IN THE
INDIANA SUPREME COURT

No. 19A-JV-255

C.J., *Appellant-Defendant*, v. STATE OF INDIANA, *Appellee-Plaintiff*.	Appeal from the Marion Superior Court, No. 49D09-1810-JD-1192, The Honorable Geoffrey Gaither, Judge.

PETITION TO TRANSFER

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QUESTIONS PRESENTED ON TRANSFER

Whether the Court of Appeals published opinion, holding that a *Miranda* advisement in full compliance with the juvenile waiver statute is inconsequential in determining the voluntariness of a juvenile waiver of rights, is in conflict with this Court's opinion in *D.M. v. State*, 949 N.E.2d 327 (Ind. 2011).

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This Court should accept jurisdiction as the Court of Appeals departed from *D.M.'s* guidance on how to analyze the voluntariness of a juvenile *Miranda* waiver where no inappropriate or unconstitutional State action occurred. The published opinion creates a near insurmountable obstacle that will greatly hamper the State's ability to investigate allegations of juvenile delinquency, without corresponding benefit. The opinion ignores law enforcement action and permits an after-the-fact totality of the circumstances analysis to swallow the holding of *D.M.* Practically, this means law enforcement will be unable to conduct investigations because they have no clear guidelines for speaking with juveniles. This Court should grant transfer and reverse the Court of Appeals.

BACKGROUND AND PRIOR TREATMENT OF ISSUES

C.J., A.J., and A.T. lived with C.J.'s Mother and Stepfather, *C.J. v. State*, No. 19A-JV-255, slip. op. at 2 (Ind. Ct. App. Jan. 23, 2020). In October of 2018, 11-year old A.J. walked into a bedroom and saw that his 12 year old brother, C.J., had his face very close to their 4 year old sister's bottom while the sister, A.T., had her pants pulled down and was "standing like a dog" (Tr. Vol. II 34). A.J. told Mother, who called a crisis hotline and took her children to the hospital so that A.T. could undergo a sexual assault assessment. *C.J.*, slip. op. at 2. Hospital staff contacted the Department of Child Services as well as law enforcement, who spoke with Mother at the hospital and arranged for Mother to bring her children to the police department the following day for a series of interviews. *Id.*, slip. op. at 2-3.

When Mother brought her children to the police station, C.J. was placed in an interrogation room. While waiting to be interviewed, C.J. "sprawled on the floor, curled up into his shirt, drummed on the seat of a chair, sang, and played with his sock." *Id*. slip. op. at 3. Detective McAllister and Mother then entered the room and McAllister chatted with C.J. for a few moments until telling C.J. "hey man, I think you know why you're here today" in reference to C.J.'s actions with A.T. the night before. *Id*. McAllister told C.J. that it was C.J.'s decision whether he wanted to talk, and McAllister then read a waiver of rights form to C.J. and Mother. *Id*. The waiver of rights form stated that:

> Before we ask you any questions, you must understand your rights.
>
> 1. You may have one or both of your parents present.
>
> 2. You have the right to remain silent.
>
> 3. Anything you say can be used as evidence against you in court.
>
> 4. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.
>
> 5. If you cannot afford a lawyer and you want one, one will be appointed for you by the court before questioning.
>
> 6. If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You will also have the right to stop answering at any time until you talk to a lawyer.

(State's Ex. 1). McAllister read each line of the waiver form to Mother and C.J., waited for them to acknowledge they understood before moving on, and allowed them to ask questions regarding the form. *Id*. slip. op. at 4. On several occasions during the explanation of the waiver of rights, C.J. asked McAllister questions

about his rights, which McAllister answered. *Id*. C.J. and Mother were then provided time to consult privately concerning the decision to waive rights, and after consulting, C.J. and his Mother waived his rights (State's Ex. 1). *Id*.

During the ensuing interview, C.J. told McAllister that he touched and licked A.T.'s bottom, that he might have touched her vagina, and that he knew he would get in trouble when A.J. walked in on him. *Id*. slip. op. at 6. C.J. admitted that he knew better and characterized his behavior as wrong. *Id*.

At C.J.'s fact finding hearing, the State moved to introduce C.J.'s statement to law enforcement, and C.J. objected (Tr. Vol. II 51). C.J. argued that his mother was not free from adverse interest under the juvenile waiver statute, that there was no evidence C.J. had committed any crime, and that C.J. could not provide a knowing and voluntary statement based on his intelligence (Tr. Vol. II 51). The trial court overruled C.J.'s objection based on "the testimony today in its totality" (Tr. Vol. II 52).

In its discussion, the Court of Appeals properly recognized the application of Indiana Code section 31-32-5-1, the juvenile waiver statute, as explained by this Court in *D.M.*, stating:

> First, both the juvenile and his or her parent must be adequately advised of the juvenile's rights. Second, the juvenile must be given an opportunity for meaningful consultation with his or her parent. Third, both the juvenile and his or her parent must knowingly, intelligently, and voluntarily waive the juvenile's rights. Finally, the juvenile's statements must be voluntary and not the result of coercive police activity.

Id., slip. op. at 9-10 (citing *D.M.*, 949 N.E.2d at 334). The Court of Appeals determined that the State must prove beyond a reasonable doubt that C.J. received all the protections listed in the juvenile waiver statute, and that both C.J. and Mother knowingly, intelligently, and voluntarily executed the waiver—ultimately concluding that C.J.'s waiver was not knowing, intelligent, and voluntary. *Id*. slip. op. at 10-14.

The Court of Appeals determined that the State did not prove beyond a reasonable doubt that C.J. and Mother waived his right to remain silent. The Court based its conclusion on several factors. The Court concluded that: A) C.J.'s juvenile behavior while alone in the interrogation room "was not that expected of someone who understands he is being questioned about a serious crime;" B) C.J. was not specifically told what crime and or statute he was suspected of having violated, thus there was "no evidence C.J. recognized he was being asked about criminal activity during the interrogation;" C) the State "failed to make the additional showing required by *Berghuis*" that C.J. understood his rights, and that; D) C.J. and Mother had a brief, private conversation prior to their decision to waive *Miranda*, the brevity of which cast doubt on whether C.J. understood his rights because "we expect people facing consequential decisions to take time to contemplate their options before making a decision." *Id*., slip. op. at 10-14.

ARGUMENT

By relying on behavior common to juveniles, the Court of Appeals creates an insurmountable obstacle to showing voluntariness of juvenile waiver.

Juveniles, like adults, may waive their rights and talk with law enforcement. However, juveniles are treated differently when deciding whether a waiver is valid. Here, the Court of Appeals applied the special protections to juveniles while at the same time expecting the juvenile to talk and act like an adult. It is precisely because we do not expect juveniles to talk and act like adults that special protections are in place. In the published opinion below, the Court of Appeals has held that juveniles must act like adults before a waiver will be valid, ensuring that juveniles cannot validly waive their rights and talk to law enforcement.

Law enforcement officers are required to inform the subject of a custodial interrogation that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). In Indiana, the *Miranda* rights of juveniles are granted additional procedural safeguards before they may be waived. *See* I.C. § 31-32-5-1(2). Those safeguards provide that a juvenile's *Miranda* rights may be waived only:

> 2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:
>
> (A) that person knowingly and voluntarily waives the right;
> (B) that person has no interest adverse to the child;
> (C) meaningful consultation has occurred between that person and the child; and
> (D) the child knowingly and voluntarily joins with the waiver.

I.C. § 31-32-5-1(2). As this Court explained in *D.M.*, a juvenile's statements may only be admitted during the State's case-in-chief under the following conditions:

> First, both the juvenile and his or her parent must be adequately advised of the juvenile's rights. Second, the juvenile must be given an opportunity for meaningful consultation with his or her parent. Third, both the juvenile and his or her parent must knowingly, intelligently, and voluntarily waive the juvenile's rights. Finally, the juvenile's statements must be voluntary and not the result of coercive police activity.

D.M. v. State, 949 N.E.2d at 334. The validity of a juvenile *Miranda* waiver is determined by looking at the totality of the circumstances, which includes a consideration of:

> 1) the juvenile's physical, mental, and emotional maturity;
> 2) whether the juvenile or his parent understood the consequences of speaking with law enforcement;
> 3) whether the juvenile and his parent were informed of the delinquent act for which the juvenile was suspected;
> 4) the length of time the juvenile was held in custody before consulting with his parent;
> 5) whether law enforcement used any force, coercion, or inducement, and;
> 6) whether the juvenile and his parents had been advised of the juvenile's Miranda rights.

D.M., at 339-40.

While the Court of Appeals applied this methodology, it compared C.J. to an adult in his situation rather than evaluating his behavior as that of a 12 year-old boy. When properly evaluated, the totality of the evidence shows that C.J. in consultation with his Mother waived his rights. The opinion does not identify any improper action by law enforcement, but instead—despite clear evidence that C.J. listened to his rights, asked questions about his rights, spoke with Mother about his

rights, and chose to waive his rights—concludes that C.J. was not able to understand and waive his rights. *Id.* slip. op. at 10-14. This opinion is in conflict with *D.M.* because *D.M.* evaluates the appropriateness of police conduct in providing a juvenile *Miranda* waiver, while this opinion ignores police conduct and focuses solely on whether the juvenile—irrespective of a proper waiver explanation—was able to understand that waiver under the totality of the circumstances. As such, this opinion effectively allows an after-the-fact totality of the circumstances analysis to swallow *D.M.'s* clear four-part test governing the admission of a juvenile statement following a proper advisement and waiver.

A. C.J.'s physical, mental, and emotional maturity and understanding of consequences.

The Court of Appeals found that C.J. did not voluntarily waive his *Miranda* rights in part because of the manner in which C.J. behaved while alone in the interrogation room and while answering questions. The Court pointed to behavior typical of a 12-year old boy, such as drumming on objects, singing, and sprawling on the floor, as well as C.J.'s speech patterns and use of poor grammar. *Id.*, slip. op. at 11. The Court concluded that C.J.'s behavior was "not that expected of someone who understands he is being questioned about a serious crime." *Id.* This analysis ignores the timeline of the interrogation.

Here, the Court of Appeals failed to note in its analysis—despite discussing it during the facts of the case—that at the time C.J. was advised of his rights by Detective McAllister, he was quiet, paid attention, and asked questions about his

rights and the definition of certain words McAllister used (State's Ex. 3). *Id.*, slip. op. at 3-4, 11). C.J. did not continue to behave in an "immature" fashion once Mother and Detective McAllister entered the interrogation room, instead, he became attentive, followed along with the form, and asked questions (State's Ex. 3). As such, the evidence shows that C.J.—when left alone in an interrogation room—became bored easily and engaged in juvenile behavior, but that when C.J. was questioned he stopped that juvenile behavior, focused, and engaged with McAllister. What the opinion calls "immature" behavior may be immature when compared with an adult, but it is age appropriate behavior by a bored 12 year old. Those facts do not create a presumption that C.J. was unable to understand the explanation of the juvenile waiver of rights.

Moreover, the Court of Appeals focused on several findings of the juvenile court that were contained in the dispositional decree, namely that C.J. had special needs, exhibited inappropriate behaviors, and required care outside the home, as a basis to show he did not voluntarily waive his rights (App. Vol. II 174). *Id.*, slip. op. at 11. That conclusion does not logically follow. A juvenile court providing services to a delinquent child does not mean that said child is incapable of understanding his or her rights under the juvenile waiver statute. Here the juvenile court found

that C.J. had special needs that required care outside the home—it did not find that C.J. was unable to understand information conveyed to him.[1]

B. Whether C.J. and Mother were informed of the delinquent act of which C.J. was suspected.

The Court of Appeals concluded that although C.J. recognized what he did was wrong and that he would likely get in trouble, he nonetheless did not appreciate the illegal nature of his conduct. *Id.*, slip. op. at 12. This approach ignores the nature of criminal investigations. Until obtaining additional facts pursuant to an interview with a suspect, a police officer would not know the exact charge a juvenile may or may not be facing. Here C.J. and Mother knew that C.J.'s touching of A.T. constituted the potential criminal conduct at issue—that action was the motivation for Mother to take A.T. to the hospital for an examination, and why Mother took her children to the police station the following day for interviews (Tr. Vol. II 12-16). C.J. also knew, as the Court of Appeals observed, that his touching of A.T. was wrong. Those facts are sufficient to show that C.J. and Mother were informed of the delinquent act.

The Court's approach implies, without stating, that police officers must provide juveniles with a specific criminal charge in order for a juvenile and his or

[1] It should also be noted that the evaluations relied upon by the juvenile court were not submitted during the fact-finding hearing, nor were those reports used at that hearing to claim that C.J. was unable to understand his juvenile waiver (Tr. Vol. II 7-58).

her parent to knowingly and voluntarily waive *Miranda*. Even when questioning an adult, police are not required to explain the specific criminal charges that they want to discuss or even the nature of the crime that police want to talk to the suspect about. *See Allen v. State*, 686 N.E.2d 760 (Ind. 1997) ("Miranda does not require an officer to provide the accused with the quantum of knowledge which an attorney would require before rendering legal advice"); *see also Armour v. State*, 474 N.E.2d 1294, 1298-99 (Ind. 1985) ("Miranda does not require that an accused be specifically informed by the interrogator of the precise nature of the potential charges for which the accused is being questioned"). Here, there was no question that C.J. knew what incident police wanted to talk to him about and that it was serious and he could get in trouble for it. The Court of Appeals held that this was not enough. This approach oversteps both the provisions contained in the juvenile waiver statute and this Court's holding in *D.M.*, neither of which require a police officer to specifically state what particular section of the criminal code a juvenile may have violated in order to convey sufficient information for a juvenile to knowingly and voluntarily waive *Miranda*. *See* I.C. 31-32-5-1(2); *D.M.*, 949 N.E.2d at 334.

C. Advisement of rights.

The Court of Appeals acknowledges that C.J. and Mother were provided with juvenile waiver forms, that the rights contained on those forms were correct, and that C.J. and Mother were able to, and did, ask questions regarding those rights during the explanation. *C.J.*, slip. op. at 12-13. The Court then cited *Berghuis v. Thompkins*, and asserted without referencing the record that the State failed to

make an additional showing under *Berghuis* that C.J. understood his rights. *Id.* (citing 560 U.S. 370, 384 (2010)).

Berghuis does establish that a *Miranda* advisement and uncoerced statement are not, standing alone, sufficient to demonstrate a valid waiver of *Miranda* rights. *Berghuis*, 560 U.S. at 384. However, *Berghuis* specifically states that this requirement "does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights," and that if the prosecution shows a *Miranda* warning was given and understood, that is sufficient. *Id.*, at 384-85. *Berghuis* recognized that "as a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford." *Id.* (citations omitted). Here, the additional showing required by *Berghuis* is readily apparent, as C.J. and Mother were provided with a full explanation of *Miranda* over the course of approximately nine minutes, C.J. asked questions regarding those rights, and C.J. and Mother decided to waive those rights after private consultation (State's Ex. 1, 3).

The Court of Appeals opinion creates an impossible task for the juvenile justice system. Under this precedent, neither police officers nor juvenile courts may have confidence in an explanation of *Miranda* that comports with the juvenile waiver statute—even when that explanation is in the context of a detailed, nine-minute discussion followed by private consultation and an accompanying written waiver.

D. Consultation with Mother.

In *D.M.,* this Court held that in order to show "meaningful consultation" between a parent and juvenile, the State need only show that parent and juvenile were provided a "relatively private atmosphere that was free from police pressure." *D.M.*, 949 N.E.2d at 336. The State is only required to provide an opportunity to consult in order to satisfy the juvenile waiver statute, and the State does not need to show that the consultation was beneficial. *Id*. Despite acknowledging that the State met the requirements contained in *D.M.*, the Court of Appeals concluded that the brevity of the conversation between C.J. and Mother—despite the record not containing evidence of the content of that conversation—was insufficient. *C.J.*, slip. op. at 13.

This determination is particularly problematic. The Court of Appeals has concluded that, contrary to *D.M.'s* opportunity only rule, that the actual content and length of the conversation between a parent and juvenile is the controlling factor in determining voluntariness. The Court of Appeals does not explain why C.J.'s consultation with Mother was insufficient other than to assert that the consultation was not long enough. This, of course, begs the question: how is a juvenile court to know whether a given consultation was "long enough?" How is a law enforcement officer to know whether a juvenile and a parent have discussed the juvenile's waiver in a sufficient enough manner without impermissibly listening in on and evaluating that conversation? The Court of Appeals has created precedent here that casts

doubt on the sufficiency of any consultation between a juvenile and a parent, and has contravened the practical opportunity-based test of *D.M.*

This Court should accept transfer to affirm the trial court. If left to stand, this decision by the Court of Appeals will cause a great deal of uncertainty regarding the manner in which law enforcement officers are to provide juvenile *Miranda* waivers, and the confidence those officers can have in the admissibility of procured statements. Further, the Court of Appeals' opinion creates an impossible standard for the voluntary waiver of rights by juveniles by expecting them to act and talk like adults. This case is contrary to D.M. and leaving it creates uncertainty for law enforcement and trial courts regarding juvenile statements.

CONCLUSION

For the foregoing reasons, this Court should grant transfer and affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that this Petition to Transfer contains no more than 4,200 words. This petition contains 3,331 words. The word count was conducted by selecting all portions of the petition not excluded by Indiana Appellate Rule 44(C) and selecting Review/Word Count in Microsoft Word, the word-processing program used to prepare this petition.

/s/ Matthew B. MacKenzie
Matthew B. MacKenzie

CERTIFICATE OF SERVICE

I certify that on March 9, 2020, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on March 9, 2020, the foregoing document was served upon opposing counsel via IEFS, addressed as follows:

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