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Testimony from:

Alan Smith, Midwest Director & Senior Fellow, R Street Institute

In SUPPORT of SB 368, A BILL FOR AN ACT  
to amend the Indiana code regarding criminal law and procedure

March 24, 2021

Courts and Criminal Code Committee

Chairman McNamara, Vice-Chair Schaibley, Ranking Minority Member Hatcher, and members of the House Courts and Criminal Code Committee:

My name is Alan Smith, and I am a senior fellow and Midwest Director at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, specifically including prosecutorial reform, which is why SB 368 is of particular interest to us.

There is no more important responsibility of lawmakers than to protect their citizens, and particularly children. Sen. Tallian has authored comprehensive legislation to accomplish several objectives, which together further distinguish children from adults in the criminal justice system, based on extensive research and common sense.

First, Indiana is one of only five states that do not distinguish between adults and children insofar as competency to stand trial is concerned. It makes no sense to develop assessment measures based on mental capacity to recognize right and wrong and not apply them equally to folks whose brains are not even fully developed until their mid-20s.<sup>1</sup> The *International Journal of Environmental Research and Public Health* reported in 2016 that up to 80 percent of incarcerated youth suffer from a mental health disorder.<sup>2</sup> Rather than having an opportunity to receive the care they need, children with mental health needs and intellectual disabilities often face a juvenile delinquency process in order to obtain critical services.

Second, both research and common sense suggest that children have no place in adult jails, even while awaiting trial. However, children as young as 12 years old who are waived into adult court can be housed with adult criminals before trial. According to the American Bar Association, children who are incarcerated as adults can have higher recidivism rates.<sup>3</sup> Moreover, violence toward them is even more

dangerous. A 2009 report by the National Prison Rape Elimination Commission found that youth in adult facilities are at a high risk of being physically or sexually assaulted.<sup>4</sup> To avoid the expected assaults, youth are often placed in conditions akin to solitary confinement and the isolation begets its own brand of anti-social behavior or puts children at risk of depression, self-harm and suicide.<sup>5</sup> Making matters worse, youth in adult facilities often have little to no access to developmentally-appropriate services suited to the unique needs of children.

For all of the reasons above, the bipartisan reauthorization of the Juvenile Justice and Delinquency Prevention Act in 2018 was specifically enacted by Congress to prevent this. Indiana will lose hundreds of thousands of dollars in federal funding if this change is not made in the 2021 legislative session.

Lastly, automatic expungement of juvenile records may be the critical pivot point in a minor's life because of the lasting impediment to employment, housing, education, financial aid, military service and many other types of vocational training. Currently, there is a wide discretion invested in courts regarding what convictions are expungable and uniformity would serve the public much better. It is also true that the burden of a conviction is often carried in perpetuity merely because of the hurdle of hiring legal counsel to assist with expungement.

There are other technical provisions in the bill and we endorse them all, but clearly the above features are most important for a modern system of juvenile justice.

I respectfully request this letter to be included as part of the public hearing record.

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<sup>1</sup> See, e.g., Richard Bonnie et al., eds., "Adolescent Development," in *Reforming Juvenile Justice: A Developmental Approach* (The National Academies Press, 2013), pp. 89-99.

<sup>2</sup> See, e.g., Lee Underwood and Aryssa Washington, "Mental Illness and Juvenile Offenders," *International Journal of Environmental Research and Public Health* 13:228 (2016), p. 3. <https://www.mdpi.com/1660-4601/13/2/228>.

<sup>3</sup> Nicole Scialabba, "Should Juveniles Be Charged As Adults in the Criminal Justice System," American Bar Association, Oct. 3, 2016. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults>.

<sup>4</sup> "National Prison Rape Elimination Commission Report," National Prison Rape Elimination Commission, June 2009, pp. 69-71. <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>5</sup> Joy Lepola, "Juveniles charged as adults potentially face dangerous conditions at detention centers," Fox News Baltimore, Sept. 6, 2018. <https://foxbaltimore.com/features/operation-crime-justice/juveniles-charged-as-adults-potentially-face-dangerous-conditions-at-detention-centers>; See, e.g., Allison Hastings et al., "Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails," National PREA Resource Center, April 2014, pp. 6, 13. <https://www.prearesourcecenter.org/sites/default/files/library/keepingvulnerablepopulationssafeunderpreaapril2015.pdf>; Donna Ruch, "Characteristics and Precipitating Circumstances of Suicide Among Incarcerated Youth," *Journal of the American Academy of Child and Adolescent Psychiatry* 58:5 (2019), pp. 514-24. <https://www.sciencedirect.com/science/article/abs/pii/S0890856719300437>; "Growing Up Locked Down: Youth in

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Solitary Confinement in Jails and Prisons Across the United States,” American Civil Liberties Union and Human Rights Watch, 2012, pp. 23-47. <https://www.aclu.org/files/assets/us1012web-wcover.pdf>.