the goals of the plan within the applicable period of time
 39 under this section, the provider shall issue a report informing
 40 the court of the determination within three (3) days of the
 41 determination. The report shall include recommendations for
 42 services for the child that would support the safety of the child



1 or the community.

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

4 (1) The prosecuting attorney.

5 (2) The attorney representing the child.

6 (3) The child's guardian ad litem, if any.

7 (4) The child's parent, guardian, or custodian, unless the court
8 finds that providing a copy of the report is not in the best
9 interests of the child.

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

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

21 (1) dismiss the allegations without prejudice; or

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

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

27 (B) order a probation officer to:

28 (i) refer the child or the child's family to an agency
29 funded by the division of mental health and addiction, or
30 an agency funded by the bureau of developmental
31 disabilities services; or

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

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

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

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

42 (2) a civil action against the child based on the conduct that



1 formed the basis of the allegations against the child.

2 **(n) Proceedings under this chapter do not toll the time limits**
3 **under IC 31-37-11.**

4 SECTION 4. IC 31-39-8-3.5 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2021]: **Sec. 3.5. (a) This section does not apply to the records of**
7 **a child adjudicated a delinquent child for committing an act that**
8 **would be:**

9 **(1) a felony if committed by an adult; or**

10 **(2) a violation of IC 35-47-10.**

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

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

22 **(d) The expungement provisions in this section supplement and**
23 **are in addition to expungement provisions located elsewhere in this**
24 **chapter. A person entitled to expungement of delinquency records**
25 **under this section may also seek expungement under any other**
26 **applicable section of this chapter.**

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

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

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



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 368, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 13 with "[EFFECTIVE JULY 1, 2023]".

Page 1, delete lines 1 through 17.

Delete pages 2 through 5.

Page 6, delete lines 1 through 26.

Page 7, delete lines 35 through 42.

Delete pages 8 through 10.

Page 11, delete lines 1 through 5.

Page 11, line 34, delete "chapter." and insert "**chapter, unless the child is represented by counsel and waives the competency evaluation.**".

Page 11, line 36, delete "two (2) or more" and insert "**one (1)**".

Page 11, line 37, delete "persons" and insert "**person**".

Page 11, line 37, after "competency." insert "**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.**".

Page 12, line 14, delete "persons" and insert "**a person**".

Page 12, line 15, delete "persons" and insert "**person**".

Page 12, line 22, delete "persons" and insert "**person**".

Page 12, line 25, delete "persons" and insert "**person**".

Page 12, line 28, delete "persons" and insert "**person**".

Page 12, line 31, delete "one (1) or more persons" and insert "**a person**".

Page 12, line 37, delete "evaluation" and insert "**report**".

Page 12, line 39, after "Sec. 5." insert "**(a)**".

Page 13, line 6, delete "a public defender or" and insert "**counsel for the child.**".

Page 13, delete line 7.

Page 13, line 8, delete "The party" and insert "**Except as provided in subsection (b), the party**".

Page 13, between lines 10 and 11, begin a new paragraph and insert:

"(b) There is a presumption that a child less than eleven (11) years of age is not competent, and the party alleging that the child is competent has the burden of proving by a preponderance of the



evidence that the child is competent."

Page 13, line 33, delete "assign court staff" and insert "**order a probation officer**".

Page 14, line 8, delete "the child's parent, guardian, or custodian" and insert "**a probation officer**".

Page 14, line 35, delete "is ordered to" and insert "**is:**".

Page 14, delete lines 36 through 37.

Page 14, line 38, delete "outside of a residential" and insert "**in a nonresidential**".

Page 16, line 36, delete "assign court staff" and insert "**order a probation officer**".

Page 17, delete lines 13 through 42, begin a new paragraph and insert:

"SECTION 5. 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; or

(2) 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), 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."

Page 18, delete lines 1 through 19.

Page 18, delete lines 33 through 42.

Delete pages 19 through 29.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to SB 368 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 6, Nays 1.

