U. JUVENILE

U.1. General considerations

U.1.a. Policy/purpose of juvenile law

TITLE: C.B. v. State
INDEX NO: U.1.a.
CITE: (5/21/2013), 988 N.E.2d 379 (Ind. Ct. App 2013)
SUBJECT: Conditional agreements for juveniles are proper
HOLDING: Conditional admission agreements are an acceptable and important tool for juvenile courts. Even though no statute recognizes such agreements, juvenile courts should have a variety of options for juveniles, including conditional agreements. See Jordan v. State, 512 N.E.2d 407, 408 (Ind. 1987). Here, C.B. was alleged delinquent in two cases. She entered a conditional admission in one case in exchange for dismissal of the other. The first case would also be dismissed if she did not violate the agreement's terms for 90 days. A violation would result in a true finding and disposition hearing. Held, judgment reversed.

TITLE: Seay v. State
INDEX NO.: U.1.a.
CITE: (11/25/75), Ind. App., 337 N.E.2d 489
SUBJECT: Juvenile code policy
HOLDING: After being charged with assault & battery with intent to kill, D signed waiver of rights form & admitted to shooting. Motion to dismiss information was denied & in same proceeding Tr. Ct. dismissed cause which had been previously remanded to Juvenile Ct. for determination of jurisdiction of that Ct. D was eventually tried & convicted of charges. While several issues involving propriety of proceeding below were not directly raised by arguments of D on appeal, Ct. held that where D was juvenile & case was one in which his interests, rights & privileges were involved, it was not precluded from giving consideration to such problems. In addition, in considering contentions of parties with respect to propriety of proceedings in lower Cts., Ct. was required to consider any applicable sections of juvenile code in light of express statutory provisions & judicial pronouncements. Ct. held that there is presumption in favor of dealing with delinquents within juvenile system, & that provisions of juvenile code must be closely followed in dealing with rights of delinquent in particular case. "Pro forma" printed order which merely states statutory requirements in respect to waiving juvenile offense over to adult Ct. is inadequate to permit meaningful judicial review. Ct. held that waiver order did not meet express requirements. Held, reversed in part & reversed & remanded in part.

U. JUVENILE

U.1. General considerations

U.1.d. Rights of juveniles in delinquency proceedings

TITLE: C.S. v. State
INDEX NO.: U.1.d.
CITE: (10/01/19), 131 N.E.3d 592 (Ind. 2019)
SUBJECT: Remote video participation at juvenile disposition-modification hearings
HOLDING: Administrative Rule 14, which controls when telephones and audiovisual telecommunication tools can be used, applies to juvenile disposition-modification hearings. Here, juveniles appeared remotely by Skype for their disposition-modification hearings without their express agreement or a finding of good cause. Although trial court did not follow the requirements of Rule 14(B) by holding these hearings remotely, no fundamental error occurred.

The Supreme Court provided the following advice to courts and parties faced with similar situations in the future: If a trial court holds a hearing with remote participants based on a finding of good cause pursuant to Rule 14(B), it must base its good-cause determination on the factors listed in the rule and issue a written order complying with the rule's deadlines. Further, in making a Rule 14(B)(2) good-cause determination in a juvenile case, a trial court will necessarily need to consider the unique aspects of the juvenile justice system. Thus, the child's best interests will generally constitute a relevant factor under Rule 14(B)(2)(f) in a juvenile court's good-cause determination. Finally, when a party is confronted with potential noncompliance with an applicable rule, the party should object. Justice David dissented in part, finding that the trial court's failure to follow Administrative Rule 14(b) resulted in fundamental error.

TITLE: In Re Gault
INDEX NO.: U.1.d.
CITE: 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)
SUBJECT: Rights of child in juvenile delinquency proceedings
HOLDING: Child has right to confrontation, due process, counsel, and cross-examination of witnesses in juvenile Ct. proceedings. Absent valid confession, determination of delinquency cannot be sustained absent sworn testimony subjected to opportunity for cross-examination. In this case, at delinquency hearing, complainant was not present, and no sworn testimony was given. Held, reversed, and remanded.

RELATED CASES: A.S., 929 N.E.2d 881 (Ind. Ct. App 2010) (juvenile has no right to jury trial under the Indiana Constitution); McKeiver v. Pennsylvania, 91 S. Ct. 1976 (1971) (Although Due Process requires that juvenile be afforded rights to appropriate notice, counsel, confrontation, cross- examination, privilege against self-incrimination and standard of proof beyond reasonable doubt, trial by jury in delinquency proceeding is not constitutionally required).

U. JUVENILE

U.1. General considerations

U.1.d.1. Iin general (IC 31-6-3-1)

TITLE: Beldon v. State
INDEX NO.: U.1.d.1.
CITE: (3rd Dist., 11-21-95), Ind. App., 657 N.E.2d 1241
SUBJECT: Guilty plea involuntary - waiver of juvenile's rights
HOLDING: Juvenile D's guilty plea to operating vehicle with .10% BAC or greater was not made knowingly, voluntarily, or intelligently, where juvenile unilaterally waived his own rights in contravention of Ind. Code 31-6-7-3. Statute permits waiver of juvenile's rights by either juvenile's counsel or his parent or guardian, but it does not authorize minor to waive his own rights. Deckard v. State (1981), Ind. App., 425 N.E.2d 256. Here, 16-year-old D appeared, without counsel, for initial hearing wherein he received en masse advisement of his fundamental rights & Waiver of Rights form. D thereafter indicated to Tr. Ct. his desire to plead guilty, signed waiver form, & Tr. Ct. accepted his plea. Record was devoid of any evidence indicating that D's parent or guardian waived D's rights on his behalf. Because waiver was improperly executed, D's guilty plea was fundamentally defective. Ct. rejected D's claim of involuntariness as to subsequent, unrelated guilty plea to operating while intoxicated. Held, affirmed in part, reversed in part, & remanded.

RELATED CASES: Wehner, App., 684 N.E.2d 539 (16-year-old who pled guilty to reckless driving did not fall within Juvenile Code, and thus, could waive his own constitutional rights).

TITLE: C.B. v. State

INDEX NO: U.1.d.1.

CITE: (5/21/2013), 988 N.E.2d 379 (Ind. Ct. App 2013)

SUBJECT: Due process requires independent probable cause finding to conclude juvenile violated conditional agreement

HOLDING: In issue of first impression, Court held that due process requires that before juvenile court may conclude that a juvenile has violated a conditional agreement based on probable cause that juvenile committed new offense, court must independently find probable cause of the new offense, and not rely on the probable cause affidavit that authorized the filing of the new petition. Here, C.B. was alleged delinquent in two cases. She entered a conditional admission in one case in exchange for dismissal of the other. The first case would also be dismissed if she did not violate the agreement's terms for 90 days. A violation would result in a true finding and disposition hearing. Within 90 days, C.B. was arrested for battery, and the State filed a delinquency petition. However, State dismissed the petition shortly thereafter. Nonetheless, juvenile court ruled that the dismissed charge provided probable cause that C.B. violated the conditional agreement. The juvenile court erred in doing so. Held, judgment reversed. Barnes, J., concurring, stating Court's holding could be construed too broadly.

TITLE: C.S., J.R. v. State
INDEX NO.: U.1.d.1.
CITE: (9/19/2018), 110 N.E.3d 433 (Ind. Ct. App 2018)
SUBJECT: Juveniles have no right to be "personally present" at disposition hearings
HOLDING: C.S.'s presence via video conference for his disposition hearing was sufficient to satisfy Ind. Code §31-37-18-1.3, which requires that a delinquent child be given notice of and opportunity to be heard. As in Hawkins v. State, 982 N.E.2d 997 (Ind. 2013), D did not sign a written waiver of his right to appear at the hearing in person. But C.S.'s reliance on Hawkins was misplaced because he was not a criminal D appearing for a sentencing hearing, but rather appeared before juvenile court for a modification hearing. Thus, the rules relating to sentencing of criminal offenders do not apply. C.S. was given adequate notice of hearing and he participated in the hearing via video conference. Held, judgment affirmed.

TITLE: D.E. v. State
INDEX NO.: U.1.d.1.
CITE: (11-14-11), 962 N.E.2d 94 (Ind. Ct. App 2011)
SUBJECT: Guilty plea - waiver of juvenile's rights
HOLDING: Tr. Ct. did not err in accepting juvenile's plea agreement without a parent having signed it when the child was represented by counsel and counsel signed the plea agreement along with the child. In order for juvenile to waive any constitutional right, IND. CODE ' 31-32-5-1 requires a juvenile's waiver to be knowingly or voluntarily made and either counsel or the child's parent or guardian to join in waiver. Court rejected D.E.'s argument that his parents' rights were thwarted by the statute, which allowed appointed counsel to waive D.E.'s right to a fact-finding adjudication. D.E.'s mother was present at every hearing, and his father attended the hearing during which D.E. accepted the plea agreement. Both parties indicated they understood the implications of the waivers in the plea agreement. D.E.'s mother did not approve of the way the State treated D.E. differently than his accomplice, so she would not sign the plea agreement; however, she never denied D.E.'s guilt or indicated she disagreed with his acceptance of the plea agreement. Moreover, D.E. was not denied the opportunity for meaningful consultation with his parents prior to signing the plea agreement in this case. Held, judgment affirmed.

TITLE: In the Matter of K.G., D.G., D.C.B., & J.J.S.
INDEX NO.: U.1.d1.
CITE: (4th Dist., 5-20-04), Ind., 808 N.E.2d 631
SUBJECT: Competency determination - juveniles
HOLDING: Although juveniles alleged to be delinquent have the constitutional right to have their competency determined prior to delinquency proceedings, Indiana's adult competency statute is not applicable to this determination. Tr. Ct. had found juveniles incompetent to stand trial using the adult statute & the Ct. App. upheld this ruling. *Citing* the rehabilitative nature of the juvenile justice system & the Court's position as parens patriae, S. Ct. found that such use of the adult standard would not be appropriate. In coming to this conclusion, Ct. also noted the limited facilities operated by the Department of Mental Health that house juveniles & that placement in these facilities conflicts with understanding under juvenile law that individual will be housed in child's county of residence & near his family if possible. See Ind. Code 31-37-19-23. Ct. reached this holding despite acknowledging that Ind. Code 31-32-1-1 provides that procedures for criminal trials govern juvenile proceedings unless otherwise specified by juvenile law, & that no juvenile statute specifically speaks to competency as it relates to delinquency proceedings. Using a broad reading of legislative intent, Ct. determined that Ind. Code 31-32-12-1, which authorizes mental or physical examinations & treatment under certain circumstances when a physician determines them appropriate & consistent with the statute, is the proper vehicle to accomplish a competency finding in a juvenile proceeding. Held, transfer granted, Ct. App. decision at 781 N.E.2d 700 vacated, judgment reversed & remanded for further proceedings consistent with opinion.

TITLE: Sevion v. State
INDEX NO.: U.1.d.1.
CITE: (4th Dist., 9-15-93), Ind. App., 620 N.E.2d 736
SUBJECT: Protections of Ind. Code 31-6-7-3 not required for non-custodial interrogation
HOLDING: Where juvenile D called police about giving statement & was suspect but had no charges against him when he came to police station & gave statement, neither safeguards of Miranda, nor Ind. Code 31-6-7-3 apply. D arrived at station with 18-year-old he was living with. Officer tried to reach relatives, but both of his parents were incarcerated & mother had placed him in care of 18-year-old. Officer advised D & 18-year-old of his rights & both signed waiver form. D gave statement, admitting to shooting victim, & was arrested. Statement was admitted at trial & D was convicted of reckless homicide. Ct. rejected argument that confession was erroneously admitted because 18-year-old had adverse interest & was not proper custodian to fulfill requirements of Ind. Code 31-6-7-3. Ct. noted that if juvenile is not in custody when he gives statement, neither safeguards of Miranda, nor statute apply, Scott, 510 N.E.2d 170, *cert. denied* 484 U.S. 978. To be custodial in non-arrest context, interrogation must start after there has been significant deprivation of person's freedom of action, Grass, 570 N.E.2d 32. Here interrogation was not custodial, because D was not in custody & his freedom of action had not been curtailed. Although he was suspect, there were no charges against him, & he was placed in office, was alone part of time, & was free to leave at any time. Although officer tried to comply with statutory protections, they were not necessary because D was not in custody. Nevertheless, Ct. found 18-year-old was proper custodian for purposes of statute & that its protections had been followed. Ct. found he did not have interest adverse to D, even though he was witness to crime & his car was nearby, because there was no evidence, he had gun in his possession & apparently, he only heard shot.

RELATED CASES: Thompson, App., 692 N.E.2d 474 (juvenile who voluntarily came down to police station to give statement waived requirement that officer strictly follow Ind. Code 31-32-5-1).

TITLE: Thompson v. State
INDEX NO.: U.1.d.1.
CITE: (4th Dist., 2-23-98), Ind. App., 690 N.E.2d 224
SUBJECT: Rights of juvenile - voluntarily giving statement
HOLDING: In order for juvenile to waive any constitutional right, Ind. Code § 31-32-5-1 requires juvenile's waiver to be knowingly or voluntarily made & either counsel or parent or guardian to join in waiver. If juvenile, who is not in custody, gives statement to police, neither safeguards of Miranda nor Ind. Code § 31-32-5-1 apply to him under most circumstances. To be custodial in non- arrest context, interrogation must commence after person's freedom of action has been deprived in any significant way. Here, after juvenile voluntarily went to police station to give statement, officer advised juvenile of his rights & juvenile signed waiver of rights form. In addition, juvenile stated that he did not feel like prisoner & had not been promised anything. Thus, any failure on officer's part to follow requirements of Ind. Code § 31-32-5-1 did not render juvenile's statement inadmissible. Held, conviction affirmed.

U. JUVENILE

U.1. General considerations

U.1.d.2. Right to counsel (IC 31-6-7-2) (see Y.1.d)

TITLE: A.M. v. State
INDEX NO.: U.1.d.2.
CITE: (8/20/2018), 109 N.E.3d 1034 (Ind. Ct. App 2018)
SUBJECT: Juvenile IAC claim in post-adjudication proceeding governed by due process clause, not Strickland
HOLDING: In an issue of first impression, the Court ruled that the juvenile's claim that counsel was ineffective in a modification of disposition proceeding was governed by the Due Process Clause of the 14th Amendment, not the more stringent standard of Strickland v. Washington.

The juvenile ("A.M.") has a long history of delinquent adjudications and a legion of probation violations. Thus, at the State's request, the trial court modified his placement to the juvenile division of DOC. On appeal, A.M. argued his attorney was ineffective because, according to A.M., he made no effort to advocate for him. Indiana courts have not squarely addressed whether the two-pronged Strickland test or the due process test is the proper test to analyze the effectiveness of a juvenile's attorney during pre-adjudication and post-adjudication proceedings. Compare S.T. v. State, 764 N.E.2d 632, 634-35 (Ind. 2002) (Strickland governed claim that counsel was ineffective during adjudication proceeding). The seminal case In re Gault did not answer this question: "[W]e are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." Id., 387 U.S. 1, 13-14 (1967).

Strickland requires a D to show deficient performance and prejudice. The due process standard is less exacting: "If counsel appeared and represented the petitioner in a procedurally fair setting which resulted in a judgment of the court, it is not necessary to judge his performance by rigorous standards." Jordan v. State, 60 N.E.3d 1062, 1068 (Ind. Ct. App. 2016). This less stringent standard has been applied to assess counsel's performance in probation revocation proceedings. Id. at 1069.

A modification of disposition proceeding is akin to a probation revocation proceeding. Accordingly, A.M.'s IAC claim is analyzed under the less stringent due process standard, and A.M's counsel satisfied that standard. Contrary to A.M.'s claim, counsel did promote A.M.'s interests. He negotiated a stipulation with the State to redact three allegations in support of modification; these allegations were that A.M. possessed an alcoholic beverage, consumed an alcoholic beverage on a school bus, and committed burglary. These alleged acts were not only violations of A.M.'s supervised probation rules but also criminal conduct that could have resulted in additional true findings. Even under Strickland, counsel was not ineffective. To the extent A.M. focuses on the result, "the harshest disposition available," as evidence of ineffective assistance, he presupposes that any client who receives the maximum sentence or harshest penalty allowed by law necessarily received ineffective assistance.

D also claims that counsel's closing statement shows that he abandoned A.M. Counsel said: "I am befuddled by the actions of [A.M.]. I think he's a good kid. I think he's got a bright future ahead of him. He's smart, has some real opportunities, but the path he's going down is leading him to prison and he's just going to end up wallowing away there, probably spend most of his life there. You don't break into

people's houses, you don't steal guns, don't follow the rules, get kicked out of school. You don't get an education and that's going to end up being his downfall. I think except for being kicked out of [school], he could have had an opportunity here. He could have been on home detention and shown everybody that he could do right. Instead he's going to go to the DOC, go to Logansport for an evaluation, do his six months, eight months or a year, as long as he does right, and hopefully will come back and have learned a lesson. I have a lot of hope for [A.M.]. I hope he understands that what's going to happen here is not a punishment but rather a chance to get a leg up in life and to try to do the right thing. I hope he does good, and when he comes back he can really grow and be a good kid." These remarks did not violate A.M.'s right to the effective assistance of counsel, whether under due process or Strickland. Under a due process analysis, counsel appeared at a procedurally fair modification hearing and negotiated a redaction of three allegations against A.M., all involving criminal conduct. Thus, A.M. has failed to show he was denied his constitutional right to counsel during his disposition modification proceeding. Held, judgment affirmed.

TITLE: A.M. v. State

INDEX NO.: U.1.d.2.

CITE: (11-12-2019) 134 N.E.3d 361 (Ind.)

SUBJECT: Juvenile's ineffective assistance of counsel claim in delinquency proceedings governed by standard founded in the Fourteenth Amendment's due process clause

HOLDING: A court should evaluate a juvenile's claim of ineffective counsel in a delinquency disposition-modification hearing by using a due process standard. It should consider counsel's overall performance to determine if the child received a fundamentally fair hearing resulting in a disposition that served his best interests. Here, after a modification of probation hearing, juvenile A.M. was placed in the Department of Correction. He claimed his attorney failed to provide effective assistance of counsel during the modification hearing because his counsel expressed confusion at his deteriorating behavior instead of advocating for a placement other than the DOC. The Court rejected the application of the Sixth Amendment standard set out for evaluating ineffective-assistance-of-counsel claims set out in Strickland v. Washington, 466 U.S. 668 (1984), and instead applied the Fourteenth Amendment due process standard articulated in Baker v. Marion Cty. Office of Family and Children, 810 N.E.2d 1035 (Ind. 2004). In evaluating the claim of ineffective assistance of counsel, the Court focused its inquiry on whether it appeared that the juvenile received a fundamentally fair hearing where the facts demonstrate the court imposed an appropriate disposition considering the child's best interests.
In this case, Court concluded that the A.M.'s counsel helped ensure he received a fundamentally fair hearing where the court reached an accurate disposition that furthered A.M.'s best interests. Justice Slaughter concurred in the judgment with a separate opinion, indicating he would simply apply the standard set forth in Baum v. State, 533 N.E.2d 1200 (Ind. 1989).

TITLE: D.H. v. State
INDEX NO.: U.1.d.2.
CITE: 688 N.E.2d 221 (Ind. Ct. App. 1997)
SUBJECT: Right to counsel - juvenile proceedings
HOLDING: Tr. Ct.'s disposition was invalid where juvenile D had no attorney at disposition hearing & D had not waived his right to counsel. Juvenile is entitled to assistance of counsel at every stage of juvenile proceedings, including disposition hearing. Bridges, 299 N.E.2d 616. Record must show either that juvenile was represented by counsel or that juvenile waived representation. Adams, App., 411 N.E.2d 160. Juvenile's waiver of right to counsel must be freely & voluntarily given. M.R., App., 605 N.E.2d 204.

Here, record showed that public defender appeared for D's denial hearing. Record was devoid, however, of any showing that counsel appeared at D's disposition hearing or that he waived his right to counsel. Held, disposition reversed & remanded for new disposition hearing.

RELATED CASES: A.A.Q., 958 N.E.2d 808 (Ind. Ct. App 2011) (even though Tr. Ct.'s advisement fell below "better practices," juvenile and his parents knowingly and intelligently waived the juvenile's right to counsel); A.S., 929 N.E.2d 881 (Ind. Ct. App 2010) (the juvenile court's failure to determining whether juvenile and mother were given meaningful consultation prior to juvenile and her mother waiving juvenile's right to counsel at an initial hearing where the juvenile was detained was fundamental error); R.W., 901 N.E.2d 539 (Ind. Ct. App. 2009 (because juvenile and mother were not provided the opportunity for meaningful consultation before they waived his right to counsel at the initial hearing at which juvenile admitted allegations, juvenile was denied his right to counsel & his adjudication must be reversed); N.M., App., 791 N.E.2d 802 (D did not knowingly or voluntarily waive her right to counsel under Ind. Code 31-32-5-1, because neither she nor her mother was informed that counsel would be appointed to represent her if they were unable to afford counsel); J.W., App., 763 N.E.2d 464 (Juvenile Ct. erroneously conducted fact-finding hearing by allowing defense counsel to withdraw after Juvenile D informed Ct. that he wished to have counsel during hearing; D was never adequately advised of nature, extent, & importance of right to counsel & dangers of self-representation).

TITLE: In Re Gault

INDEX NO.: U.1.d.2.

CITE: 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)

SUBJECT: Right to counsel in juvenile delinquency proceedings

HOLDING: Child has right to counsel in delinquency proceeding which may result in commitment to institution where freedom is curtailed. Due process requires that Ct. advise child and parents of right to representation by counsel or, if family unable to afford counsel, that one will be appointed. Probation officer cannot be relied upon to protect child's rights as counsel because such officers initiate actions against child and testify for prosecution. Judge cannot be said to represent child in juvenile proceeding. Juvenile Ct. did not advise child and parents of their right to counsel and proceeded with hearing, adjudication, and order of commitment in absence of counsel for child and parents or express waiver of rights. Mother's statement at habeas corpus proceeding that she knew she could have retained counsel did not operate as valid waiver of right. Held, reversed and remanded.

TITLE: J.G. v. State
INDEX NO.: U.1.d.2.
CITE: (10/2/2017), 83 N.E.3d 1263 (Ind. Ct. App 2017)
SUBJECT: Juvenile had right to counsel at modification hearing
HOLDING: Where J.G was not represented by counsel and did not waive his right to counsel at the hearing to modify his disposition, the juvenile court erred by modifying J.G.'s disposition such that J.G. was made a ward of the Department of Correction. The State concedes J.G. was entitled to counsel at the hearing. Criminal Rule 25(B)(3)(a) states that "counsel for the child must be appointed . . . before convening any hearing in which the court may find facts (or the child may admit to facts) on the basis of which the court may impose . . . wardship of the child to the Department of Correction[.]" (Emphases added). Criminal Rule 25(C) provides that, following the appointment of counsel under subsection (B), any waiver of the right to counsel shall be made in open court, on the record and confirmed in writing, and in the presence of the child's attorney. Here, it is undisputed both that J.G. was not represented by counsel and that he did not waive his right to counsel. Held, judgment reversed and remanded for new modification hearing.

U. JUVENILE

U.1. General considerations

U.1.d.3. Speedy trial (IC 31-6-4-13; Ind. Code 31-6-7-6)

TITLE: A.K. v. State
INDEX NO.: U.1.d.3.
CITE: (2nd Dist., 10-29-09), Ind. App., 915 N.E.2d 554 (Ind. Ct. App 2009)
SUBJECT: Juvenile speedy trial - waiver; discharge not required
HOLDING: Juvenile court did not abuse its discretion by denying the juvenile's motion to dismiss based on an alleged violation of his speedy trial rights. When a child is not in detention, a fact-finding hearing must be commenced not later than sixty days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed. Ind. Code 31-37-11-2(b). Here, when the juvenile court set the hearing date outside of the sixty days to accommodate the large number of defense witnesses, the juvenile did not object. Analogous to the adult criminal setting, the juvenile waived the speedy trial issue by failing to object. Moreover, nothing in the juvenile code requires dismissal as a remedy for a violation of Ind. Code 31-37-11-2(b). Thus, Tr. Ct. properly refused to dismiss the juvenile's case. Held, judgment affirmed.

RELATED CASES: B.T.E., 82 N.E.3d 267 sum. *aff'd.*, 108 N.E.3d 322 (Ind. 2018) (following K.G., below, and affirming denial of motion to dismiss for failure to comply with IC 31-37-11-2(b)).

TITLE: C.W. v. State
INDEX NO.: U.1.d.3.
CITE: (4th Dist., 11-30-94), Ind. App., 643 N.E.2d 915
SUBJECT: No speedy trial violation - juveniles
HOLDING: Juvenile's signing of informal adjustment contract & then failing to comply with its conditions was act causing delay properly attributed to D under Ind. Code 31-6-7-6(e), the Juvenile Code equivalent to CR 4(C). Ct. rejected D's argument that his motion for discharge should have been granted because no action had been taken by prosecution within one year of filing delinquency petition. Had D not chosen to participate in six-month informal adjustment program, State would have been required to proceed on its delinquency petition within one year. Here, however, Ct. found delay chargeable to D as delay clearly for his benefit, & statute provides extension of speedy trial time periods for delay resulting from juvenile's act, Ind. Code 31-6-7-6(i). Held, judgment affirmed.

TITLE: J.D. v. State

INDEX NO.: U.1.d.3.

CITE: (5th Dist., 07-21-09), 909 N.E.2d 1035 (Ind. Ct. App 2009)

SUBJECT: Speedy trial - juveniles; D must object to fact-finding hearing set outside statutory time limit

HOLDING: Juvenile waived his right to fact-finding hearing within sixty days of filing petition alleging delinquency under Ind. Code 31-37-11-2(b) by failing to object when Tr. Ct. set the hearing outside the sixty-day time limit. The requirement that a juvenile object to a trial date set after the relevant deadline facilitates compliance by Tr. Ct.s with speedy trial requirements. Dean v. State, 901 N.E.2d 648 (Ind. Ct. App 2009). Court sees no reason not to apply case law interpreting Criminal Rule 4(C) to Ind. Code 31-37-11-2. Moreover, without clear authorization, Court could not say that a violation of the sixty-day limit of Ind. Code 31-37-11-2(b) required Tr. Ct. to dismiss the allegations that D was a delinquent child. When a child is in detention, and appropriate time limits are not met, the statutory remedy is not dismissal of charges and discharge of child, but release of child either on his own recognizance or to his parents, guardian, or custodian. See Ind. Code 31-37-11-7; Brown v. State, 448 N.E.2d 10 (Ind. 1984). Held, denial of motion to dismiss affirmed.

TITLE: K.G. v. State
INDEX NO.: U.1.d.3.
CITE: (1/13/2017), 67 N.E.3d 1147 (Ind. Ct. App 2017)
SUBJECT: Discharge not remedy for untimely juvenile fact-finding hearing
HOLDING: Although juvenile court must hold a fact-finding hearing for child who is not in detention within 60 days of filing of delinquency petition pursuant to Ind. Code § 31-37-11-2(b), dismissal of charges is not proper remedy when the statutory deadline is not met. See A.K. v. State, 915 N.E.2d 554 (Ind. Ct. App 2009). A review of Ind. Code § 31-37-11 reveals that continuances beyond the general 60-day limit are clearly contemplated. Although Section 2 uses "must" regarding time limits for holding the heaing, Court concluded that the term is intended to be directory rather than mandatory in this context. Held, judgment affirmed.

U. JUVENILE

U.2. Jurisdiction/venue

TITLE: D.P. v. State and State v. N.B.

INDEX NO.: U.2.

CITE: 151 N.E.3d 1210 (Ind. 2020) (09/08/2020)

SUBJECT: Juvenile court does not have subject matter jurisdiction to waive an alleged delinquent offender into adult criminal court if the individual is no longer a "child"

HOLDING: In a pair of consolidated cases, the Indiana Supreme Court held that a juvenile court does not have subject matter jurisdiction to waive an alleged delinquent into adult criminal court if the individual is no longer a "child." In both cases, Respondents were over the age of twenty-one when the State filed delinquency petitions based on allegations of conduct that occurred when they were juveniles. The Court considered the statute conferring juvenile jurisdiction, Ind. Code 31-30-1-1, and the statutory definition of "child" in Ind. Code 31-9-2-13(d), to conclude a juvenile court does not have jurisdiction to adjudicate individuals over the age of twenty-one delinquent. The Court further considered the waiver of jurisdiction statutes--Indiana Code sections 31-30-3-5 and 31-30-3-6 to hold the juvenile court does not have the authority to waive Respondents into adult criminal court. Under the plain language of the relevant statutes, a juvenile court does not have subject matter jurisdiction to waive an alleged delinquent offender into adult criminal court if the individual is no longer a "child."

RELATED CASES: Pemberton, 186 N.E.3d 647 (Ind. Ct. App. 2022) (Adult courts do not have subject matter jurisdiction over adults alleged to have committed crimes before reaching age of 18).

TITLE: Griffith v. State
INDEX NO.: U.2.
CITE: (5th Dist., 7-10-03), Ind. App., 791 N.E.2d 235
SUBJECT: Waiver of juvenile Ct. jurisdiction - non-included offenses
HOLDING: Juvenile waiver statute, Ind. Code 31-30-3-1, prohibits waiver of non-included offenses to adult Ct. Here, State petitioned juvenile Ct. pursuant to Ind. Code 31-30-3-4 to waive jurisdiction over D based upon consideration that he was charged with act that would be murder if committed by an adult. After hearing, juvenile Ct. waived jurisdiction of felony murder count & remaining five counts with which D had been charged. Ct. concluded that Marion Superior Ct. was without jurisdiction of particular case to hear & decide charges against D of theft, carrying handgun without license, & criminal confinement because they are not included offenses of felony murder. Ind. Code 31-30-3-1 provides that waiver is for offense charged & all included offenses. Although Tr. Ct. acquired personal jurisdiction over D when juvenile Ct. waived him to adult Ct., it did not automatically acquire jurisdiction of particular case over all of offenses for which he was charged. Held, theft, carrying handgun without license & confinement convictions vacated, remanded to juvenile Ct. for further proceedings. Baker, J., dissenting, argued that majority erroneously construed waiver statute & ignored inherent finding that commitment to juvenile justice system was not in D's best interest.

RELATED CASES: D.B., App., 819 N.E.2d 904 (adult Ct. retained jurisdiction over juvenile for "sufficiently linked" related charges; once a juvenile has been determined to be beyond rehabilitation because of automatic waiver then he must also be beyond rehabilitation for any connected offense); Phares, App., 796 N.E.2d 305 (Ct. disapproved of Griffith & held that jurisdiction of 17-yr-old D properly remained in adult Ct. on battery charge after D was previously waived to adult Ct. on another charge).

TITLE: K.D. v. State
INDEX NO.: U.2.
CITE: (8-23-01), Ind. App., 754 N.E.2d 36
SUBJECT: Subject matter/personal jurisdiction - age not element State must prove
HOLDING: State did not have to prove age of juvenile D where age was not a specific element of crime & juvenile's age being under eighteen was undisputed. Ind. Code 31-37-1-1 defines a delinquent child as a child who "before becoming eighteen years of age commits a delinquent act." Although defense counsel would not stipulate to the juvenile's age, no facts alleged that he was over eighteen. Further, his mother had stated several times that he was fifteen. Therefore, juvenile D could not maintain that Tr. Ct. lacked subject matter jurisdiction over case. Also, juvenile could not successfully challenge Ct.'s personal jurisdiction over him because he submitted himself to authority of juvenile Ct. by not filing a motion to dismiss. Ct. relied on In re Burton, 736 N.E.2d 928 (Ohio Ct. App. 1999), which held that once a Tr. Ct. has properly established subject matter & personal jurisdiction over a child accused of being a juvenile offender, age is not essential element that State is required to prove unless one of the elements of the charged adult crime requires specific proof of age. Here, juvenile D was charged with battery, which does not require specific proof of age. Held, judgment affirmed.

TITLE: K.S. v. State
INDEX NO.: U.2.
CITE: (06-22-06), Ind., 849 N.E.2d 538
SUBJECT: Failure of Ct. to approve petition alleging delinquency is not jurisdictional issue
HOLDING: K.S. cannot collaterally attack original petition alleging delinquency in probation revocation proceedings. Judgment of a Ct. having subject matter & personal jurisdiction, however irregular, is not void & cannot be collaterally attacked. However, judgment rendered without jurisdiction may be collaterally attacked. Here, K.S. argued that juvenile Ct. did not have jurisdiction to revoke her probation because the record does not reflect that juvenile Ct. approved filing of original delinquency petition, as required by Ind. Code 31-37-10-2. This procedural error does not affect juvenile Ct.'s personal & subject matter jurisdiction over case & K.S. Thus, K.S. waived error by failing to raise objection in timely manner & cannot now collaterally attack original petition.

Further, K.S.'s mother, who was also mother of victim, is considered a party to the proceedings pursuant to Ind. Code 31-37-10-7, & thus, is not subject to a motion for separation of witnesses under Indiana Rule of Evidence 615. Held, transfer granted, Ct. App. opinion at 807 N.E.2d 769 vacated, judgment affirmed.

TITLE: Mallard v. State
INDEX NO.: U.2.
CITE: (3rd Dist., 5-30-79), Ind. App., 390 N.E.2d 218
SUBJECT: Juvenile Ct. acquisition of jurisdiction - supplemental record on appeal
HOLDING: If jurisdiction of Juvenile Ct. is challenged on appeal and record does not reflect whether Juvenile Ct. complied with statutory requirements for acquiring jurisdiction, appellate Ct. will issue writ of certiorari requiring clerk of Juvenile Ct. to prepare and submit supplemental record of proceedings so that determination can be made whether procedural prerequisites were satisfied. If, as here, documents submitted demonstrate that Juvenile Ct. properly acquired jurisdiction even though original record of proceedings did not confirm that fact, conviction will not be reversed for lack of jurisdiction. Redding, App., 370 N.E.2d 397. Held, judgment affirmed.

RELATED CASES: Jackson v. State, App., 378 N.E.2d 921 (if appellate Ct. orders clerk of Juvenile Ct. to prepare and submit supplemental record of proceedings, but supplemental record produces inadequate response, appellate Ct. will hold that Juvenile Ct. did not obtain jurisdiction and will reverse conviction).

TITLE: Matter of B.R.
INDEX NO.: U.2.
CITE: (2nd Dist., 03-3-05), Ind. App., 823 N.E.2d 301
SUBJECT: Juvenile jurisdiction challenge waived
HOLDING: Juvenile waived claim that juvenile Ct. did not expressly authorize the filing of a delinquency petition under Ind. Code 31-37-10-2. Statute provides that the juvenile Ct. "shall" approve the filing of a petition if it determines probable cause exists that the child is a delinquent child & it is in the best interests of the child or the public that the petition be filed. A split in panels has resulted as to whether this jurisdictional prerequisite is waivable if not objected to at trial. See K.S. v. State, 807 N.E.2d 769 (Ind. Ct. App2004) *affirmed on rehearing*, 816 N.E.2d 1164 (Ind. Ct. App2004) *transfer pending* (holding not waivable as a question of subject matter jurisdiction); J.R. v. State, 78A05-0406-JV-300 (Ind. Ct. App Jan. 11, 2005); M.B. v. State, 815 N.E.2d 210 (Ind. Ct. App2004) (holding waivable if not objected to in Tr. Ct.).

In this case, Ct. held that as Ind. Code 31-30-1-1 provides exclusive jurisdiction to a juvenile Ct. in proceedings where a child has been alleged to be a delinquent, "there is no doubt that a juvenile Ct. has subject matter jurisdiction to hear cases involving allegedly delinquent children." Ct. also found that juvenile Ct. had personal jurisdiction since child & his parents submitted to Ct.'s authority. Also, majority disagreed with concurring opinion that juvenile Ct. did not have to strictly comply with Ind. Code 31-37-10-2 in this case because the child had previous delinquency findings against him & it can be assumed that it is in the best interests of the child or community to initiate delinquency proceedings in such cases. Analyzing Ind. Code 31-30-2-1, majority distinguished S.W.E. v. State, 563 N.E.2d 1318 (Ind. Ct. App1990), where the child had not turned 21 or had guardianship awarded to the DOC in the previous case to extinguish jurisdiction. Here, the juvenile's previous delinquency proceedings had been completed. Held, judgment affirmed; Barnes, J. concurring in result, would follow K.S., as that opinion's author, on waiver but agrees in result here as strict compliance in approving the filing of a delinquency proceeding should only be necessary during a "first time" filing of a delinquency petition.

RELATED CASES: C.C., App., 826 N.E.2d 106 (juvenile waived challenge to jurisdiction by not objecting at trial).

TITLE: M.H. v. State
INDEX NO.: U.2.
CITE: (04/19/2023) 207 N.E.3d 412 (Ind. 2023)
SUBJECT: Court decisions implicating new jurisdictional rule do not apply retroactively
HOLDING: M.H. appealed the denial of his motion for relief from judgment, seeking to vacate his prior adjudication for dangerous possession of a firearm in light of K.C.G. v. State, 156 N.E.3d 1281 (Ind. 2020), which held that juvenile courts did not possess subject matter jurisdiction over allegations that a child had committed dangerous possession of a firearm. The Court held that the ruling in K.C.G. does not apply retroactively because it did not affect the reliability and fairness of juvenile proceedings.

Here is how the Court reached that decision: When a trial court lacks jurisdiction, its actions are "void ab initio," i.e., void from the very beginning. However, absent extenuating circumstances, a trial court's final judgment is an existing juridical fact until *overruled*, and intermediate cases finally decided under it will not be disturbed. The modern trend of Indiana criminal proceedings is to apply Teague v. Lane, 489 U.S. 288 (1989). Daniels v. State, 561 N.E.2d 487 (Ind. 1990) (on remand from the grant of certiorari, 491 U.S. 902 (1989)). Under Teague, new substantive and procedural rules that implicate fundamental fairness of criminal proceedings and are central to an accurate determination of innocence or guilt apply retroactively. As a result, we elevate finality and efficient administration of justice as the primary rationale for non-retroactivity (with limited exceptions). These same considerations apply to juvenile delinquency proceedings, which are "quasi-criminal" in nature. Looking at K.C.G., the Supreme Court determined that it created a new rule by breaking with prior precedent from the Indiana Court of Appeals. However, the new rule was neither substantive nor procedural. Rather, the new rule implicated the court's authority to hear and try a case. As a result, there is no clear precedent for how to treat this retroactivity issue. That said, state courts hearing claims for collateral review may set their own retroactivity rules independent of Teague. Mohler v. State, 694 N.E.2d 1129, 1132 (Ind. 1998). The new rule created by the Supreme Court is this: "When a decision implicates a new jurisdictional rule, as in K.C.G., we apply the principle of non-retroactivity, rather than vacate a final judgment for voidness, unless the jurisdictional error compromised the reliability or fairness of the proceedings." Held: judgment affirmed. Justice Molter concurred, writing separately to note that the result was consistent with federal law, where a court has jurisdiction to determine its own jurisdiction, and absent an egregious jurisdictional error, that decision is final unless timely appealed. Here the trial court exercised jurisdiction consistent with a binding Court of Appeals decision, so the jurisdictional error cannot be considered egregious. Justice Slaughter, joined by Justice Massa, concurred in the judgment, writing separately as well. They would have held that juvenile delinquency proceedings are civil proceedings, and State ex rel. Piel v. Arkansas Construction Co., 201 Ind. 259, 167 N.E. 526 (1929) applies, holding that jurisdictional decisions are not retroactive in effect.

TITLE: State v. D.B.
INDEX NO.: U.2.
CITE: 842 N.E.2d 399 (Ind. Ct. App 2004)
SUBJECT: Adult court retained jurisdiction over juvenile for related charges
HOLDING: Tr. Ct. erred in dismissing intimidation charge against 17-year-old D due to lack of jurisdiction. D allegedly threatened to kill a witness if she testified against him in a carjacking case. If an individual is at least 16 years-old and charged with carjacking, he is automatically waived to adult court pursuant to Ind. Code 31-30-1-4(a)(6). Tr. Ct. determined that an insufficient nexus existed between the intimidation and the carjacking to allow joinder and a resulting waiver of the intimidation charge to adult court. Court of appeals disagreed and found the charges were "sufficiently linked" to allow joinder pursuant to Ind. Code 35-34-1-9(a)(2). Court also disagreed with D's argument that the juvenile court should have an opportunity to decide waiver question since intimidation is not an automatically waivable offense, noting that once a juvenile has been determined to be beyond rehabilitation because of automatic waiver then he must also be beyond rehabilitation for any connected offense. Court noted that to do otherwise would only strain judicial resources in having two courts hear similar evidence. D's "speculative" contention that D could plead to a lesser charge than carjacking was also dismissed, as Ind. Code 31-30-1-4(c) specifically provides the Tr. Ct. retains jurisdiction in such instances. Held, judgment reversed and remanded.

TITLE: State v. J.S.
INDEX NO.: U.2.
CITE: (11-16-10), 937 N.E.2d 831 (Ind. Ct. App. 2010)
SUBJECT: Dismissal of sex offenses against incompetent juvenile affirmed
HOLDING: Juvenile court did not abuse its discretion in dismissing certain sex offenses against juvenile who was diagnosed with an autism spectrum disorder, intermittent explosive disorder, ADHD, and major depression. Two of three mental health professionals found that juvenile was not competent to stand trial, and it was for juvenile court to weigh evidence and reach conclusion regarding juvenile's competency.

Court declined the State's request to keep the matter pending while juvenile is treated and attempts to achieve competency, noting that Curtis v. State, 932 N.E.2d 204, 208 (Ind. Ct. App. 2010), *trans. granted*, held that indefinitely holding charges over an incompetent adult's head violated due process where incompetency is likely to remain for life. Further, even though the experts made no finding about whether the juvenile would regain competency, there was a relatively short time before the juvenile became an adult and was no longer under the jurisdiction of the juvenile court. Also, based on the juvenile's history of multiple debilitating mental health and social and developmental disorders, the juvenile court would not have abused its discretion in finding that the juvenile is unlikely to regain competency before turning eighteen years old, if ever. Finally, given the juvenile's extensive support system, the juvenile court's dismissal of the delinquency petition did not unduly endanger the public. Held, judgment affirmed.

TITLE: State v. Neukam

INDEX NO.: U.2.

CITE: (06/23/2022), Ind. Sct., 189 N.E.3d 152

SUBJECT: Indiana Supreme Court issues decision that calls into question validity of Indiana's juvenile waiver statutes

HOLDING: When Neukam was twenty-two years old, the State charged him with child molest in criminal court for acts including those that occurred before he reached the age of eighteen. The Court considered whether Neukam's alleged conduct that took place before he reached the age of eighteen "was a criminal or delinquent act—or whether the same conduct could be both, i.e., whether a delinquent act committed before the age of eighteen could ripen into a crime once a child became an adult."

A delinquent act, by definition, occurs when a child, before turning eighteen, "commits an act . . . that would be an offense if committed by an adult." I.C. § 31-37-1-2(1). Because of this definition, the conduct of a child cannot be a delinquent act when he is a child, and then a crime later. A criminal act and a delinquent act are two different terms that mean two different things. "[W]e infer the legislature intended 'criminal' acts to be distinct from 'delinquent acts.'" The phrase "would be an offense" suggests a delinquent act is not a crime—and in fact "would be" a crime only if an adult did it—in which case, it would no longer be a delinquent act because only a child can commit such an act.

"On the issue of criminal-versus-juvenile jurisdiction, a circuit court has jurisdiction over only 'criminal cases'. And a delinquent act by a juvenile cannot 'be' a crime because it 'would be' a crime only if committed by an adult. Thus, under the relevant statutes, circuit courts lack jurisdiction over conduct by juveniles."

The delinquent act statute permits exceptions where the juvenile court lacks jurisdiction under IC 31-30-1, which would except direct file offenses, defined by I.C. § 31-30-1-4 from the definition of delinquent acts. However, the Court's decision "raises questions about circuit court jurisdiction [by way of] the juvenile court's waiver statutes and the criminal court's transfer statute." For instance, the waiver statutes allow a juvenile court to waive its exercise of jurisdiction. See, e.g., I.C. § 31-30-3-1. The effect of this waiver is a criminal court may exercise its own jurisdiction. But it cannot do so without jurisdiction over the alleged conduct in the first place. "[W]e are not blind to the weighty and far-reaching policy concerns implicated by today's decision." Goff, J., dissenting: "Because the Court's reading of the relevant jurisdictional statutes permits Neukam's alleged acts of child molestation "to go unpunished," because it judicially repeals the juvenile waiver and transfer statutes, and because the legislature would never have intended these results, I dissent." Goff, joined by Massa, would hold that the circuit court would have jurisdiction over an individual who committed the offensive act as a child but who ages out of the juvenile system. Goff, not joined by Massa, also encourages the adult courts to perform a similar procedure required by the waiver statutes before allowing the prosecution of an adult charged with conduct committed as child to go forward. Massa, J., dissenting: He joins with Goff's proposed holding, but notes that simply clearing the jurisdictional roadblock does not fix the problem of how to hold an adult accountable for a crime they committed when they were still a child.

RELATED CASES: Kedrowitz, 199 N.E.3d 386 (Ind. Ct. App. 2022) (noting the history of affirmations of cases involving the waiver of juveniles and the extensive provisions in the juvenile code for waiver, Ct. held adult court had subject matter jurisdiction and refused to apply the obiter dictum from Neukam to "essentially nullify almost an entire chapter of the Indiana Code").

TITLE: R.E.I. v. State
INDEX NO.: U.2.
CITE: (5th Dist., 05-07-08), Ind. App., 855 N.E.2d 93
SUBJECT: Juvenile court's jurisdiction to order 21-year-old D to register as sex offender
HOLDING: Juvenile court had jurisdiction to order 21-year-old D to register as sex offender, because: 1) he could not be ordered to register until juvenile court held required evidentiary hearing after his release from DOC, In re G.B., 709 N.E.2d 352 (Ind. Ct. App 1999); and 2) he intentionally delayed proceedings past his twenty-first birthday. Juvenile court was not required to file a motion to reinstate jurisdiction pursuant to Ind. Code 31-30-2-3, because D was on probation for his delinquency adjudication for child molesting, and State filed petitions to register him as sex offender while he was on probation.

Court retained jurisdiction to conduct evidentiary hearing and order D to register after he reached age of twenty-one, because by his own conduct, he failed to appear for previous evidentiary hearings and intentionally delayed the proceedings past his twenty-first birthday. D's attempt to game the system by failing to appear for scheduled hearings in an effort to challenge juvenile court's jurisdiction is a clear "gotcha" technique that Court will not reward. Held, judgment affirmed.

TITLE: Taylor v. State
INDEX NO.: U.2.
CITE: (8-9-82), Ind., 438 N.E.2d 275
SUBJECT: Juvenile Ct. jurisdiction - effect of noncompliance with procedural prerequisites
HOLDING: Procedural prerequisites for assumption of jurisdiction over child include: (1) filing of delinquency petition; (2) preliminary investigation into home, environment, child's personal history and circumstances of incident prompting filing of petition; (3) determination by Juvenile Ct. that it will assume jurisdiction; and (4) filing of formal petition and authorization by Juvenile Ct. Noncompliance with procedural prerequisites precludes assumption of jurisdiction over juvenile. However, failure of Ct's order book to state that prerequisites have been satisfied will not defeat jurisdiction where, as here, docket sheet shows that prerequisites have been satisfied. Held, judgment affirmed.

RELATED CASES: S.W.E. v. State, App., 563 N.E.2d 1318 (procedural prerequisites for acquiring jurisdiction over juvenile are not necessary where Juvenile Ct. previously obtained jurisdiction over child on prior delinquency charge).

U. JUVENILE

U.2. Jurisdiction/venue

U.2.a. Exclusive Jurisdiction (IC 31-6-2-1)

TITLE: Caldwell v. State
INDEX NO.: U.2.a.
CITE: (9/23/83), Ind., 453 N.E.2d 278
SUBJECT: Exclusive Juvenile Ct. jurisdiction over child under age 16 charged with murder
HOLDING: Juvenile Ct. has exclusive original jurisdiction over child charged with murder who was under 16 years old at time of offense. Ind. Code 31-6-2-1. Here, child was convicted and sentenced as adult for felony murder. Ind. S. Ct. held that absent proper waiver from Juvenile Ct., adult Ct. had no jurisdiction over D. Held, conviction reversed and remanded to Juvenile Ct.

TITLE: State ex rel. Atkins v. Juvenile Court of Marion County
INDEX NO.: U.2.a.
CITE: (5/6/69), Ind., 247 N.E.2d 53
SUBJECT: Exclusive Juv. Ct. jurisdiction - persons known to be under 18 years of age
HOLDING: It is improper for grand jury to indict person known to be juvenile for offense known by grand jury to be within exclusive original jurisdiction of Juv. Ct. However, if prosecutor and grand jury had not known that Ds were juveniles, indictment would have vested jurisdiction in criminal Ct. for sole purpose of transferring cause to Juv. Ct. Turner v. State, 508 N.E.2d 541. Here, indictment did not vest any jurisdiction in criminal Ct. Held, writ of prohibition granted.

RELATED CASES: Twyman v. State, 459 N.E.2d 705 (where child is charged in adult criminal Ct., child must affirmatively and timely assert lack of personal jurisdiction or objection is waived); Bryant v. State, 271 N.E.2d 127 (statute giving Juv. Ct. exclusive jurisdiction over juveniles does not apply to case of direct contempt in another Ct. Ct. in which contempt occurs has full right to punish juvenile as it would adult; held, no error in Tr. Ct. ordering juv. witness to answer questions of prosecuting attorney under penalty of contempt); Blackwell v. State, 262 N.E.2d 632.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.b. Exceptions

TITLE: Gressel v. State
INDEX NO.: U.2.b.
CITE: (1st Dist., 12-16-81), Ind. App., 429 N.E.2d 8
SUBJECT: Reckless driving - excluded from Juvenile Ct. jurisdiction
HOLDING: Reckless driving is traffic offense and thus excluded from Juvenile Ct. jurisdiction. Juvenile Code excludes violation of traffic law from Juvenile Ct. jurisdiction if, under traffic code, violation constitutes misdemeanor or infraction [IC 31-6-2-1.1(b)(1) and (2)]. Felony violations which may involve vehicles, such as criminal recklessness [IC 35-42-2-2(c)] and reckless homicide [IC 35-42-1-5], are subject to exclusive original jurisdiction of Juvenile Ct. Jones, App., 322 N.E.2d 727. In this case, 17-year-old D was properly convicted of reckless driving in adult Ct. Held, conviction affirmed.

TITLE: Matter of P.G. v. State
INDEX NO.: U.2.b.
CITE: (5th Dist., 8-28-96), Ind. App., 669 N.E.2d 443
SUBJECT: Erroneous waiver of juvenile jurisdiction - attempted murder
HOLDING: Because murder & attempted murder are not same offense for purposes of waiving juvenile jurisdiction to adult Ct. under Ind. Code 31-6-2-4(d), waiver of jurisdiction of 13-year- old juvenile charged with attempted murder was inappropriate. Statute provides in part that, upon motion of prosecutor & after full investigation & hearing, juvenile Ct. shall waive jurisdiction of child over 10 years of age if it finds that child is charged with act that would be murder if committed by adult. Absent explicit reference to attempts in general or to attempted murder in particular, attempted murder was not intended to be included among those acts for which juvenile jurisdiction may be waived under Ind. Code 31-6-2-4(d). Held, judgment reversed.

TITLE: Snodgrass v. State
INDEX NO.: U.2.b.
CITE: (6/24/80), Ind., 406 N.E.2d 641
SUBJECT: Adult Ct. jurisdiction over lesser included offenses
HOLDING: Once jurisdiction properly vests in adult criminal Ct. as to charged crime, whether by way of waiver or statutory exclusion of crime from jurisdiction of Juvenile Ct., jurisdiction remains in adult Ct. as to that charge and all lesser included offenses. Here, D was charged with felony murder and waived to adult Ct. Following waiver, State filed robbery charge against D. Robbery was felony underlying felony murder charge, and thus was lesser included offense to original charge. Waiver hearing was unnecessary on robbery charge. Held, judgment affirmed; petition for rehearing granted.

RELATED CASES: Nelson v. State, 479 N.E.2d 48; Douglass v. State, 466 N.E.2d 721; Lindley v. State, 373 N.E.2d 886; Pharms v. State, App., 477 N.E.2d 334; Blythe v. State, 373 N.E.2d 1098 (when jurisdiction vests in adult criminal Ct. as to charged crime, jurisdiction does not remain with criminal Ct. for subsequent charge or acceptance of plea bargain for charge that is not lesser included offense).

TITLE: State ex rel. Camden v. Gibson Circuit Ct.
INDEX NO.: U.2.b.
CITE: (09-19-94), Ind., 640 N.E.2d 696
SUBJECT: Direct adult Ct. jurisdiction over attempt crimes of juveniles
HOLDING: Attempts to commit enumerated crimes over which juvenile Ct. does not have jurisdiction are not included in those offenses exempted from juvenile Ct. jurisdiction. Attempted robbery charge against 16-year-old was filed in adult criminal Ct. D moved to dismiss charge based on lack of jurisdiction, but Tr. Ct. denied motion & original action was filed with Supreme Ct. Ct. issued permanent writ of mandamus & prohibition ordering adult Ct. to cease & desist in further jurisdiction. Subject matter jurisdiction is entirely statutory, & exclusive jurisdiction is conferred on juvenile Cts. in wide range of proceedings involving children under 18. This jurisdiction is integral to policy that while children's legal obligations have to be enforced to protect public, children in juvenile system must be treated as persons in need of care, treatment, rehabilitation & protection. Decision discusses importance of policy rejecting treatment of juveniles same as adults. Ind. Code 31-6-2-1.1(d) sets forth offenses over which juvenile Ct. does not have jurisdiction even though the child is under 18, if he or she is 16 or over. Attempts in general, & attempted robbery in particular were not listed in enumerated offenses, although robbery if committed with deadly weapon or resulting in serious bodily injury is included. Protections of waiver process are not merely formal. Ct. held that legislature did not intend to exclude attempted robbery from grant of exclusive jurisdiction to juvenile Cts. Direct file offenses are listed by statutory code section numbers, & Ind. Code 31-6-2-1.1 makes no mention of attempt statute, Ind. Code 35-4-5-1. Ct. agreed with D that two other statutes concerning admissibility of alternative testimony in enumerated sex offenses, Ind. Code 35-37-4-6 & 8, specifically mention attempts to commit enumerated offenses by code number. Ct. inferred that legislature was aware of difference between completed offenses & attempts, & specifically includes attempts when it means to. Ind. Code 31-6-2-1.1 had been amended twice since language of Ind. Code 35-37-4-6 & 8 was adopted, & therefore legislature had two clear opportunities to include "attempt" language but chose not to. Ct. also found attempts to commit offenses are included offenses of completed offenses, & unless State actually charges robbery as class A or B felony, Ind. Code 31-6-2-1.1 does not exclude charge of attempted robbery from juvenile Ct. jurisdiction. Ct. lastly considered differences between attempt, aiding & abetting, & conspiracy offenses. Attempt as defined in Ind. Code 35-41-5-1(a) is considered felony or misdemeanor of same class as crime attempted, while aiding & inducing statute, Ind. Code 35-41-2-4, provides that person who aids or induces another to commit offense, commits that offense. Additionally, conspiracies are considered felonies of same class as underlying felony, just as attempts, & conspiracies to commit offenses are still within juvenile Ct. jurisdiction. Because both attempts & conspiracies are crimes in their own right, because language of their statutes is so similar, & because conspiracies are not excluded from juvenile jurisdiction, attempts should also not be excluded. Held, petition granted & case ordered transferred to juvenile Ct.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.b.1. Automatic waiver (IC 31-6-2-1(d))

TITLE: B.D.T. v. State
INDEX NO.: U.2.b.1.
CITE: (4th Dist.; 11-22-00), Ind. App., 738 N.E.2d 1066
SUBJECT: Automatic adult jurisdiction - effect of failure to transfer
HOLDING: Juvenile Ct. committed fundamental error in failing to transfer jurisdiction of case to criminal docket because sixteen-year-old juvenile was charged with offense of criminal deviate conduct. Juvenile Ct. does not have jurisdiction over individual for alleged violation of Ind. Code 35-42-4-2 (criminal deviate conduct) if individual was at least sixteen years of age at time of alleged violation. Ind. Code 31-30-1-4. Judgment made when Ct. lacks subject matter jurisdiction is void. Clark, App., 727 N.E.2d 18. Objection to subject matter jurisdiction cannot be waived. Twyman, 459 N.E.2d 705 (Ind. 1984). However, such void judgment is no bar to subsequent indictment & trial in Ct. which has jurisdiction of offense. U.S. v. Ball, 163 U.S. 662 (1896). Here, because juvenile was sixteen when he allegedly committed criminal deviate conduct, adult Ct., rather than juvenile Ct., had subject matter jurisdiction, & thus, juvenile Ct. judgment is void. However, because judgment is void, it did not place juvenile in jeopardy & does not bar trial in adult Ct. Held, judgment vacated.

RELATED CASES: Gall, App., 811 N.E.2d 969 (D was automatically waived to adult Ct. based on charge of dangerous possession of a firearm, which is among those the juvenile Ct. lacks jurisdiction of pursuant to Ind. Code 31-30-1-4).

TITLE: Caldwell v. State
INDEX NO.: U.2.b.1.
CITE: (9/23/83), Ind., 453 N.E.2d 278
SUBJECT: Automatic juvenile waiver
HOLDING: As adult criminal Ct., Tr. Ct. did not have jurisdiction over D, a 15-year-old charged with murder, absent a waiver request by prosecutor. See Cummings 251 N.E.2d 663. Here, Tr. Ct. *overruled* D's motion to dismiss for lack of jurisdiction, *citing* Ind. Code 31-6-2-1(d). State contends phrase "if the individual was 16 years of age or older" is a limitation upon robbery but not upon murder, kidnapping or rape. Ct. finds such a construction would be absurd in light of Ind. Code 31-6-2-4(c) [mandatory waiver of juvenile over 10 charged with murder upon prosecutor's request & after waiver hearing]. Automatic waiver under Ind. Code 31-6-2-1(d) means the juvenile Ct. has no jurisdiction over a person aged 16 or older charged with murder, kidnapping, rape, or robbery (if committed while armed or results in serious bodily injury). Because D was under 16 when he committed offense of murder, he was not subject to treatment as an adult under Ind. Code 31-6-2-1(d). Absent a proper waiver from juvenile Ct. under Ind. Code 31-6-2-4, the Tr. Ct. (an adult criminal Ct.) had no jurisdiction. Held, conviction reversed. DISSENT by Pivarnik finds state's position entirely tenable.

RELATED CASES: Tingle, 632 N.E.2d 345 (Rejecting argument that because D was only accessory to offenses, it was error to charge him as principle to obtain automatic waiver into adult Ct. While Ind. Code 31-6-2-4 does not specify accessories, other criminal statutes to which accessory statute, Ind. Code 35-41-2-4, applies, do not either); Pharms, App., 477 N.E.2d 334 (State need not procure waiver on underlying felony of felony-murder charge, which had already been waived to adult Ct., *citing* Snodgrass 402 N.E.2d 1235, on *reh'g* 406 N.E.2d 461).

TITLE: Philson v. State
INDEX NO.: U.2.b.1.
CITE: (5th Dist., 12-11-08), Ind. App., 899 N.E.2d 14
SUBJECT: Juvenile court jurisdiction - joined offenses after acquittal
HOLDING: The fact that D was acquitted of rape charges, which were the charges upon which the Tr. Ct.'s automatic jurisdiction was based, does not divest the Tr. Ct. of its jurisdiction over a joined child molest conviction. The juvenile court does not have jurisdiction over offenses that may be joined with offenses that are subject to automatic adult jurisdiction. Ind. Code 31-30-1-4(a)(13). Here, D was alleged to have committed three counts of child molest in the juvenile court. Subsequently, the State filed two rape charges over which the adult court had automatic jurisdiction. The State then dismissed the child molest accusations in juvenile court and joined them with the rape charges in adult court. D moved to sever the rape charges from the child molest charges, and the court denied the motion. Although the D was acquitted of the rape charge, and only convicted one joined child molesting offense, the legislature has not included a mechanism for transferring jurisdiction back to the juvenile court upon the acquittal of the only automatic adult criminal jurisdiction charge. Thus, the jurisdiction remains in the adult court. Recognizing that this is a harsh result, the court implores the legislature to address this scenario head-on. Held, judgment affirmed; Kirsch, J., dissenting on basis that the Tr. Ct. abused its discretion in denying the severance.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.b.2. Discretionary waiver/ concurrent jurisdiction (IC 31-6-2-1.5)

TITLE: Atkins v. State
INDEX NO.: U.2.b.2.
CITE: (12/21/72), Ind., 290 N.E.2d 441
SUBJECT: Discretionary waiver - presumption against waiver
HOLDING: In discretionary waiver case, there is presumption in favor of disposing of juvenile matters within Juvenile Ct. system. Waiver is last resort to be used only if, after full hearing, Juvenile Ct. determines that dispositions within juvenile system are inadequate to serve child and best interests of community. Juvenile Ct. must provide specific reasons for concluding that child is beyond rehabilitation. Waiver order which simply parrots statutory requirements, without specifying reasons, is inadequate. Held, for Ds who had no prior juvenile record and in whose case no evidence could be shown that dispositions available within Juvenile Ct. system were inadequate, Ct. reversed waiver order. For Ds who had prior record in Juvenile Ct., Ct. remanded case to Juvenile Ct. for further waiver determination.

RELATED CASES: Summers v. State, 230 N.E.2d 320.

TITLE: Hagan v. State
INDEX NO.: U.2.b.2.
CITE: (2nd Dist., 5-31-96), Ind. App., 682 N.E.2d 1292
SUBJECT: Presumptive waiver of juvenile - procedure & review
HOLDING: Appellate Ct. has authority to review decision of juvenile Ct. to waive its jurisdiction, including whether juvenile Ct. abused discretion in failing to find that it is in best interests of child & safety/welfare of community for it to retain jurisdiction. Presumption in favor of waiver is created when State shows that D was at least 16, was charged with act that would be Class A or B felony if committed by adult, & there was probable cause to believe D committed act. Ind. Code 31-6-2-4(e); Soward v. State, 606 N.E.2d 885 (Ind. Ct. App. 1993). Burden to present evidence that waiver is not in best interests of juvenile or of safety/welfare of community remains at all times on juvenile seeking to avoid waiver. Juvenile Ct. is required to make specific findings of fact regarding elements of presumptive waiver, but not regarding best interests of child & community. Ind. Code 31-6-2-4(j).

TITLE: K.M v. State
INDEX NO.: U.2.b.2.
CITE: (1st Dist., 3-9-04), Ind. App., 804 N.E.2d 305
SUBJECT: Discretionary waiver to adult Ct. - juvenile "beyond rehabilitation"
HOLDING: As a matter of law, Ct. held that evidence of prior juvenile delinquency adjudications and/or informal dispositions is not a prerequisite to determining that a juvenile is "beyond rehabilitation" for purposes of waiving juvenile to adult Ct. Ct. could not find any definition for "beyond rehabilitation" & noted this determination is fact sensitive necessitating a case-by- case inquiry. While a presumption exists that a juvenile should remain in the juvenile system, Ind. Code 31-30-3-2 makes that presumption rebuttable. In this case, Ct. upheld Tr. Ct.'s finding that State rebutted that presumption due to D's use of a firearm in the crime; the victim was leaving the area; D earlier in the day attempted to use a weapon against the victim; & the incident was gang-related. Thus, Tr. Ct. did not abuse its discretion in finding that D was beyond rehabilitation in juvenile Ct. & in waiving him to adult Ct. on charge of attempted murder. Held, judgment affirmed.

TITLE: Kindred v. State
INDEX NO.: U.2.b.2.
CITE: (4th Dist. 5/28/86), Ind. App., 493 N.E.2d 467
SUBJECT: Discretionary waiver/concurrent jurisdiction
HOLDING: Pursuant to Burns Section 9-3213 (1956 replacement), Tr. Ct. was required to transfer cause to its juvenile docket & conduct "full investigation" before "waiving" its juvenile jurisdiction in transferring theft count to adult criminal docket. Juvenile Ct. may obtain jurisdiction over subject matter & person of D, a juvenile, only by strict compliance with statute. [*Citations* omitted.] Here, Ct. finds Tr. Ct. never acquired juvenile jurisdiction &, therefore, could not waive juvenile jurisdiction to obtain adult criminal jurisdiction. Subsequent adult criminal proceedings on theft count were, therefore, null & void. Held, reversed & remanded.

TITLE: Soward v. State
INDEX NO.: U.2.b.2.
CITE: (3rd Dist., 01-25-93), Ind. App., 606 N.E.2d 885
SUBJECT: Evidence sufficient to support waiver of juvenile under presumptive waiver
HOLDING: Where evidence showed juvenile was 16 years old, & that victim died from head-on collision with car juvenile was driving when he was racing or chasing another car in excess of 85 m.p.h. (in a 45 mph. zone) & crossed double yellow line on curve, it was sufficient to support waiver to adult Ct. under Ind. Code 31-6-2-4(e). Statute requires that Ct. shall waive jurisdiction if child is charged with reckless homicide as Class C felony, there is probable cause to believe he committed act, & he was 16 years old or older at time; unless it is in best interests of child & safety & welfare of community for him to remain in juvenile system. Although at hearing there was testimony presented in favor of finding D should remain in juvenile system, evidence in support of waiver was sufficient to support Tr. Ct.'s exercise of its discretion to waive.

RELATED CASES: Hall, App., 870 N.E.2d 449; Moore, App., 723 N.E.2d 442 (Tr. Ct. provided ample support for waiver order); Hagan, App., 682 N.E.2d 1292 (Juvenile Ct. did not abuse discretion in waiving jurisdiction despite undisputed evidence from D that it was in his & community's best interests for him to remain in juvenile Ct.).

TITLE: State v. C.K.
INDEX NO.: U.2.b.2.
CITE: (2/28/2017), 70 N.E.3d 900 (Ind. Ct. App. 2017)
SUBJECT: Court reverses denial of State's petition to waive jurisdiction to adult court
HOLDING: In the State's interlocutory appeal, the Court held that where Ind. Code § 31-30-3-6 requires a trial court to waive jurisdiction to adult court if the juvenile has "previously been convicted of a felony," the adult felony needs to be entered only before the State seeks waiver, not before the juvenile allegedly committed a delinquent act. See id. C.K. allegedly committed burglary and robbery in September 2014, but the State delayed bringing delinquency actions until the fall of 2015. Meanwhile, in September of 2015, after C.K. had turned 16, he and several companions robbed a pizza delivery person. On December 1, 2015, he pled guilty to the two adult charges. Six weeks later, the State asked the juvenile court to waive the two pending juvenile cases to adult court, but the court denied the request.

IC 31-30-3-6 provides, in part: "Upon motion by the prosecuting attorney, the juvenile court shall waive jurisdiction if . . . . (2) the child has previously been convicted of a felony . . . ." The plain meaning of the phrase, "previously convicted of a felony," includes felony convictions imposed up to any time before the State files a petition to waive jurisdiction to adult court. Thus, contrary to the trial court's ruling, the felony conviction need not be entered before a child commits a delinquent act. Here, the State sought waiver six weeks after C.K. pled guilty in adult court, so the trial court should have granted the State's request to waive the juvenile matters to adult court. Held, denial of motion to waive jurisdiction reversed and remanded for further proceedings.

TITLE: State v. D.R.
INDEX NO.: U.2.b.2.
CITE: (2/13/2019), 119 N.E.3d 1060 (Ind. Ct. App. 2019)
SUBJECT: Evidence rebutted presumption of juvenile'swaiver to adult court
HOLDING: On interlocutory appeal, Court found no abuse of discretion in juvenile court's denial of State's request to waive juvenile jurisdiction over D.R. to criminal court. D.R. was 17 years old when he drove a car at a high rate of speed, crossing the center line, and striking another vehicle resulting in the death of the driver of the other vehicle. After receiving medical care, D.R. was taken into custody and charged with reckless homicide, a Level 5 felony if committed by an adult, and operating a vehicle with a controlled substance or its metabolite in the person's blood resulting in death, a Level 5 felony. Tr. Ct. denied State's motion for waiver of juvenile jurisdiction after hearing and sought discretionary interlocutory review of the juvenile court's order.

D.R. cross-appealed and argued the State lacked statutory authority to seek interlocutory review of the juvenile court's denial of a motion to waive jurisdiction. The Court of Appeals concluded the State may seek discretionary interlocutory review of a juvenile court's denial of the State's motion to waive jurisdiction. Such an appeal would not conflict with mandatory juvenile court deadlines. But in this instance, the Tr. Ct. did not abuse its discretion in the decision not to waive D.R. from juvenile court to adult court. D.R.'s lack of juvenile record and his attempts to overcome his significant familial, personal and mental difficulties were evidence in favor of continuing jurisdiction in juvenile court. Thus, D.R. presented evidence that rebutted the presumption in favor of waiver.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.c. Waiver hearing (IC 31-6-2-4)

TITLE: Allen v. State
INDEX NO.: U.2.c.
CITE: (3rd Dist., 7-10-91), Ind. App., 547 N.E.2d 932
SUBJECT: Right to full waiver hearing before transfer to criminal Ct.
HOLDING: Juvenile D is entitled to full waiver hearing, including right to counsel at hearing, confrontation of witnesses, presentation of evidence and circumstances that would entitle D to remain within Juvenile Ct. system. Here, no record existed showing whether waiver hearing was held prior to D's guilty plea in criminal Ct. Held, conviction reversed.

RELATED CASES: Adams v. State, App., 411 N.E.2d 160 (where child has not waived right to counsel before waiver hearing, appointment of counsel required even if Juvenile Ct. determines that child's parents have sufficient funds to retain counsel; determination of who shall pay cost of counsel is completely independent of appointment; Juvenile Ct. committed reversible error in conducting waiver hearing without appointing counsel for D).

TITLE: Brown v. State
INDEX NO.: U.2.c.
CITE: (4/27/83), Ind., 448 N.E.2d 10
SUBJECT: Waiver hearing - failure to hold promptly requires release not dismissal
HOLDING: Tr. Ct. did not err in denying D's motion for discharge premised upon non-compliance with Ind. Code 31-6-7-6 (time guidelines for juvenile detention), because remedy for failure to comply is release of juvenile on recognizance or to parents/guardian, not discharge. Here, D contends she was in detention 35 days before a waiver hearing was held (15 days beyond time proscribed in statute). Ind. Code 31-6-7-6(g) provides for release on recognizance or to parents/guardian if time in detention goes beyond that provided in statute. Held, no error.

RELATED CASES: J.D., 909 N.E.2d 1035 (Ind. Ct. App 2009) (without clear authorization, Ct. could not say that a violation of the 60-day limit of Ind. Code 31-37-11-2(b) required Tr. Ct. to dismiss the delinquency allegations against D); Spikes 460 N.E.2d 954.

TITLE: Kent v. United States

INDEX NO.: U.2.c.

CITE: 383 U.S. 451, 86 S. Ct. 1045, 16 L.Ed.2d 84 (1966)

SUBJECT: Rights of juvenile in waiver proceedings

HOLDING: Determination whether or not to waive juvenile D to adult court is critically important since it contemplates imposition of criminal sanctions. Juvenile is entitled to hearing on issue of waiver of jurisdiction, including representation by counsel, access by D's counsel to social records and probation reports considered by Tr. Ct. and statement of reasons for Tr. Ct's decision to waive D. Statement of Tr. Ct. must include relevant facts and basis for waiver with sufficient specificity to permit meaningful review, and must demonstrate that full investigation has been made by Tr. Ct. See parallel holding in Summers v. State, 248 Ind. 551, 230 N.E.2d 320 (1967). Here, Tr. Ct. improperly ignored request by D's counsel for waiver hearing and access to social records when it waived D to adult Ct. Further, D was deprived due process because Tr. Ct. did not provide adequate statement of reasons for waiver of D. Held, Tr. Ct. reversed and remanded; Ct. App. decision vacated.

TITLE: Smith v. State
INDEX NO.: U.2.c.
CITE: (2/8/84), Ind., 459 N.E.2d 355
SUBJECT: Waiver hearing - probable cause
HOLDING: Petition alleging delinquency was sufficient to constitute probable cause, even though it failed to include words "with intent to kill" & was later dismissed. Charge presented to juvenile must be sufficient to allow enlightened determination re propriety of waiver from juvenile system & to inform juvenile of nature & cause of charge. Trotter 429 N.E.2d 637. Intent to kill may be inferred from intentional use of deadly weapon in manner likely to cause death. [Citations omitted.] Victim testified at waiver hearing that D stabbed her numerous times, causing serious injuries. Subsequent dismissal of information is irrelevant. Same precision in information is not required for waiver hearing as for trial. Dismissal of charges does not necessarily imply lack of probable cause. Strosnider, App., 422 N.E.2d 1325 (juvenile case; similar argument). Held, no error.

RELATED CASES: Spikes 460 N.E.2d 954 (hearsay evidence may be presented at waiver hearing, *citing* Clemons).

TITLE: Smith v. State
INDEX NO.: U.2.c.
CITE: (2/8/84), Ind., 459 N.E.2d 355
SUBJECT: Waiver hearing - proof
HOLDING: Juvenile waiver statute does not place unconstitutionally vague burden of proof on D. Standard of "the child's welfare & best interests of the state" (an earlier version of statute) is sufficient guideline, saving statute from being void on its face for vagueness; sufficient notice is provided to juvenile to prepare for waiver hearing. Clemons, App., 317 N.E.2d 859. Requiring statement of reasons for waiver order renders broad standard in juvenile waiver statute constitutionally sound. Id. Appellate review of juvenile Ct.'s findings protects juvenile from arbitrary/capricious/discriminatory decisions. Held, no error.

TITLE: Tibbs v. State

INDEX NO.: U.2.c.

CITE: (10/23/2017), 86 N.E.3d 401 (Ind. Ct. App. 2017)

SUBJECT: Written findings not required to support denial of motion for "reverse waiver" to juvenile court

HOLDING: After 17-year-old Defendant was acquitted of murder, trial court properly denied his motion to transfer his case to juvenile court for adjudication and disposition of obstruction of justice and carrying handgun without a license charges. Pursuant to Ind. Code § 31-30-1-4(c) (enacted in 2016), a court having adult criminal jurisdiction may withhold judgment and transfer jurisdiction to the juvenile court for adjudication and disposition after consideration of several enumerated factors. The "reverse transfer" statute contains no requirement that the trial court enter findings in support of its denial of petition, and Court will not read one into the statute. Aside from sentencing decisions, trial courts generally have no obligation to enter findings in support of their rulings in criminal cases. Willsey v. State, 698 N.E.2d 784 (Ind. 1998). Held, denial of petition to transfer case to juvenile court affirmed and convictions affirmed.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.c.1. Procedure

TITLE: Gerrick v. State
INDEX NO.: U.2.c.1.
CITE: (7/27/83), Ind., 451 N.E.2d 327
SUBJECT: Waiver hearing - procedure; probable cause
HOLDING: Although better practice is to require state to again present evidence of probable cause at waiver hearing, D was not harmed by juvenile Ct.'s procedural error of incorporating by reference (IBR) finding made during detention hearing that probable cause existed to believe D murdered victim/committed robbery. Juvenile Ct.'s act did not prevent D from presenting his own evidence at waiver hearing to negate prior showing of probable cause. See Kindred, App., 365 N.E.2d 776 (technical error of noncompliance with statute is not reversible error absent showing of harm). Here, D argues Ind. Code 31-6-2-4(c)(2) requires state to establish probable cause at waiver hearing, regardless of juvenile Ct.'s prior findings. D also argued his rights to confrontation & CX were negated by the juvenile Ct.'s IBR. Ct. construes IBR as taking judicial notice of prior proceeding in same Ct. & same cause of action. Held, no error.

RELATED CASES: Villalon, 956 N.E.2d 697 (Ind. Ct. App 2011) (sixth amendment does not requires that the decision to waive a juvenile be made by a jury; thus, Indiana's juvenile waiver statute requiring the Tr. Ct. to determine waiver is constitutional).

TITLE: Jonaitis v. State
INDEX NO.: U.2.c.1.
CITE: (3rd Dist., 7-12-82), Ind. App., 427 N.E.2d 140
SUBJECT: Waiver of jurisdiction - repetitive pattern of delinquent acts
HOLDING: For purposes of waiver determination under Ind. Code 31-6-2-4(b)(1)(B), discretionary waiver statute concerning child charged with act that is part of repetitive pattern of delinquent acts, pattern of acts need not include acts previously referred to Juvenile Ct. Here, D was simultaneously charged with 3 separate acts that would be crimes if committed by adult. Although D had no prior contact with Juvenile Ct., Ct. found presently charged acts sufficient to support waiver under statutory provision regarding "repetitive pattern of delinquent acts." Held, waiver judgment affirmed.

TITLE: Partlow v. State
INDEX NO.: U.2.c.1.
CITE: (9/22/83), Ind., 453 N.E.2d 259
SUBJECT: Waiver hearing - procedure; initial hearing
HOLDING: Juvenile Ct.'s failure to conduct initial hearing (IC 31-6-4-13) prior to waiver hearing (IC 31-6-2-4) had no effect on its jurisdiction over D; juvenile Ct. had jurisdiction to waive D to adult Ct. Here, at detention hearing, juvenile Ct. advised D of rights to remain silent/not testify & to an attorney; appointed attorney for D; told him probable cause had been found to permit filing of robbery & murder charges; & found it was in D's best interest to keep him in juvenile detention. Ct. accepts state's position that it was proper to hold waiver hearing before initial hearing became necessary. When waiver is sought, all other proceedings directed toward determination of delinquency cease until waiver issue is resolved. Held, no error. CONCURRING IN RESULT, DeBruler, joined by Prentice, contends initial hearing is required. Because juvenile Ct. obtains jurisdiction before waiver hearing, reversal is not required.

TITLE: Spikes v. State
INDEX NO.: U.2.c.1.
CITE: (3-20-84), Ind., 460 N.E.2d 954
SUBJECT: Waiver hearing - hearsay evidence admissible
HOLDING: Neither due process nor fundamental fairness requires exclusion of hearsay evidence at waiver hearing. Jonaitis v. State, App., 427 N.E.2d 140; Clemons v. State, App., 317 N.E.2d 859. Juvenile waiver hearing is dispositional in nature, and hearsay rules do not apply because evidence in waiver hearing is not offered to prove guilt. Rather, evidence is offered to show that evidence is substantial enough to find that juvenile committed crime and that juvenile jurisdiction should be waived to criminal Ct. Held, judgment affirmed.

TITLE: Vance v. State
INDEX NO.: U.2.c.1
CITE: (09-09-94), Ind., 640 N.E.2d 51
SUBJECT: Waiver hearing - continuance to prepare
HOLDING: Where only two days elapsed between time counsel was appointed & waiver hearing, it was error to deny defense motion for continuance to prepare for hearing; error not reversible because there was second waiver hearing on other charges with adequate time to prepare, & waiver was found proper on other charges. 15-year-old D was charged with murder & waiver hearing was held on that charge. Subsequent waiver hearing on conspiracy & robbery charges stemming from same incident was held approximately 6 months later. Public Defender on first charge was appointed on Saturday, & first Ct. appearance, including waiver hearing, took place on following Monday. Ct. denied D's request for continuance to prepare for waiver, & D was waived to adult Ct.

Juveniles are entitled to basic due process & fair treatment, including right to present evidence of any circumstances that would entitle them to provisions of Juvenile Act. While Tr. Ct. appeared to think waiver was mandatory for murder charges, waiver for those under 16 is only presumptive, not mandatory, Ind. Code 31-6-2-4(d). It was possible that if D had been granted continuance, he might have obtained evidence to overcome waiver presumption. Juvenile Ct. cannot waive jurisdiction without full investigation & hearing, which is intended to protect full panoply of juvenile's rights.

Error was not reversible because D could not show required prejudice & that additional time would have aided defense. D was unable to persuade Tr. Ct. against waiver on other charges. Held, conviction affirmed.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.c.2. Certification to adult court

TITLE: In Matter of S.W.E. v. State

INDEX NO.: U.2.c.2.

CITE: (12/18/90), Ind. App., 563 N.E.2d 1318

SUBJECT: Waiver order -- no error

HOLDING: Juvenile D was charged with delinquency for having committed what constituted class A felony of delivery of scheduled I controlled substance. Circuit Ct. waived juvenile jurisdiction & transferred juvenile to adult criminal Ct. On appeal, D claimed that waiver order was not valid to transfer jurisdiction because only juvenile referee's signature appeared on waiver order & not juvenile judge's signature, & juvenile Ct.'s waiver order cited non-existent statute as basis for waiver. Ct. held that fact that juvenile referee signed waiver was moot issue because judge subsequently signed order & cite to non-existent statute was not grounds for reversal because D failed to show that he was prejudiced. Held, transfer affirmed.

TITLE: Massey v. State
INDEX NO.: U.2.c.2.
CITE: (1-20-78), Ind., 371 N.E.2d 703
SUBJECT: Waiver of jurisdiction - no new probable cause determination necessary in adult Ct.
HOLDING: Juvenile Ct. has statutory duty to make probable cause determination as part of decision to waive D to adult Ct. pursuant to Ind. Code 31-6-2-4. Once D is waived, it is unnecessary for criminal Ct. to hold separate, additional hearing concerning probable cause. Held, judgment affirmed.

U. JUVENILE

U.2. Jurisdiction/venue

U.2.c.3. Review on appeal

TITLE: Daniel v. State
INDEX NO.: U.2.c.3.
CITE: (12-10-91), Ind., 582 N.E.2d 364
SUBJECT: Waiver of jurisdiction reviewable only for abuse of discretion
HOLDING: Juvenile Ct. decision to waive juvenile D to adult Ct. is reviewable only for abuse of discretion. Trotter, 429 N.E.2d 637. Held, waiver and conviction affirmed.

RELATED CASES: Phelps, 969 N.E.2d 1009 (Ind. Ct. App 2012) (Tr. Ct. did not abuse its discretion by waiving a 15-year-old juvenile accused of attempted murder into adult court; Although the juvenile had no history of violence towards other adults or females, there was evidence of the juvenile=s pattern of disciplinary problems at school and myriad efforts to help the juvenile adjust his behavior, all to no avail); Jonaitis, App, 437 N.E.2d 140 (in reviewing order of Juvenile Ct. waiving jurisdiction, appellate Ct. does not reweigh evidence, but looks only to evidence supporting Tr. Ct. judgment. Record of waiver hearing may be used to supplement reasons for waiver as stated by Juvenile Ct. judge).

TITLE: Gerrick v. State
INDEX NO.: U.2.c.3.
CITE: (7/27/83), Ind., 451 N.E.2d 327
SUBJECT: Waiver hearing - review on appeal; validity of order
HOLDING: Juvenile Ct. did not abuse discretion in waiving D to adult Ct. where state offered evidence to show welfare & safety of society required waiver & factual support for waiver appeared in record of waiver hearing & on face of waiver order. Here, D contends evidence is insufficient to support waiver in that 2 witnesses testified it was in his best interest to remain in juvenile system & state presented no evidence that dispositional alternatives within juvenile system were inadequate. Evidence shows D was not aided by juvenile system in State of OH. Held, waiver affirmed.

RELATED CASES: Williams, App., 477 N.E.2d 906 (Infants 68.7(4); Ct. upholds form waiver order which merely set out general/conclusory language of juvenile waiver statute, *citing* Redding, App., 370 N.E.2d 397 & Swinehart, App., 349 N.E.2d 224); Gorzelanny, App., 468 N.E.2d 589 (Infants 68.7(2); juvenile Ct. entitled to give whatever weight it deems appropriate to testimony re best interests of child/community; held, no abuse of discretion in dismissal of state's waiver petition).

TITLE: Jordan v. State
INDEX NO.: U.2.c.3.
CITE: (7/15/2016), (Ind. Ct. App 2015)
SUBJECT: Waiver of juvenile jurisdiction & 40-year sentence for 15-year-old D affirmed
HOLDING: Juvenile court did not abuse its discretion when it waived jurisdiction over 15 year-old D's case to the Tr. Ct. D participated in the prolonged rape and robbery of a homeowner during his burglary of her home. His challenge to the waiver of jurisdiction centered on Tr. Ct.'s conclusion that, as demonstrated by his "criminal thinking," D was "beyond rehabilitation under the juvenile justice system" pursuant to Ind. Code § 31-30-3-2(4). However, there is no error associated with the juvenile court's use of the phrase "criminal thinking" without reference to evidence-based measures of criminogenic behavior where, as here, the "beyond rehabilitation" element of the waiver statute is otherwise properly addressed and supported by evidence from the record of the waiver hearing. Juvenile court cited D's minimization of his part in the crime, his apparent lack of remorse, "his beliefs [of the victim's] willingness to 'go along'" being inconsistent with his actions, the decision to move from a burglary of his victim's home with a planned theft to rape upon discovering little of value to steal, the alleged escalation of the rape, indifference to the presence of the victim's children in the home, and threats made on children in order to compel victim's compliance.

Court also concluded that D's aggregate 40-year sentence was not inappropriate under Appellate Rule 7(B) in light of the "horrendous" nature of his offenses and his character. Held, judgment affirmed.

RELATED CASES: Kedrowitz, 199 N.E.3d 386 (Ind. Ct. App. 2022) (no abuse of discretion in in finding that potential detention until age of 21 was inadequate to treat a disturbed individual who had allegedly killed two children who were "supposed to be in his care"); O.E.W., 133 N.E.3d 144 (Ind. Ct. App. 2019) (juvenile court's findings were more thansufficient to support determination of probable cause to waive O.E.W. to adult court on charges of felony murder, robbery, and theft).

TITLE: Roberson v. State
INDEX NO.: U.2.c.3.
CITE: (1st Dist., 04-02-09), 903 N.E.2d 1009 (Ind. Ct. App 2009)
SUBJECT: Waiver - can challenge after guilty plea
HOLDING: On rehearing, Court of Appeals *clarified* that one may challenge a wavier into adult court at any time, as it involves a question of subject matter jurisdiction. When courts lack subject matter jurisdiction, their actions are void ab initio and may be attacked at any time. Kondauri v. Kondamuri, 799 N.E.2d 1153, 1156 (Ind. Ct. App 2003). Thus, any language in the original opinion indicating that D waived the issue for appellate review by pleading guilty is superseded by this rehearing opinion. The original opinion at 900 N.E.2d 446 is affirmed in all other respects, including the conclusion that Tr. Ct. did not abuse its discretion in waiving D to adult court. Held, judgment affirmed; Riley, J., dissenting.

TITLE: State ex rel. Snellgrove v. Porter Circuit and Juvenile Courts
INDEX NO.: U.2.c.3.
CITE: (3-8-79), Ind., 386 N.E.2d 680
SUBJECT: Waiver of jurisdiction - no right to immediate appeal of waiver order
HOLDING: Juvenile D has right to direct appeal of order waiving jurisdiction, but no right to immediate appeal. Appeal of waiver order that is valid on its face must abate until final determination of criminal prosecution following waiver. In situation where waiver order is facially invalid, jurisdiction of criminal Ct. would be subject to attack, and D may invoke mandate and prohibition jurisdiction of Ind. S. Ct. Here, D filed petition for writ to direct Juvenile Ct. to permit immediate appeal of waiver order and to prohibit superior Ct. from proceeding in criminal action. Held, petition denied.

RELATED CASES: In Re Tacy, App., 427 N.E.2d 919 (waiver order is subject to discretionary interlocutory appeal; where Tr. Ct. and Ct. App. grant permission for immediate appeal, D may proceed accordingly; held, permission to appeal waiver order granted, but Tr. Ct. judgment affirmed).

U. JUVENILE

U.4. Taking into custody

U.4.a. Delinquent act (IC 31-6-4-4 and 5)

TITLE: Van Evey v. State
INDEX NO.: U.4.a.
CITE: (11-6-86), Ind., 499 N.E.2d 245
SUBJECT: Waiver of rights in extradition proceedings
HOLDING: Juvenile D's decision to waive objection to extradition was not subject to Ind. Code 31-6-7-3, which requires that child be granted meaningful consultation with child's custodial parent, guardian, custodian, or guardian ad litem who has no interest adverse to the child for valid waiver of rights by child, since extradition is not critical stage of proceedings. Cobb v. Gilman, 391 N.E.2d 618. Here, D argued that he was denied "meaningful consultation" with parents prior to voluntarily waiving objection to extradition from Michigan. D failed to present any documentation of extradition proceedings which could be reviewed for impropriety thus issue was waived. Ct. found that even if proper documentation had been presented, D's argument would fail because right to consultation with parents did not attach at this stage. Held, judgment affirmed.

U. JUVENILE

U.4. Taking into custody

U.4.b. CHINS (Children in Need of Service)

TITLE: Matter of S.G. v. In Dept of Child Services
INDEX NO.: U.4.b.
CITE: (1/12/2017), 67 N.E.3d 1138 (Ind. Ct. App 2017)
SUBJECT: Constitutional challenge to CHINS reunification exception statute rejected
HOLDING: Ind. Code § 31-34-21-5.6, which relieves DCS of the requirement to make reasonable efforts to reunify a child with parents if their rights to siblings were previously terminated, is not unconstitutional as applied to Mother. Between 1999 and 2016, DCS substantiated at least 13 instances of child abuse or neglect against Mother, which resulted in 11 separate CHINS cases involving all of her children at various points, as well as the termination of parental rights to two children. Although she has previously demonstrated an ability to reunify with her children, Mother did not put any effort into making a meaningful change in her life for the sake of her children and did not receive the benefits of services that DCS repeatedly provided to her. Statute serves a compelling State interest in protecting children from abuse and neglect of their parents and is narrowly tailored to serve that interest. G.B. v. Dearborn County Div. of Family & Children, 754 N.E.2d 1027, 1032 (Ind. Ct. App 2001).

Court also rejected Mother's argument that the statute was unconstitutionally vague. “Notwithstanding the applicability of the void for vagueness doctrine only to penal statutes, we nevertheless agree with the State that the No Reasonable Efforts Statute does not authorize arbitrary enforcement. Rather, certain statutory criteria must be satisfied... before DCS may, in its discretion, determine that it will not allocate the State’s resources in order to reunite a parent with her children. Such discretion is not tantamount to arbitrary enforcement.” Held, judgment affirmed.

U. JUVENILE

U.4. Taking into custody

U.4.c. For fingerprinting and photographing child (IC 31-6-8-1.5)

TITLE: Spikes v. State
INDEX NO.: U.4.c.
CITE: (3-20-84), Ind., 460 N.E.2d 954
SUBJECT: Taking child into custody - investigatory stop
HOLDING: Child is properly "taken into custody" where child agrees to accompany officers to police station and consents to fingerprinting. Here, police did not have "probable cause" to arrest Spikes or judicial authorization to take him into custody, but stop was found to be permissible "investigatory stop" pursuant to Terry v. Ohio, (1968), 88 S. Ct. 1868. Following this decision, U.S. S. Ct. vacated Spikes for further consideration in light of Hayes v. Florida, (1985), 105 S. Ct. 1643, in which Ct. held taking suspect to police headquarters without warrant or probable cause for arrest exceeds scope of Terry stop and violates 4th Amendment. On remand, 481 N.E.2d 1304, Ind. S. Ct. found that determination of 4th Amendment violation rested on whether D consented to accompany police to station. In this case, D testified that police informed him that he would be arrested if he refused to accompany then to station voluntarily. Police testified at hearing on D's Motion to Suppress and during trial that D consented to accompany police to station. Ct. found facts in conflict and remanded case to Tr. Ct. for further findings regarding whether D voluntarily accompanied police to station.

U. JUVENILE

U.5. Detention (before determination of delinquency)

TITLE: R.A. v. State

INDEX NO.: U.5.

CITE: (5th Dist., 6-18-02), Ind. App., 770 N.E.2d 376

SUBJECT: Repeat truant; probation violation - juvenile can be held in secure facility for twenty-four hours

HOLDING: Juvenile Ct. lacked authority to hold D in secure facility for seven-days pending fact-finding hearing on alleged probation violation. Repeat truant who is alleged to have violated probation may be held in pre-hearing detention facility for up to twenty-four hours pending fact- finding hearing. Ind. Code 31-37-22-6(4). Where, as here, child is alleged to be truant but has not been adjudicated to be truant, he or she may not be detained at secure facility. Ind. Code 31-37-7-1. This statute does not apply to detention in secure facility when child has been adjudicated to be delinquent & is alleged to have violated her probation. In so holding, Ct. disagreed with holding in W.R.S. v. State, 759 N.E.2d 1121 (Ind. Ct. App. 2001). In W.R.S., Ct. found abuse of discretion in detaining child who had been adjudicated truant & was alleged to have violated probation. In instant case, child was ordered held in secure facility for seven days pending fact-finding hearing on probation violation, violating twenty-four-hour limitation found in modification statute, Ind. Code 31-37-22-6(4). Held, judgment reversed. Sullivan J., concurring & dissenting in part, & Darden, J., concurring & dissenting in part. Judge Darden believes that five conditions set forth in Ind. Code 31-37-22-6 must be met before juvenile may be detained in secure facility, the most critical being the possibility of harm to child's mental & physical condition.

TITLE: State ex rel W.A. v. State
INDEX NO.: U.5.
CITE: (12-31-98), Ind., 704 N.E.2d 477
SUBJECT: Juvenile detention - pre-determination informal home detention
HOLDING: Although Ct. inherently had power to order informal home detention for juvenile, Ct. failed to make required probable cause findings & failed to grant juvenile's request for hearing within twenty days. Juvenile Cts. have power in some circumstances to confine child alleged to be delinquent in detention facility. Ind. Code 31-37-6-6. Included within broader power to detain juvenile in facility lies power to order less restrictive form of home detention, where parents or guardians can participate in child's supervision. However, before Ct. can order any form of detention, it must first find probable cause to believe child is delinquent child & that: (1) child is unlikely to appear for subsequent proceedings; (2) detention is essential to protect child or community; (3) parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of child; or (4) child has reasonable basis for requesting child not be released. Ind. Code 31-37-6-6(a). Here, Ct. adopted probation officer's recommendation as to above findings of probable cause without making any finding of its own. Thus, without making one finding of its own, Ct. improperly detained juvenile.

When juvenile is placed on home detention, including informal home detention, juvenile Ct. is required to hold fact-finding hearing within twenty days. If child is in detention & petition has been filed, fact-finding hearing must be commenced not later than twenty days after petition is filed. Ind. Code 31-37-11-2(a). Informal home detention in juvenile Cts. means that child will remain at home at all times, except when at school, when at work or when accompanied by parent. Because juvenile on informal home detention still faces significant restrictions, though not to degree of one placed in facility, informal home detention qualifies as detention for purposes of Ind. Code 31-37-11-2. Thus, Tr. Ct. should have granted juveniles request to have fact- finding hearing within twenty days or set juvenile free on his own recognizance or to his guardians. Held, petition for writ of mandate granted; Sullivan, J., concurring on basis it is possible for Ct. to order home detention with less restrictive conditions which would not be considered detention for purposes of Ind. Code 31-37-11-2.

RELATED CASES: L.W., App., 798 N.E.2d 904 (Juvenile Ct. did not err in placing D on informal home detention as condition of suspended commitment, even though this condition was not part of plea agreement; see full review at U.11.e).

TITLE: W.R.S. v. State

INDEX NO.: U.5.

CITE: (12-13-01), Ind. App., 759 N.E.2d 1121

SUBJECT: Status offense - juvenile can't be held in secure facility or sentenced after being held 24 hours

HOLDING: It was improper for Tr. Ct. to detain juvenile D in secured facility for being truant before he was found to have violated his probation. Further, Tr. Ct. lost ability to commit D to DOC because he was held in juvenile detention facility for over 24 hours. Pursuant to Ind. Code 31- 37-7-1, with exception of runaways, any child alleged to be delinquent child for committing status offense may not be held in: 1) secure facility; or 2) shelter care facility that houses persons charged with, imprisoned for, or incarcerated for crimes. D was neither runaway nor had he committed act that would be crime if committed by adult. Only type of allegation made against D was truancy, which is status offense. Juvenile Ct. may only incarcerate repeat truant if it follows procedures under Ind. Code 31-37-22-6, which prohibits child from being held in juvenile detention facility for more than 24 hours before fact finding hearing. 24-hour rule ensures that dispositional alternatives are not lost when repeat truant has been held for 24 hours in juvenile detention facility. Because juvenile was wrongly held in secure facility for 29 days Tr. Ct. lost ability to modify its dispositional order & to order D to spend three months in DOC. Held, judgment reversed.

RELATED CASES: R.A., App., 770 N.E.2d 376 (disagreeing with W.R.S., Ct. held that Ind. Code 31-37-7-1 does not apply to detention in secure facility when child has been adjudicated to be delinquent & is alleged to have violated her probation).

U. JUVENILE

U.5. Detention (before determination of delinquency)

U.5.a. Grounds (IC 31-31-8-2(2))

U. JUVENILE

U.5. Detention (before determination of delinquency)

U.5.c. Release (IC 31-6-4-5)

TITLE: Brown v. State
INDEX NO.: U.5.c.
CITE: (4/27/83), Ind., 448 N.E.2d 10
SUBJECT: Detention - release rather than dismissal required for failure to hold prompt waiver hearing
HOLDING: Tr. Ct. did not err in denying D's motion for discharge premised upon non-compliance with IC31-6-7-6 (time guidelines for juvenile detention), because remedy for failure to comply is release of juvenile on recognizance or to parents/guardian, not discharge. Here, D contends she was in detention 35 days before a waiver hearing was held (15 days beyond time proscribed in statute). Ind. Code 31-6-7-6(g) provides for release on recognizance or to parents/guardian if time in detention goes beyond that provided in statute. Held, no error.

U. JUVENILE

U.5. Detention (before determination of delinquency)

U.5.d. Detention hearing (IC 31-6-4-5)

TITLE: Gerrick v. State
INDEX NO.: U.5.d.
CITE: (7/27/83), Ind., 451 N.E.2d 327
SUBJECT: Detention hearing - compliance with statute
HOLDING: Alleged failure of state to comply with requirements of Ind. Code 31-6-4-5(c), (d), (e) & (f), concerning proper conduct of waiver hearing does not divest juvenile Ct. of its jurisdiction over D. Tacy, App., 427 N.E.2d 919. Here, D contends noncompliance with statute meant juvenile Ct. had no jurisdiction over him & thus no jurisdiction to waive him to adult Ct. Ct. finds Ind. Code 31-6-4-5 is not a jurisdictional statute. Juvenile Ct.'s jurisdiction attaches as soon as child has been taken into custody by law enforcement officer who is acting with probable cause to believe child has committed an act that would be a felony if committed by an adult. Juvenile Ct.'s jurisdiction had attached before hearing & cannot be lost by failure to conduct hearing in proper manner. Held, no error.

U. JUVENILE

U.7. Petition alleging delinquency (IC 31-6-4-9)

TITLE: Hendricks v. State

INDEX NO.: U.7.

CITE: (10-2-81), Ind., 426 N.E.2d 367

SUBJECT: Failure to verify delinquency petition - timely objection necessary to preserve issue

HOLDING: Although Ind. Code 31-6-4-9(c) requires petition alleging delinquency to be verified, D must object to defect via motion to quash or objection is waived. Here, sworn testimony of alleged victims at waiver hearing served purpose of assuring that delinquency petition was not frivolous. Ct. found that Juvenile Ct. properly acquired jurisdiction over D despite State's failure to verify petition. Held, judgment affirmed.

U. JUVENILE

U.7. Petition alleging delinquency (IC 31-6-4-9)

U.7.a. Preliminary inquiry (IC 31-6-4-7)

TITLE: Collins v. State
INDEX NO.: U.7.a.
CITE: (2nd Dist., 6-26-89), Ind. App., 540 N.E.2d 85
SUBJECT: Preliminary Inquiry - social history not required if D charged with adult crime
HOLDING: Pursuant to Ind. Code 31-6-4-7, if prosecutor has reason to believe child has committed delinquent act, prosecutor shall instruct intake officer to make preliminary inquiry, which is an informal investigation into facts and circumstances reported to Ct. Whenever practicable, inquiry should include social history, including information on child's background, current status, and school performance. Social history aspect of preliminary inquiry is not required for Juv. Ct. to obtain jurisdiction over juvenile D charged with act that would be crime if committed by adult. Murphy, App., 408 N.E.2d 1311. Here, preliminary inquiry into theft charge included presentation of 2 affidavits demonstrating informal investigation into facts of alleged offense. Appellate Ct. found inquiry sufficient. Held, judgment affirmed.

RELATED CASES: C.K., App., 695 N.E.2d 601 (no need for further inquiry into case prior to filing delinquency petition, when court already has affidavit of probable cause).

U. JUVENILE

U.7. Petition alleging delinquency (IC 31-6-4-9)

U.7.d. Court authorization to file petition (IC 31-6-4-9(b))

TITLE: In Re Tacy
INDEX NO.: U.7.d.
CITE: (3rd Dist., 11-10-81), Ind. App., 427 N.E.2d 919
SUBJECT: Delinquency petition - filing complete only after authorized by Juvenile Ct.
HOLDING: Delinquency petition is deemed "filed," for purposes of tolling 20-day time period in which waiver or fact-finding hearing must be held, only after petition is "authorized" by Juvenile Ct. Pursuant to Ind. Code 31-6-4-9(b), Juvenile Ct. shall consider preliminary inquiry and evidence of probable cause and shall approve filing of delinquency petition if there is probable cause to believe that child is delinquent child and that it is in best interests of child or public that petition be filed. Here, State filed delinquency petition 28 days before waiver hearing, but Juvenile Ct. authorized petition within 20 days before waiver hearing. Held, judgment affirmed.

U. JUVENILE

U.7. Petition alleging delinquency (IC 31-6-4-9)

U.7.e. Notice (IC 31-6-7-4 and 5)

TITLE: In Re Gault

INDEX NO.: U.7.e.

CITE: 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)

SUBJECT: Delinquency petition - due process right to notice

HOLDING: Notice of juvenile delinquency proceedings must be given sufficiently in advance of Ct. proceedings to provide reasonable preparation time and must set forth alleged misconduct with particularity. Police officer filed petition alleging delinquency for lewd phone call on day following alleged act, which was day initial hearing (also serving as fact-finding hearing) was scheduled. Child's parents were not given written notice of petition or initial hearing. Notice of subsequent hearing was note written by police officer containing date and time of further hearing. Notice did not describe alleged misconduct. Delinquency hearing was improperly held where notice requirements were not met.

U. JUVENILE

U.8. Initial hearing (IC 31-6-4-13 and 13.5)

TITLE: Partlow v. State
INDEX NO.: U.8.
CITE: (9/22/83), Ind., 453 N.E.2d 259
SUBJECT: Initial hearing
HOLDING: Juvenile Ct.'s failure to conduct initial hearing (IC 31-6-4-13) prior to waiver hearing (IC 31-6-2-4) had no effect on its jurisdiction over D; juvenile Ct. had jurisdiction to waive D to adult Ct. Here, at detention hearing, juvenile Ct. advised D of rights to remain silent/not testify & to an attorney; appointed attorney for D; told him probable cause had been found to permit filing of robbery & murder charges; & found it was in D's best interest to keep him in juvenile detention. Ct. accepts state's position that it was proper to hold waiver hearing before initial hearing became necessary. When waiver is sought, all other proceedings directed toward determination of delinquency cease until waiver issue is resolved. Held, no error. CONCURRING IN RESULT, DeBruler, joined by Prentice, contends initial hearing is required. Because juvenile Ct. obtains jurisdiction before waiver hearing, reversal is not required.

U. JUVENILE

U.9. Admission / Denial Hearing

TITLE: T.D. v. State

INDEX NO.: U.9.

CITE: (10/31/2022) 198 N.E.3d 1197 (Ind. Ct. App. 2022)

SUBJECT: Failure to ensure that juvenile knowingly and voluntarily waived his rights rendered admission void

HOLDING: T.D. appealed the denial of his Motion for Relief from Judgment pursuant to Ind. Trial Rule 60(B), challenging his adjudication as a delinquent child and commitment to the Department of Correction for auto theft. The motion argued that T.D.'s admission was void because the juvenile court did not ensure that he voluntarily waived several constitutional rights before accepting the admission. The motion contained statements from T.D.'s prior attorney that T.D. had watched a video explaining his rights and that his attorney had explained T.D.'s rights to his mother, and neither he nor his mother asked his attorney questions about those rights. T.D. attached to his motion for relief a copy of the transcript from T.D.'s delinquency proceedings. At the admission hearing, the court did not ask T.D. whether he had watched the video about rights or have any discussion with T.D. or his mother about the rights he was waiving by admitting to auto theft. However, in the juvenile court's order from the admission hearing, it wrote that T.D. and his mother understand that T.D. waives the rights discussed in the video. Nevertheless, the juvenile court denied T.D.'s motion for relief from judgment, finding that T.D. had watched a video explaining his rights and had been represented by counsel, so his admission was voluntary and knowing.

On appeal, the State did not dispute that the juvenile court had failed to establish that T.D. knew and understood the rights he was waiving by admitting to a delinquent act. Rather, the State contended that it was a procedural error, instead of an error that rendered his admission void.

The Court of Appeals held that failure to follow the juvenile waiver statute is not a procedural error: "the juvenile waiver statute ensures that juveniles knowingly and voluntarily waive important constitutional and statutory rights. 'Strict compliance' with the statute is required to safeguard these rights." "[A] trial court's failure to ensure that a juvenile knowingly and voluntarily waives his rights when the juvenile admits to being a delinquent child means that the agreed delinquency adjudication is void under Trial Rule 60(B)(6)."

Because T.D.'s adjudication is void, the Court of Appeals reversed the denial of his motion for relief. Judge Bailey, dissenting, agrees that the juvenile court failed to ensure that T.D. knowingly and voluntarily waived his rights when entering his admission, but does not believe that the error rendered the admission or adjudication void. Judge Bailey rejected the majority's comparison of a juvenile admission to the entry of a plea of guilty, but also noted that even if the comparison applied, the error made T.D.'s admission "voidable" not "void." He would allow for a delinquent child to challenge his or her admission under T.R. 60(b)(8), but only if the child presents a meritorious defense in addition to the challenge to the admission.

U. JUVENILE

U.9. Admission/denial hearing

U.9.b. CHINS (IC 31-6-4-13.5(f to i))

TITLE: In Re Heaton

INDEX NO.: U.9.b.

CITE: (1st Dist. 11/26/86), Ind. App., 503 N.E.2d 410

SUBJECT: Admission/denial hearing - CHINS

HOLDING: Tr. Ct. lacked subject matter jurisdiction over CHINS proceeding; therefore, any order or judgment rendered by Tr. Ct. is a nullity & ordered vacated. Here, CHINS petition was never filed, fact-finding hearing was never held (as required by Ind. Code 31-6-4-14), & child's parents did not receive notice of proceeding prior to child's admission to CHINS. Welfare Dept. asserts it had authorization to detain child under Ind. Code 31-6-4-6(d)(4), & that Tr. Ct. was authorized to make finding of CHINS without fact-finding hearing pursuant to Ind. Code 31-6-4-13.5. Ct. finds Welfare Dept. failed to follow statutory scheme. Statutes clearly set forth jurisdictional prerequisites & it is only after petition has been authorized, with notice to parents, that Tr. Ct. may engage in disposition of matters pending re child. Held, judgment reversed & vacated.

U. JUVENILE

Fact-Finding Hearing (IC 31-37-11-2)

U.10.a. Authority of Referee

TITLE: Swisher v. Brady

INDEX NO.: U.10.a.

CITE: 438 U.S. 204, 98 S. Ct. 2699 (1978)

SUBJECT: No double jeopardy where State allowed to file objections to unfavorable ruling by referee

HOLDING: Dist. Ct. erred in granting injunctive relief after finding that Maryland rule authorizing State to file objections to unfavorable ruling by referee with Juv. Ct. judge violated double jeopardy clause of 5th Amendment. Maryland juvenile procedure provides for fact- finding hearing before master/referee, who has no power to enter order of adjudication. Juv. Ct. judge then considers proposed findings, who can consider additional evidence only by consent and who alone may enter final order. Because there is one proceeding, not two, the procedure does not violate double jeopardy. Here, D argued that allowing State to file objections to referee's ruling in essence required D to retry his case before Juv. Ct. judge. Ct. found that because Maryland rule allowed Juv. Ct. judge to review objections only on basis of record made before referee and upon further evidence to which D did not object, D was not required to retry case to judge. Held, judgment reversed.

U. JUVENILE

U.10. Fact-finding hearing (IC 31-6-4-14)

U.10.b. Evidence

TITLE: R.S. v. State
INDEX NO.: U.10.b.
CITE: (1st Dist., 5/27/82), Ind. App., 435 N.E.2d 1019
SUBJECT: Failure of Juv. Ct. referee to submit written findings of fact
HOLDING: Juv. Ct. erred in adjudging D delinquent child where referee presided over fact- finding hearing but did not submit adequate findings and recommendations in writing to Juv. Ct. judge. Ind. Code 31-6-9-2(d) states that Juv. Ct. referee shall submit findings and recommendations in writing to judge. Procedure is mandated by legislature in order to provide D with meaningful opportunity for review. Reviewing Ct. cannot determine if there was abuse of discretion or lack of substantial evidence unless basis of decision is set out in writing. Here, referee's findings merely stated that D committed certain acts and found that he was delinquent child, and Juv. Ct. approved findings. Ct. found referee's findings did not constitute adequate factual basis upon which Juv. Ct. judge may order judgment of delinquency, or for meaningful review by Ct. Held, adjudication of delinquency reversed and remanded with instructions to referee to make written record of findings and for Juv. Ct. to render decision based upon written findings of referee.

TITLE: B.M.P. v. State
INDEX NO.: U.10.b.
CITE: (3/8/83), Ind., 446 N.E.2d 17
SUBJECT: Prior statement of State's witness not admissible where witness refuses to testify at trial
HOLDING: Juv. Ct. committed reversible error by failing to strike statement of State's witness who refused to testify. Lewis, 440 N.E.2d 1125. Here, statement was offered into evidence before witness was called to testify. Later, witness was called by State, but refused to testify. Witness did not claim 5th amendment right, nor did he admit, to statement or claim that statement was not true. Judge found witness guilty of contempt but denied D's motion to strike witness' statement. Ct. found that because witness refused to testify at all, effective cross-examination was not available and D's confrontation right under 6th amendment was denied. Held, delinquency adjudication reversed.

NOTE: See Ind. Evidence Rule 801(d)(1).

TITLE: J.V. v. State
INDEX NO.: U.10.b.
CITE: (4-16-02), Ind. App., 766 N.E.2d 412
SUBJECT: Protected person statute - applies in juvenile proceedings
HOLDING: Admission of evidence pursuant to protected person statute, Ind. Code 35-37-4-6, applies in juvenile proceedings despite language in statute that states it applies to criminal action. D argued that protected person statute allows for admission of videotaped statement only in criminal cases, & that admission of tape in this case was erroneous because juvenile delinquency proceedings are civil matters. Although juvenile proceedings are civil in nature & act of juvenile delinquency is not crime, a child alleged to be delinquent is charged by State with act that would be crime if committed by adult. In addition, to support true finding of delinquency, criminal standard of proof applies, i.e., State must prove delinquent act beyond reasonable doubt. Moreover, goal of protected person statute is to reduce child's emotional trauma caused by numerous Ct. appearances, not to guarantee that child will never have to face D. Miller v. State, 517 N.E.2d 64 (Ind. 1987). Therefore, there is no compelling reason to exclude application of protected person statute in these circumstances or to read statute so narrowly as to render it inapplicable in delinquency proceedings. Held, judgment affirmed.

TITLE: Simmons v. State
INDEX NO.: U.10.b.
CITE: (2nd Dist., 1/23/78), Ind. App., 371 N.E.2d 1316
SUBJECT: School records admissible under "business records" exception to hearsay rule
HOLDING: Juv. Ct. did not err in admitting D's school attendance records into evidence at fact-finding hearing. Although hearsay rule applies to fact-finding hearings in Juv. Ct., school attendance records are admissible under "business records" exception to hearsay rule. Here, records were compiled by individual who received information regarding student absences from teachers and circulated attendance ledger for correction of discrepancies. D argued that notations on attendance ledger were not made by person with personal knowledge of D's school absences. Ct. found that combination of circumstances constituted reliable indicator of trustworthiness sufficient to warrant admission of records into evidence. Held, delinquency adjudication affirmed.

NOTE: See Indiana Evidence Rule 803(6) and O.9.c.5

U. JUVENILE

U.10. Fact-finding hearing (IC 31-6-4-14)

U.10.d. Other

TITLE: In Re Heaton
INDEX NO.: U.10.d.
CITE: (1st Dist. 11/26/86), Ind. App., 503 N.E.2d 410
SUBJECT: Fact-finding hearing
HOLDING: Tr. Ct. lacked subject matter jurisdiction over CHINS proceeding; therefore, any order or judgment rendered by Tr. Ct. is a nullity & ordered vacated. Here, CHINS petition was never filed, fact-finding hearing was never held (as required by Ind. Code 31-6-4-14), & child's parents did not receive notice of proceeding prior to child's admission to CHINS. Welfare Dept. asserts it had authorization to detain child under Ind. Code 31-6-4-6(d)(4), & that Tr. Ct. was authorized to make finding of CHINS without fact-finding hearing pursuant to Ind. Code 31-6-4-13.5. Ct. finds Welfare Dept. failed to follow statutory scheme. Statutes clearly set forth jurisdictional prerequisites & it is only after petition has been authorized, with notice to parents, that Tr. Ct. may engage in disposition of matters pending re child. Held, judgment reversed & vacated.

TITLE: Moran v. State
INDEX NO.: U.10.d.
CITE: (10-21-93), Ind., 622 N.E.2d 157
SUBJECT: Delinquency burden of proof (BOP) not improper
HOLDING: Ind. S. Ct. reversed Ct. App. decision at 611 N.E.2d 673 & found that judge did not err & apply erroneous standard at juvenile's delinquency hearing. Although in entering decision, Tr. Ct. stated that, "possibly if this were a criminal Court where the Court was finding the juvenile guilty of a crime, that might have some difference in the decision. However, under the present circumstances, what this Court is doing is finding the juvenile guilty of being a juvenile delinquent..." Ct. found remarks did not warrant assumption that improper BOP, lower than beyond reasonable doubt, was being used. It is presumed that Tr. Cts. will apply correct BOP, & Ct. found comments of trial judge may have been made for purposes unrelated to BOP. Ct. determined comments did not show sufficient indicia that he applied wrong BOP.

TITLE: State v. Gorzelanny
INDEX NO.: U.10.d.
CITE: (3d Dist. 9/27/84), Ind. App., 468 N.E.2d 589
SUBJECT: Fact-finding hearing - waiver hearing cannot satisfy
HOLDING: Juvenile Ct. erred in dismissing delinquency petition without holding separate fact-finding hearing pursuant to Ind. Code 31-6-4-14. Partlow 453 N.E.2d 259; Jonaitis, App., 437 N.E.2d 140; see generally Ind. Code 31-6-4-13(g) & (i). Here, state's petition for waiver was dismissed following a hearing. Juvenile Ct. simultaneously denied delinquency petition. Hearing on waiver petition simply determines jurisdiction & is not an adjudication of delinquency. Held, order dismissing delinquency petition reversed & cause remanded for hearing on delinquency petition.

TITLE: T.W. v. State
INDEX NO.: U.10.d.
CITE: (5th Dist., 04-16-07), Ind. App., 864 N.E.2d 361
SUBJECT: Runaway- definition of "permission to leave" & "failure to return"
HOLDING: Juvenile court properly found by a preponderance of the evidence that T.W. committed a delinquent act, i.e., leaving home without permission, in violation of her probation & suspended sentence. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home: (1) without reasonable cause; & (2) without permission of the parent, guardian, or custodian, who requests the child's return. Ind. Code 31-37-2-2. Here, T.W. was given permission to leave the Gerrard House, where she was living, to attend G.E.D. classes & then report to work. However, T.W.'s employer called the Gerrard house to inform them that T.W. did not report for work. After the Gerrard House reported T.W. a runaway, she phoned to say she was at her sister's home. Although the personnel instructed T.W. to return immediately, she did not return for several hours.

In the context of Ind. Code 31-37-2-2, permission to leave that is given for a particular destination limits that permission, at least by implication, to that particular destination. Thus, although T.W. had permission to leave, she did not have permission to go to her sister's home. Further, the fact that T.W. returned hours after being requested to do so does not negate the fact that she failed to return immediately as asked. Held, judgment affirmed.

U. JUVENILE

U.11. Disposition

TITLE: C.C. v. State
INDEX NO.: U.11.c.
CITE: (4th Dist., 04-27-05), Ind. App., 826 N.E.2d 106
SUBJECT: Crawford inapplicable in juvenile disposition hearing
HOLDING: Sixth Amendment right to confront witnesses under Crawford v. Washington, 124 S. Ct. 1354 (2004), was not violated when juvenile Ct. admitted disciplinary report from juvenile detention center that included hearsay statements from psychiatrist stating that juvenile should be placed in the DOC if he reoffended. Under Crawford, State must show two things pursuant to Confrontation Clause when it attempts to admit "testimonial" hearsay against a criminal D: 1) that the witness who made the statement is unavailable; & 2) that the D had a prior opportunity to cross-examine the witness. Here, juvenile D had previously been adjudicated a delinquent & placed in an alternative education program. Probation department filed a petition for modification of the dispositional decree due to violations of his commitment. During a hearing on this motion, State filed the disciplinary report that included the psychiatrist comments through the chief probation officer. While hearsay rules apply in juvenile proceedings to determine a child delinquent, excluding hearsay evidence in disposition hearings would in many cases disserve the child by excluding relevant information that might support a less restrictive disposition. *Citing* Matter of L.J.M., 473 N.E.2d 637 (Ind. Ct. App. 1985) (Ct.'s emphasis). Held, judgment affirmed; Barnes, J. concurring on other grounds with separate opinion.

TITLE: M.M. v. State

INDEX NO.: U.11.c.

CITE: (06/22/2022), Ind. Ct. App., 189 N.E.3d 1163

SUBJECT: Trial court did not abuse its discretion in sending juvenile to DOC after wide array of services designed to address juvenile's mental health issues and attempts to rehabilitate him failed.

HOLDING: M.M. appealed his commitment to the Indiana Department of Correction for his acts of juvenile delinquency. Since 2018, when M.M. was first adjudicated a delinquent child for an act that would have been a Class A misdemeanor battery, had he been an adult, M.M. had been adjudicated delinquent three more times for battery offenses ranging from acts that would have been Class A misdemeanors, to Level 5 felonies. He had spent 56.5 months in residential placement, and another 175 days in secure detention. He was unsuccessfully discharged from all but one of his placements. The juvenile court had attempted a wide array of services designed to address M.M.'s mental health and rehabilitate him. The Court of Appeals held that the juvenile court did not abuse its discretion by committing M.M. to the DOC

U. JUVENILE

U.11. Disposition

U.11.a. Predispositional report (IC 31-34-18-1)

TITLE: J.B. v. State
INDEX NO.: U.11.a.
CITE: (2nd Dist.; 06-26-06), Ind. App., 849 N.E.2d 714
SUBJECT: Commitment to DOC & predispositional report considering only DOC were proper
HOLDING: A predispositional report shall include a description of all dispositional options considered in preparing the report & an evaluation of each. Ind. Code 31-37-17-6.1. This statute does not require that predispositional report provide information about every single placement option that is conceivably available to a juvenile. Here, probation officer testified that she considered only DOC as placement option for juvenile, & that is the option she discussed in her report. Thus, the predispositional report complies with the statute. Held, judgment affirmed.

U. JUVENILE

U.11. Disposition

U.11.d. Findings

TITLE: In Re Winship

INDEX NO.: U.11.d.

CITE: 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970)

SUBJECT: Findings must be supported by proof beyond reasonable doubt

HOLDING: When child charged with act that would be crime if committed by adult, child entitled to adjudicatory findings based upon proof beyond reasonable doubt. Reasonable doubt standard is essential to due process and fair treatment and is constitutionally required as to every fact that is necessary to crime. Here, Tr. Ct. judge acknowledged that evidence might have been insufficient to prove guilt beyond reasonable doubt. Held, reversed.

TITLE: Madaras v. State
INDEX NO.: U.11.d.
CITE: (3rd Dist., 9/15/81), Ind. App., 425 N.E.2d 670
SUBJECT: Disposition - failure of Juv. Ct. to make written findings
HOLDING: Juv. Ct. did not commit reversible error in failing to make written findings prior to ordering disposition of child following adjudication. Here, Juv. Ct. judge ordered D to be confined for 7 days in county jail but made no findings of fact to support disposition. Ct. found that any error of Juv. Ct. in failing to make written findings of fact regarding disposition of child is harmless where appellate Ct. finds that disposition ordered was proper and D has already served sentence at time of appellate review. Noting that child had turned 19 at time of disposition, Ct. found disposition was appropriate and any error in failing to make written findings was harmless. Held, judgment affirmed.

U. JUVENILE

U.11. Disposition

U.11.e. Disposition alternatives (IC 31-6-14-15.4 et seq.)

TITLE: D.C. v. State
INDEX NO.: U.11.e.
CITE: (11-17-11), 958 N.E.2d 757 (Ind. 2011)
SUBJECT: Dispositional alternatives - interplay between indeterminate and determinate commitment
HOLDING: Juvenile court abused its discretion by imposing on the delinquent child a determinate commitment to the DOC to be followed by an indeterminate commitment. The juvenile code lists dispositional alternatives that can be imposed on a delinquent child. The juvenile court can award wardship of the child to the DOC. Ind. Code 31-37-16-6. In that case, the DOC determines both the placement of the juvenile and the duration of the placement. Ind. Code 31-37-19-10 provides for a determinate commitment of a juvenile for up to two years to the DOC if the juvenile meets certain criteria. The DOC cannot reduce the period of the determinate sentence.

Here, 14-year-old Juvenile was adjudicated for an act that would be Class A felony burglary if committed by an adult. Using the two different dispositional statutes, the juvenile court imposed a determinate commitment of two years at the DOC to be followed by an indeterminate commitment "until the age of 21 unless sooner released by" the DOC. Using principles of statutory construction, Court held that the determinate commitment statute and indeterminate commitment statutes are mutually exclusive, and a juvenile court can only sentence a juvenile under one of them. However, a juvenile court is not required to order a determinate commitment under Ind. Code 31-37-19-10 when the juvenile meets the requirements of that statute. Rather, when a juvenile meets the requirements of determinate commitment, the juvenile court has the choice between ordering a determinate or an indeterminate commitment. Although reading the statutes to provide the juvenile court the flexibility to order both a determinate and indeterminate commitment would be more consistent with the purpose of the juvenile code, Court leaves it to the legislature to change the statutes, if necessary. Held, transfer granted, judgment reversed and remanded with instructions to impose either a section 6 (indeterminate) or 10 (determinate) commitment and Court of Appeals' opinion at 935 N.E.2d 290 vacated.

TITLE: E.H. v. State
INDEX NO.: U.11.e.
CITE: (3-4-02), Ind. App., 764 N.E.2d 681
SUBJECT: One year commitment in detention facility - improper based on best interests of juvenile
HOLDING: Juvenile Ct. abused its discretion in placing Juvenile D in juvenile detention facility for one year as it was not least restrictive alternative as mandated in Ind. Code 31-37-18-6 & did not further rehabilitative goals of juvenile justice system. D was found guilty of stealing necklace from classmate at school. However, D had severe emotional problems stemming from parents' drug abuse. After being tossed around from one foster home after another, D finally showed significant improvement & began reunification process with parents. Juvenile Ct. provided no explanation for committing D for one year, other than it being typical next step after suspended commitment. Given nature of offense & D's lack of violent criminal record, it was not in his or community's best interest to commit him to detention facility. Held, dispositional decree vacated; Robb, J., concurring, noted that Tr. Ct.'s recommendation to Department of Correction exceeded 90-day statutory time limit of wardship or commitment.

RELATED CASES: A.A.Q., 958 N.E.2d 808 (Ind. Ct. App 2011) (No abuse of discretion in placing juvenile in restrictive facility, even though his offense was not heinous and less restrictive alternatives existed; juvenile had trespassed on school property while suspended; also, his habitual use of marijuana, behavior problems at school, including a prior suspension, and defiant and disobedient behavior justified restrictive placement); R.H. 937 N.E. 2d 386 (Ind. Ct. App. 2010) (juvenile court did not abuse its discretion in awarding guardianship to DOC although juvenile had no prior adjudications and his adjudications were for acts that would have been misdemeanors as an adult; juvenile exhibited many troubling behaviors before these arrests and offenses); J.J., 925 N.E.2d 796 (Ind. Ct. App 2010) DOC placement was proper despite history of drug use and mental health problems, including diagnoses for bipolar II disorder with psychotic features, hallucinations, major depression, psychosis, and borderline intellectual function; child had been given every opportunity to solve his problems, yet he continued to re-offend); D.B., App., 842 N.E.2d 399 (D's placement with Department of Corrections until his eighteenth birthday was not an abuse of discretion; statute recognizes that in certain situations, best interest of child is better served by more restrictive placement); S.C., App., 779 N.E.2d 937 (D's commitment to DOC was proper because it was in her best interests despite fact that it was not least restrictive alternative); L.L., App., 774 N.E.2d 554 (distinguishing E.H., Ct. noted that Juvenile court had given D several opportunities to better himself & had been given several warnings of consequences of continuing to act improperly, yet he still violated probation; further, foster family no longer wished to adopt or accept D back into their home); K.A., App., 777 N.E.2d 382 (Juvenile Ct. did not abuse discretion in committing D to DOC for placement at girls school, where Ct. adequately revealed reasons for disposition; statute recognizes that in certain situations best interest of child is better served by more restrictive placement).

TITLE: J.S. v. State
INDEX NO.: U.11.e.
CITE: (10/12/2018), 110 N.E.3d 1173 (Ind. Ct. App 2018)
SUBJECT: Consideration of evidence beyond juvenile's agreed admission
HOLDING: When considering placement options for a juvenile offender, Tr. Ct. may consider evidence beyond that which formed the factual basis for the juvenile's agreed admission. Here, juvenile court acted within its discretion in ordering DOC placement after finding that all three of J.S.'s referrals were "firearms related," even though firearm involvement was factually determined (through admission) only as to one of the referrals. J.S. did not object to references about guns in the other cases.

Unless parties include limiting language in negotiated plea agreements, Tr. Ct.s may consider facts and circumstances of underlying charges that were dismissed in determining sentence. Bethea v. State, 983 N.E.2d 1134, 1144 (Ind. 2013). As in Bethea, J.S. entered into an admission agreement with the State that was "functionally analogous to a plea agreement" in which J.S.'s disposition and placement was left open to the Tr. Ct.'s discretion. The agreement only limited the delinquent acts for which the court could enter true findings. The juvenile court sufficiently noted factors supporting J.S.'s placement in the DOC. Held, judgment affirmed.

TITLE: Legg v. State
INDEX NO.: U.11.e.
CITE: (12/10/2014), 22 N.E.3d 763 (Ind. Ct. App 2014)
SUBJECT: No error in declining to sentence D under alternative juvenile sentencing scheme
HOLDING: Tr. Ct. did not abuse its discretion in refusing to sentence D under the alternative sentencing scheme for juveniles who have been waived into and convicted in adult court. See Ind. Code § 31-30-4-2.

Upon hearing someone knock on her door, Trisha Kirk opened the door and saw D (age 16), who asked to see Trisha's son, Darren Kirk. Darren came outside and saw an unidentified person with D, who began wrestling with Darren. Moments later, the unidentified person gave his gun to D and told him to "pop" Darren, which D did, causing Darren to die moments later. When this happened, Darren's seventeen-year-old brother was also outside on the porch and Darren's mother and two-year-old brother were just inside the front door.

In an issue of first impression, Court found that the alternative sentencing statute (Ind. Code § 31-30-4-2) offers no guidance about when it should be used, so when deciding whether to use the alternative sentencing statute, courts may consider factors used to decide whether a juvenile should be waived to adult court, such as whether the juvenile has committed a heinous act, is beyond rehabilitation in the juvenile system, and whether it is in the best interests of the community's safety and welfare to make the child stand trial as an adult. See Ind. Code § 31-30-3-2. Applying these three factors from the waiver statute, Court found that the Tr. Ct. did not abuse its discretion in declining to sentence D under the alternative sentencing scheme for juveniles convicted in adult court. See Ind. Code § 31-30-4-2. The Court also found that D's fifty-five-year sentence for murder was not inappropriate. See Ind. Appellate Rule 7(B). Held, judgment affirmed.

TITLE: Matter of E.L. v. State
INDEX NO: U.11.e.
CITE: (2nd Dist., 2-14-03), Ind. App., 783 N.E.2d 360
SUBJECT: Improper commitment to Department of Corrections (DOC) - not least restrictive alternative
HOLDING: Juvenile Ct. abused its discretion by committing D to DOC for term of one year because it conflicted with rehabilitative goals of juvenile justice system, was not necessary for safety of community, & was not in D's or her daughter's best interests. D argued that unwritten policy adhered to in Marion County Juvenile Ct., in which juvenile offenders who have previously been committed to DOC are recommitted upon subsequent offense, is contrary to rehabilitative goals of juvenile justice system & strips magistrate of ability to make individualized determination of best placement for juvenile. Here, magistrate's comments revealed that she felt constrained by Ct.'s policy of recommitment & began with strong presumption that D should be recommitted to DOC. Applying such a presumption of recommitment in all cases runs risk of frustrating rehabilitative goals of juvenile justice system & necessarily shifts focus away from less restrictive alternatives. Here, evidence revealed that despite rocky start in early teens, D started to turn life around upon release from DOC. For over two years, D remained out of juvenile justice system, actively participating in school, maintaining positive attitude, & working extensively with service providers to create a better life for herself & her child. Juvenile Ct. abused its discretion by following its policy of recommitment. Held, dispositional decree vacated.

RELATED CASES: C.B., 988 N.E.2d 379 (Ind. Ct. App 2013) (conditional admission agreements are acceptable tool for juvenile courts to achieve rehabilitative goal of juvenile system; see full review at U.1.a); R.A., 936 N.E. 2d 1289 (Ind. Ct. App. 2010) (Juvenile court abused its discretion by committing R.A. to the DOC, because his commitment was punitive in nature, failed to adequately consider the totality of circumstances surrounding R.A. & failed to follow the public policy of favoring least-harsh disposition); J.B., App., 849 N.E.2d 714 (commitment to DOC was proper due to juvenile's continued substance abuse & criminal behavior despite prior attempts at rehabilitation); C.C., App., 831 N.E.2d 215 (Distinguishing E.L., Ct. noted that in ordering commitment, juvenile Ct. focused upon repeated attempts to assist D in correcting his behavior & his awareness that he would be sent to Boys School if he had any further problems); C.L.Y., App., 816 N.E.2d 894 (distinguishing C.T.S., Ct. found no error in detaining D pending fact-finding hearing); C.T.S., App., 781 N.E.2d 1193 (juvenile Ct. abused its discretion when it detained D for over four months during pendency of proceedings; least restrictive alternative was available, such as home detention, which would have likely ensured D's appearance for subsequent proceedings & negated need for detention to protect him & community); D.P., App., 783 N.E.2d 767 (Juvenile Ct. abused its discretion in awarding guardianship of D to DOC for six months; there was insufficient evidence to overcome Indiana's policy of favoring least-harsh disposition).

TITLE: J.S. v. State
INDEX NO.: U.11.e.
CITE: (1st Dist., 02-18-08), Ind. App., 881 N.E.2d 26
SUBJECT: Disposition - placement in DOC rather than deportation
HOLDING: Juvenile court did not abuse its discretion by placing juvenile who was in the U.S. illegally in DOC rather than returning him home to Mexico. Ind. Code 31-37-18-6 requires juvenile court to select the least restrictive placement in most situations; however, the statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances. K.A. v. State, 775 N.E.2d 382 (Ind. Ct. App 2002). The statute requires placement in the least restrictive setting only if consistent with the safety of the community and the best interest of the child. Here, juvenile was initially returned to Mexico for a minor crime in April 2006, but returned to the U.S. in May 2006, and soon committed what would be a Class A felony if committed by an adult by selling heroin to an informant, who was an exotic dancer. Juvenile had a sexual relationship and injected heroin with the dancer. Although juvenile's parents wanted him to return home to study computers or go into the military, the court found that the likelihood he would return to the U.S. and reoffend without any treatment or help was high. Given the serious nature of the drug-related offense, the likelihood that he will reoffend, and juvenile court's determination regarding his best interests, juvenile court did not abuse its discretion by placing J.S. with DOC. Held, judgment affirmed.

TITLE: L.W. v. State
INDEX NO.: U.11.e.
CITE: (2nd Dist., 11-20-03), Ind. App., 798 N.E.2d 904
SUBJECT: Informal home detention as condition of juvenile's probation - not punitive
HOLDING: Juvenile Ct. did not err in placing D on informal home detention as condition of suspended commitment, even though this condition was not part of plea agreement. While Tr. Ct. is bound by terms of accepted plea agreement, it may add conditions that do not materially add to punitive obligation. Freije v. State, 709 N.E.2d 323 (Ind. 1999). Distinguishing State ex rel. W.A. v. State, 704 N.E.2d 477 (Ind. 1998), Ct. concluded that informal home detention is not punitive in nature & may be imposed consistent with the Ct.'s obligation to be bound by terms of plea agreement. Requirement that juvenile be compelled to remain at home unless at school or accompanied by a parent or guardian does not add to punitive obligation, but instead assists juvenile's parents in ensuring that their child does not commit further delinquent acts. Like conditions of probation approved of in Freije, informal home detention is authorized in delinquency cases unless specifically excluded by plea agreement. Held, judgment affirmed.

RELATED CASES: S.S., App., 827 N.E.2d 1168 (imposition of informal home detention in this case was a substantial obligation of a punitive nature & not an administrative or ministerial condition).

TITLE: Legg v. State
INDEX NO.: U.11.e.
CITE: (12-10-2014), Ind. Ct. App., 22 N.E.3d 763
SUBJECT: No error in declining to sentence D under alternative juvenile sentencing scheme
HOLDING: Tr. Ct. did not abuse its discretion in refusing to sentence D under the alternative sentencing scheme for juveniles who have been waived into and convicted in adult court. See Ind. Code § 31-30-4-2.

Upon hearing someone knock on her door, Trisha Kirk opened the door and saw D (age 16), who asked to see Trisha's son, Darren Kirk. Darren came outside and saw an unidentified person with D, who began wrestling with Darren. Moments later, the unidentified person gave his gun to D and told him to "pop" Darren, who D did, causing Darren to die moments later. When this happened, Darren's seventeen-year-old brother was also outside on the porch and Darren's mother and two-year-old brother were just inside the front door.

In an issue of first impression, Court found that the alternative sentencing statute (Ind. Code § 31-30-4-2) offers no guidance about when it should be used, so when deciding whether to use the alternative sentencing statute, courts may consider factors used to decide whether a juvenile should be waived to adult court, such as whether the juvenile has committed a heinous act, is beyond rehabilitation in the juvenile system, and whether it is in the best interests of the community's safety and welfare to make the child stand trial as an adult. See Ind. Code § 31-30-3-2. Applying these three factors from the waiver statute, Court found that the Tr. Ct. did not abuse its discretion in declining to sentence D under the alternative sentencing scheme for juveniles convicted in adult court. See Ind. Code § 31-30-4-2. The Court also found that D's fifty-five-year sentence for murder was not inappropriate. See Ind. Appellate Rule 7(B). Held, judgment affirmed.

RELATED CASES: James, 178 N.E.3d 1236 (Ind. Ct. App. 2021) (Ct. found sentencing analysis & circumstances comparable to Legg and reduced D's sentence to the same 55-year advisory sentence for murder that Legg received; see full review at G.1.c).

TITLE: Matter of L.J.M.
INDEX NO.: U.11.e.
CITE: (4th Dist. 1/24/85), Ind. App., 473 N.E.2d 637
SUBJECT: Disposition alternatives - shelter care favored over detention
HOLDING: Tr. Ct. erred in ordering D's removal from shelter care facility without notice & D's arrest & detention in county jail. Notice is required under Ind. Code 31-6-7-16(b). Arrest & detention were improper for probation violation (breaking facility rules, poor grades). Policy of juvenile code is to keep children out of detention whenever possible, favoring shelter care facilities. See Ind. Code 31-6-4-6.5(b). Ct. can offer D, now in Boys School, no remedy. Tr. Ct. also abused discretion by removing D from facility & sending him to Boys School. Record does not support finding that such commitment was in D's best interest or necessary for safety of community as required by Ind. Code 31-6-4-16(d). Tr. Ct.'s assumption that poor grades indicated lack of cooperation at facility was improper. Ct. rejects D's contention that caseworker's testimony re his lack of cooperation/poor grades was inadmissible hearsay. Hearsay rule is inapplicable in modification proceedings. Excluding hearsay at disposition hearings in many cases would disserve child by excluding relevant information that might support less restrictive disposition. Held, reversed & remanded; Tr. Ct. to determine proper disposition. Conover DISSENTS, finding substantial evidence supporting transfer to Boys School.

TITLE: R.J.G. v. State
INDEX NO.: U.11.e.
CITE: (03-10-09), 902 N.E.2d 804 (Ind. 2009)
SUBJECT: Juvenile court may order probation following DOC commitment
HOLDING: In entering a dispositional decree, a juvenile court may simultaneously order commitment to the Department of Correction and probation following release. Ind. Code 31-37-19-5 and 6 give juvenile courts a myriad of dispositional alternatives to fit the unique and varying circumstances of each child's problems. J.J.M. v. State, 779 N.E.2d 602 (Ind. Ct. App 2002), which interpreted Ind. Code 31-30-2-1 to divest juvenile court's jurisdiction to order probation once it orders any term of commitment to DOC, was incorrectly decided. There is no jurisdictional bar to ordering more than one disposition in the same order. The juvenile court has jurisdiction over the person and the subject matter at the time it makes its dispositional decree and therefore has jurisdiction at that time to order both probation and commitment to the DOC. Entry of multiple dispositions in the initial order is not inconsistent with reinstatement of jurisdiction for additional dispositions upon release from DOC pursuant to Ind. Code 31-30-2-3. Held, transfer granted, judgment affirmed.

U. JUVENILE

U.11. Disposition

U.11.f. Commitment

TITLE: A.B. v State
INDEX NO.: U.11.f.
CITE: (06-29-11), 949 N.E.2d 1204 (Ind. 2011)
SUBJECT: Out-of-state child placement statutes constitutional - single-subject clause
HOLDING: Ind. Code 31-37-17-1.4, Ind. Code 31-37-18-9(a)-(b), and Ind. Code 31-40-1-2(f), relating to juvenile judge's authority on out-of-state juvenile placement cases, do not violate separation of powers or "one subject" principles under Indiana Constitution. Finding that Article 3, Section 1 of Indiana Constitution permits General Assembly to require that courts get approval from Department of Child Services (DCS) for any out-of-state placement, Court noted that 2009 legislative changes focused specifically on finances in state budget and this provision relates to DCS financial decisions. Disposing of separation of powers claim, Court held these laws do not limit a judge's power to place a child where he or she determines is in the best interest. Instead, they deal with how the State through the DCS funds each placement and allow for judicial review. "Although this law does not throttle the judiciary by way of the administrative branch, it comes dangerously close to stifling the inherent empowerment our juvenile courts have always enjoyed in making decisions in the best interests of juveniles. However, justice demands that consideration be given not only to which entity is going to pay, but what the costs and per diem are for the various placement options, as well as other relevant and pertinent factors focused on the best interest of the child."

Given 2009 amendment, which gives DCS absolute control over when State will pay for out of state placements, Court concluded that standards of Indiana's Administrative Orders and Procedures Act should apply in this situation rather than the clearly erroneous standard of review for appeals brought under "rocket docket" procedure established in Appellate Rule 14.1. In this case, DCS's requirement that child be placed in Indiana rather than being placed out of state was arbitrary and capricious because it appears to only have been made on basis that the placement was outside of Indiana and out-of-state placement was more cost effective than in-state options. Thus, State must pay for the out-of-state placement in this case. Held, judgment declaring statutes unconstitutional reversed, Tr. Ct.'s placement at Canyon State Academy affirmed. Dickson, J. concurring to note that it might be time for Court to begin a "robust" enforcement of Single-Subject Clause; Sullivan, J, concurring, disagrees with Justice Dickson and believes no change is warranted because Court has faithfully followed precedent and deferential standard of reasonableness review for 145 years.

TITLE: A.D. v. State
INDEX NO.: U.11.f.
CITE: (5th Dist., 10-25-00), Ind. App., 736 N.E.2d 1274
SUBJECT: Disposition alternatives - commitment for status offense
HOLDING: Juvenile Ct. properly entered dispositional order committing D to Indiana Department of Correction (DOC) for three months for status offenses. Choice of specific disposition for juvenile adjudicated to be delinquent is within discretion of juvenile Ct., subject to statutory considerations of welfare of child, safety of community, & code's policy of favoring least harsh disposition. Ind. Code 31-34-19-6. Here, D argued that her placement in DOC was not least restrictive option available to juvenile Ct., as a family friend offered to take charge of her. Juvenile Ct. was vested with authority & flexibility to commit D to DOC & statutory requirements of Ind. Code 31-37-22-5 were satisfied for her placement in DOC. Although options other than commitment to institution are available for juvenile Cts. to utilize in dealing with juvenile, there are times when commitment to suitable public institution is in best interest of juvenile & of society. Matter of Jennings, 176 Ind. App. 277, 375 N.E.2d 258 (1978). In this case, juvenile Ct. did not believe that placement of D in home of family friend would be in best interest of D & of society after reviewing numerous instances D had been found to have violated her probation & suspended commitment. Held, judgment affirmed.

TITLE: A.T. v. State
INDEX NO.: U.11.f.
CITE: (01-18-12), 960 N.E.2d 117 (Ind. 2012)
SUBJECT: Determinate commitment improper if D not found to be a sex or violent offender
HOLDING: Tr. Ct. erred by ordering both a determinate and indeterminate commitment to the Department of Correction (DOC). After a juvenile court makes a determination under Ind. Code 11-8-8-5, a determinate commitment may be imposed for juveniles of certain ages who commit certain offenses. Ind. Code 31-37-19-9(b). Ind. Code 11-8-8-5 involves sex and violent offender registrations. Here, Juvenile was adjudicated for an act that would be felony murder if committed by an adult. Juvenile act and age met the criteria of Ind. Code 31-37-19-9; but had never been determined to be a sex or violent offender under Ind. Code 11-8-8-8. As such, he did not meet the criteria for a determinate commitment. Held, transfer granted, Court of Appeals' opinion in 953 N.E.2d 490 vacated by separate order, and judgment reversed and remanded with instructions to vacate that portion of Tr. Ct.'s order committing Juvenile to the DOC until his eighteenth birthday.

TITLE: D.C. v. State

INDEX NO.: U.11.f.

CITE: (11-17-11), 958 N.E.2d 757 (Ind. 2011)

SUBJECT: Dispositional alternatives - interplay between indeterminate and determinate commitment

HOLDING: Juvenile court abused its discretion by imposing on the delinquent child a determinate commitment to the DOC to be followed by an indeterminate commitment. The juvenile code lists dispositional alternatives that can be imposed on a delinquent child. The juvenile court can award wardship of the child to the DOC. Ind. Code 31-37-16-6. In that case, the DOC determines both the placement of the juvenile and the duration of the placement. Ind. Code 31-37-19-10 provides for a determinate commitment of a juvenile for up to two years to the DOC if the juvenile meets certain criteria. The DOC cannot reduce the period of the determinate sentence.

Here, 14-year-old Juvenile was adjudicated for an act that would be Class A felony burglary if committed by an adult. Using the two different dispositional statutes, the juvenile court imposed a determinate commitment of two years at the DOC to be followed by an indeterminate commitment "until the age of 21 unless sooner released by" the DOC. Using principles of statutory construction, Court held that the determinate commitment statute and indeterminate commitment statutes are mutually exclusive, and a juvenile court can only sentence a juvenile under one of them. However, a juvenile court is not required to order a determinate commitment under Ind. Code 31-37-19-10 when the juvenile meets the requirements of that statute. Rather, when a juvenile meets the requirements of determinate commitment, the juvenile court has the choice between ordering a determinate or an indeterminate commitment. Although reading the statutes to provide the juvenile court the flexibility to order both a determinate and indeterminate commitment would be more consistent with the purpose of the juvenile code, Court leaves it to the legislature to change the statutes, if necessary. Held, transfer granted, judgment reversed and remanded with instructions to impose either a section 6 (indeterminate) or 10 (determinate) commitment and Court of Appeals' opinion at 935 N.E.2d 290 vacated.

TITLE: D.J. v. State
INDEX NO.: U.11.f.
CITE: (2nd Dist., 11-14-03), Ind. App., 798 N.E.2d 535
SUBJECT: Placement of juvenile outside county of residence - no error
HOLDING: Placement of juvenile outside his county of residence did not violate Ind. Code 31-37-19-23, which provides a Ct. may not place a delinquent child in a facility outside his county of residence "unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable ..." Ct. found that in-county facility suggested by D at trial was not "a comparable facility" to the out-of-county facility where the Ct. placed him. The out-of-county facility was "extremely secure & structured," whereas the in-county facility allowed D to leave to attend his high school classes.

Ct. also rejected argument that placement was not "least harsh disposition available" under Ind. Code 31-37-18-6 because it impeded visits by his mother & her participation in treatment. Since two facilities were not comparable, Ct. determined that sufficient evidence existed to justify placement in secure rather than unsecure facility due to D's problems with aggression toward his mother & his attendance & disciplinary problems at school. Held, judgment affirmed.

TITLE: In re D.M.
INDEX NO.: U.11.f.
CITE: (5th Dist., 06-10-09), 907 N.E.2d 582 (Ind. Ct. App 2009)
SUBJECT: Expedited appeal of placement - juvenile delinquency case
HOLDING: In expedited interlocutory appeal pursuant to Appellate Rule 14.1, Indiana Department of Child Services (IDCS) challenged Tr. Ct.'s modified dispositional order placing D.M., a juvenile adjudicated to be delinquent, in an out-of-state shelter care facility against the recommendation of IDCS. Court affirmed Tr. Ct.'s finding that IDCS's recommendation to place D.M. in Indiana residential treatment facility was "unreasonable based on the facts and circumstances of the case, and/or are contrary to the welfare or the best interests of the child." Ind. Code 31-37-19-3 provides that a Tr. Ct. may not place a delinquent child in a home or facility that is not a secure detention facility and is located outside Indiana unless court makes written findings, based on clear and convincing evidence, that the "out-of-state placement is appropriate because there is not a comparable facility with adequate services located in Indiana..."

Here, clear and convincing evidence supported Tr. Ct.'s findings that: 1) Nevada facility offers vocational, educational and athletic services more compatible to meet D.M.'s needs; 2) facility offers family counseling through satellite conferences which is needed for success and progress of D.M. D.M.'s probation officer testified that IDCS's placement recommendation was more expensive and not comparable to Nevada's facility. D.M. and his mother both testified that they preferred Nevada facility, as they felt it would better address D.M.'s academic and athletic needs. IDCS failed to specifically identify how Tr. Ct.'s findings lack supporting evidence, or how these findings, in turn, do not support Tr. Ct.'s ultimate decision to place D.M. in Nevada facility. Held, judgment affirmed.

RELATED CASES: In re D.S., 910 N.E.2d 837 (Ind. Ct. App 2009) (evidence supported Tr. Ct.'s findings & decision to place D in Arizona Right of Passage program against DCS's recommendation); In re T.D., 912 N.E.2d 393 (Ind. Ct. App 2009) (clear & convincing evidence supported Tr. Ct.'s placement of juvenile in out-of-state shelter care facility and finding that DCS's alternative placement recommendations were contrary to T.D.'s best interests).

TITLE: E.M.W. v. State
INDEX NO.: U.11.f.
CITE: (2-19-02), Ind. App., 762 N.E.2d 1283
SUBJECT: Placement in out-of-state treatment facility proper were in best interest of child
HOLDING: Tr. Ct. did not abuse its discretion in placing Juvenile D in residential treatment facility in Arizona instead of placing her in Indiana facility. D argued that similar facilities exist in Indiana & relied on Ind. Code 31-37-17-4, which states that placement should be least restrictive & result in least interference with family life. State's witness testified that D would receive much better treatment & have better possibility of being successful at Arizona facility. In addition, Indiana facility did not have adequate structure or treatment program to meet D's needs & D's mother's resistance to daughter's being on probation had negative impact on D's compliance with terms of probation. While Ct. acknowledged that placement in Arizona may not have been least restrictive or disruptive of family life, decision was based on consideration of best interest of D & community. Held, judgment affirmed.

TITLE: In Re J.A.W.
INDEX NO.: U.11.f.
CITE: (3rd Dist., 2/26/87), Ind. App., 504 N.E.2d 334
SUBJECT: Juv. Ct. may recommend specific length of commitment to Indiana Boy's School
HOLDING: Juv. Ct. did not err in denying D's motion to correct errors, treated by Ct. as motion to withdraw guilty plea, following the Juv. Ct.'s acceptance of plea agreement which contained no specific length of commitment to Indiana Boy's School. Although Juv. Ct. is specifically bound by terms of court-approved plea agreement, breach of agreement did not occur where Juv. Ct. included additional recommendation of specific length of D's commitment to Indiana Boy's School. Ct. found that because Juv. Ct. loses jurisdiction over D after commitment, recommendation was merely a suggestion and was not binding, and D was not entitled to withdraw plea. Held, judgment affirmed.

TITLE: Lake County Office of Family and Children v. Odisho
INDEX NO.: U.11.f.
CITE: (10/23/95), Ind. App., 656 N.E.2d 536
SUBJECT: Delinquency disposition - wardship of D assigned to Office of Family and Children
HOLDING: Juv. Ct. erred in assigning wardship of a child adjudicated delinquent to county Office of Family and Children (OFC). Here, CHINS case was filed, and temporary wardship was granted to OFC. Following D's subsequent adjudication of delinquency, Juv. Ct. ordered that D be made ward of OFC as disposition for delinquency adjudication. Ct. found that wardship of child adjudicated delinquent may only be awarded to Dept. of Correction or community-based correctional facility for children pursuant to Ind. Code 31-6-4-15.9. Juv. Ct. had no authority, therefore, to assign wardship of child adjudicated delinquent to OFC. Held, reversed and remanded for further proceedings consistent with opinion.

RELATED CASES: Matter of Garrett, App., 631 N.E.2d 11 (Juv. Ct. does not have authority to assign wardship of child adjudicated delinquent to Dept. of Mental Health).

TITLE: Matter of A.M.R.
INDEX NO.: U.11.f.
CITE: (5th Dist., 12-14-00), Ind. App., 741 N.E.2d 727
SUBJECT: Disposition alternatives - erroneous commitment to DOC for status offense
HOLDING: Tr. Ct. abused its discretion when it modified its dispositional order & committed 14-year-old D to Department of Correction (DOC). Tr. Ct. found D to be delinquent child & placed her on probation for violating compulsory school attendance law. One of terms of D's probation was that she "attend school as required by law" & that she conduct herself according to school policy. Approximately two months later, D was suspended from school, pending expulsion, for status offense of possessing & drinking alcohol. State's probation violation petition alleged that D violated terms of her probation by being suspended from school pending expulsion.

Status offender may only be committed to DOC if: 1) he or she is placed in shelter care facility or other residence pursuant to Ct. order & violates terms of placement; or 2) a Ct. orders delinquent to comply with compulsory school attendance law & he or she fails to do so. Ind. Code 31- 37-22-5 & 6. If student is suspended or expelled from school, student's absence from school because of suspension is not violation of Indiana's compulsory school attendance law. Ind. Code 20- 8.1-5.1-24. Thus, D did not violate term of her probation requiring her "to attend school as required by law," & her suspension, in & of itself, cannot support Tr. Ct.'s commitment of D to DOC. Even assuming that Tr. Ct. committed D to DOC because she violated terms of her probation by using alcohol, it lacked statutory authority to do so because D had not been placed in shelter care facility & her suspension was not violation of compulsory school attendance law. Ind. Code 31-37-22-5 & 6. Held, judgment reversed & remanded with instructions to revise dispositional order.

TITLE: N.D.F. v. State
INDEX NO.: U.11.f.
CITE: (10-7-02), Ind., 775 N.E.2d 1085
SUBJECT: Juvenile commitment - prior adjudications require no particular sequence
HOLDING: For purposes of juvenile determinate sentencing statute, which allows juvenile to be committed to Department of Correction (DOC), requirement that juvenile have accumulated "two unrelated prior adjudications of delinquency" does not have same meaning as adult habitual offender statute & does not require any particular sequence. Instead, it requires only that earlier adjudications are independent of offense currently charged. Juvenile may be remanded to custody of DOC for up to two years if: (1) juvenile is adjudicated delinquent because he or she committed felony against another person; Class A or B felony-controlled substance offense, or Class A or B felony burglary; (2) juvenile was at least fourteen years of age at time act was committed; & (3) juvenile has two unrelated prior adjudications of delinquency for acts that would be felonies if committed by adult. Ind. Code 31-37-19-10.

Ct. App. held that State had failed to present any evidence of adjudications' sequence, adopting requirements of adult habitual offender statute for juvenile sentencing statute. Ct. remanded case to Tr. Ct. to determine whether prior adjudications were in proper sequence to justify commitment to DOC. N.D.F. v. State, 735 N.E.2d 321 (Ind. Ct. App. 2000). Based on differing policies of statutes & specific language in statutes, S. Ct. concluded that legislature did not intend sequential requirements of adult habitual offender statute to apply to juvenile determinate sentencing statute. Purpose of juvenile code is to ensure that children within juvenile justice system are treated as persons in need of care, protection, treatment, & rehabilitation, while recognizing that in some instances, confinement may be most effective rehabilitative technique. Ind. Code 31-10-2-1(5); Madaras v. State, 425 N.E.2d 670 (Ind. Ct. App. 1981). In contrast, purpose of adult habitual offender statute is to penalize more severely those persons whom prior sanctions have failed to deter from committing felonies. Marsillett v. State, 495 N.E.2d 699 (Ind. 1986). In addition to differences in purposes of statutes, adult habitual offender statute defines "prior unrelated felonies" & includes procedural requirements which are not present in juvenile statute. Legislature intended to afford juvenile Ct. judges greater flexibility & as such "two unrelated prior adjudications of delinquency" simply means that earlier adjudications are independent of offense currently charged. Held, transfer granted, Ct. App.' decision vacated, judgment of juvenile Ct. affirmed.

TITLE: N.J.R. v. State
INDEX NO.: U.11.f.
CITE: (2d Dist. 9/16/82), Ind. App., 439 N.E.2d 725
SUBJECT: Disposition - commitment; secure detention
HOLDING: Criminal contempt is not an act for which a juvenile can be adjudicated a delinquent child. Here, juvenile's detention in secure facility following juvenile Ct. finding she had committed criminal contempt was not authorized by statute because (1) contempt not offense for which juvenile can be confined in secure facility (T.T. v. State, App., 439 N.E.2d 655) & (2) act underlying contempt, leaving home without reasonable cause/permission, is not offense if committed by adult. See Ind. Code 31-6-4-6.5(b). Held, error. Because no effective or practical means of remedying violation of N.J.R.'s rights exist at this point in time, Ct. affirms Tr. Ct.'s final judgment.

TITLE: Ratliff v. Cohn
INDEX NO.: U.11.f.
CITE: (3-27-98), Ind., 693 N.E.2d 530
SUBJECT: Incarceration of juvenile with adults - claim of due process violation
HOLDING: Incarcerated juvenile's allegation that she has been subjected to hostility & threats by adult inmates & fears for her safety was sufficient to withstand Trial Rule 12(B)(6) motion to dismiss for failure to state claim. Due Process Clause of Fourteenth Amendment to United States Constitution provides that no state shall deprive any person of life, liberty, or property, without due process of law. Involuntarily committed person enjoys constitutionally protected due process interests in: (1) conditions of reasonable care & safety; (2) reasonably nonrestrictive confinement conditions; & (3) such treatment as may be required to secure these conditions of reasonable care & safety & nonrestrictive confinement. Although juvenile's claim that treatment she received was inadequate, alone, would not survive motion to dismiss, juvenile's claim that she has been subjected to hostility & threats by adult inmates were allegations upon which Tr. Ct. could have granted relief. Thus, because juvenile's complaint presented claim that she has been denied treatment which would lead to her reasonable care & safety or freedom from restrictive confinement, Ct. improperly dismissed claim under Trial Rule 12(B)(6). Held, transfer granted, Ct. App. decision at 679 N.E.2d 985 vacated & Tr. Ct. grant of motion to dismiss affirmed in part & reversed in part.

TITLE: Ratliff v. Cohn
INDEX NO.: U.11.f.
CITE: (3-27-98), Ind., 693 N.E.2d 530
SUBJECT: Incarceration of juveniles with adults - no violation of Ind. Constitution
HOLDING: Although Article 9, Section 2 of Ind. Constitution clearly requires that General Assembly provide institutions for juvenile offenders, it does not require that all juveniles-- irrespective of their crimes or background--be housed only in such institutions. First, review of debates of constitutional convention reveals no discussion of whether juvenile institutions should be exclusive place for all juvenile offenders without regard to nature of juvenile's crime or background of juvenile. Second, Article 9, Section 2 lacks any adjective designating inclusivity, such as "all juvenile offenders" or "any juvenile offenders," despite fact that such adjectives were employed in many, if not most, other constitutional provisions. Third, since Constitution was ratified in 1851, there has never been comprehensive statutory prohibition against incarcerating certain juveniles in adult prisons. In fact, in 1983, when Article 9, Section 2 was amended by substituting "institutions" for "House of Refuge," legislators failed to take opportunity to include language reflecting that "all" or "every" juvenile must be incarcerated only in juvenile institutions. Considering absence of all-inclusive language in constitutional text, debates at constitutional convention, implementing legislation enacted shortly after adoption of Constitution, & language retained when provision was amended in 1984, Ind. Constitution does not require all juveniles to be housed separately from adults.

In addition, juvenile's incarceration in Special Needs Unit of Women's Prison did not violate either Article 1, Section 15 of Ind. Constitution, which provides that no person confined in jail shall be treated with unnecessary rigor, or Article 1, Section 18, which provides that penal code shall be founded on principles of reformation, & not vindictive justice. Juvenile's claim that unit in which she was placed deprived her of adequate rehabilitative treatment during her incarceration did not rise to level of unnecessary rigor contemplated by Article 1, Section 15. Juvenile's attempt to distinguish herself from D in Hunter, 676 N.E.2d 14, which upheld incarceration with adults of certain youths who have been convicted of most serious & violent crimes, is misplaced because Section 18 applies to penal code as whole & does not protect fact-specific challenges. Thus, incarceration in Women's Prison of fourteen-year-old girl who set fire to her home killing her mother & sister did not violate Ind. Constitution. Held, transfer granted, Ct. App. opinion at 679 N.E.2d 985 vacated & Tr. Ct.'s grant of motion to dismiss affirmed in part & reversed in part.

TITLE: R.L.H, A.D. & C.L.B. v. State
INDEX NO.: U.11.f.
CITE: (4th Dist., 7-26-05), Ind. App., 831 N.E.2d 250
SUBJECT: Unlawful commitment of juveniles to mental health institutions
HOLDING: Tr. Ct. exceeded its statutory authority in committing three juveniles found to be delinquents to state mental institutions. Department of Mental Health & Addiction challenged practice of the juvenile Ct. & distinguished situation from that In the Matter of K.G., 808 N.E.2d 631 (Ind.2004), where S. Ct. held that Ind. Code 31-32-12-1 allowed for treatment of a child *after a delinquency petition has been filed* & should be used instead of criminal adult competency processes. (*Ct.'s emphasis).* Distinguishing K.G., Ct. found that statute applies only to those facing delinquency charges & not individuals already determined to be delinquents. Therefore, the juvenile/probate Ct. here would have been required to operate under Ind. Code 31-32-12-1(4) & Ind. Code 31-37-19-5 & 6, which would allow outpatient treatment at a psychiatric facility but not permanent commitment. Ind. Code 12-26-7-1 *et seq* allows for temporary & regular commitment but the Tr. Ct. here did not follow the required procedures for regular commitments in these cases. Tr. Ct. did not instigate the filing of a written petition with a physician's written statement of the individual's needs, as required. Moreover, Tr. Ct. did not include a report in the record from the community mental health center evaluating the individuals to determine the appropriateness of placement as is also statutorily necessary. Indiana law imposes other requirements upon a Ct. when it commits a child, including the appointment of a special advocate or guardian ad litem to monitor the child's progress & appropriateness of placement. Ind. Code 12-26-8-4. Most of these procedures were not followed. While K.G. noted the code afforded juvenile Ct.s "a degree of discretion & flexibility, unparalleled in the criminal code" to act in the child's best interests, such discretion does not extend to stepping outside clear boundaries defined by Legislature. Held, judgment reversed.

TITLE: T.K. v. State
INDEX NO.: U.11.f.
CITE: (4th Dist., 01-12-09), Ind. App., 899 N.E.2d 686
SUBJECT: Juvenile disposition - App. R. 7(B) does not apply
HOLDING: Juvenile court did not abuse its discretion by committed the juvenile to the DOC following his adjudication that he committed child molesting, a Class B felony if committed by an adult. Indiana Appellate Rule 7(B) provides that a D in a criminal appeal may appeal the D's sentence and the Court may revise the sentence if it finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.

Here, pursuant to an agreement, juvenile admitted that he committed what would be Class B felony child molesting if committed by an adult and acquiescence to committed to DOC in exchange for State dismissing two other counts. Juvenile court ordered wardship of the juvenile to DOC and recommended that his "length of stay be sufficient to ensure that when he/she is returned to the community he/she will no longer represent a danger to the community." Because the juvenile was never a D, and because his appeal is not a criminal appeal, Rule 7, by its plan language, does not apply. Moreover, the juvenile court was bound by the terms of the plea agreement requiring commitment to the DOC. There also was no evidence that the juvenile's commitment would extend beyond his eighteenth birthday. Thus, the juvenile court did not abuse its discretion. Held, judgment affirmed.

TITLE: W.M. v. State
INDEX NO.: U.11.f.
CITE: (3d Dist. 7/27/82), Ind. App., 437 N.E.2d 1028
SUBJECT: Disposition - commitment; secure detention of repeat runaways/status offenders
HOLDING: A juvenile adjudicated delinquent for criminal contempt for running away in violation of a Ct. order may not be given a disposition reserved for delinquents who have committed acts which would be crimes if committed by an adult. Ind. Code 31-6-7-16(c) now provides for secure detention of repeat runaways: W.M. is still viable for proposition that Ind. Code 31-6-7-15 (contempt statute) cannot be used to incarcerate juveniles when the underlying act is a status offense. Held, judgment reversed.

TITLE: W.T.J. v. State
INDEX NO.: U.11.f.
CITE: (5th Cir.; 7-27-99), Ind. App., 713 N.E.2d 938
SUBJECT: Juvenile disposition - commitment; unrelated prior adjudications
HOLDING: Tr. Ct. erred by ordering juvenile to serve determinate sentence. Juvenile may be remanded to custody of DOC for housing in appropriate correctional facility for up to two years provided, among other things, (1) juvenile is adjudicated delinquent because he committed burglary as Class A or B felony; (2) juvenile was at least fourteen years of age when he committed offense; & (3) juvenile has two unrelated prior adjudications of delinquency for acts that would be felonies if committed by adult. Ind. Code 31-37-19-10. Habitual offender statute states that individual is habitual offender if person has accumulated two prior unrelated felony convictions. Ind. Code 35-50-2-8. Because language in habitual offender statute is similar to language in Ind. Code 31-37-19-10, & Ind. Cts. have interpreted "prior unrelated felony" to mean that commission, conviction & sentencing on offense preceded commission of subsequent offense, juvenile does not have two unrelated prior adjudications for purposes of Ind. Code 31-37-19-10 unless disposition of first adjudication occurs before commission of second juvenile offense & disposition of second adjudication occurs before commission of third juvenile offense. Here, juvenile obtained first adjudication in April 1997. Later, in period of about two weeks, juvenile burglarized several houses. Juvenile was charged with burglary of five houses, four of which Ct. found he committed & one which Ct. dismissed & prosecutor subsequently refiled. Juvenile admitted committing fifth burglary year later. Because juvenile committed & was charged with all five burglaries over same period of time, juvenile's guilty plea to dismissed & refiled fifth burglary was not unrelated prior adjudication. Thus, statutory requirements for committing juvenile to DOC were not met. Held, judgment affirmed in part & reversed in part; Rucker, J., dissenting on basis that prior adjudications of delinquency do not require same sequence of sentencing & commission of offenses as does prior unrelated felonies in habitual offender statute because each statute has different purposes & aims.

U. JUVENILE

U.11 Disposition

U.11.g – Parental participation in rehabilitation (IC 31-37-15)

TITLE: Matter of A.W. v. State
INDEX NO.: U.11.g.
CITE: (1st Dist., 10-18-01), Ind. App., 756 N.E.2d 1037
SUBJECT: Rights of parents in delinquency proceedings - improper parental participation order
HOLDING: Permanent dispositional order requiring father & stepmother to undergo assessments & any attendant counseling was entered without proper notice in violation of father & stepmother's due process rights & statutory procedures. Parent or guardian may be required to participate in program of care, treatment, or rehabilitation for child adjudicated delinquent child. Ind. Code 31-37-12-6. Filing of petition for parental participation places parent on notice that Ct. may make adjudication affecting parent; however, petition was not filed in this case. Moreover, father & stepmother were not informed of child's polygraph examination & allegations leading to parental participation order. Thus, they could not prepare defense or effectively cross-examine witnesses who filed reports stating that child's allegations of sexual abuse were credible & substantiated. Because delinquency proceedings appear to allow as evidence reports that contain information that would be otherwise inadmissible, serious due process concerns arise when allegations constitute criminal conduct or conduct impairing parental rights. A.P. v. Porter Co. Office of Family & Children, 734 N.E.2d 1107 (Ind. Ct. App 2000). In this case, father & stepmother were not accorded due process rights specified within Title 31. Held, reversed & remanded for entry of dispositional order consistent with this decision.

See also: A.E.B. v. State, No. 49A02-0105-JV-262 (Ind. Ct. App October 3, 2001) (statutory procedures, e.g., proper verified parental participation petition, must be followed before juvenile Ct. can order parental participation; juvenile had standing to attack parental participation order issued against her father).

RELATED CASES: J.S., App., 843 N.E.2d 1013 (Ct. found error in entering of parental participation order where father was not included in the initial petition for parental participation & the mother was not advised of her right to contest allegations concerning her participation & financial responsibility as provided in Ind. Code 31-37-12-6); S.S., App., 827 N.E.2d 1168 (Tr. Ct. erred in ordering mother's participation without informing her of her right to contest her participation & financial responsibility pursuant to I.D. 31-37-12-6).

U. JUVENILE

U.11. Disposition

U.11.h. Costs and reimbursement for services (IC 31-6-4-15(c), 31-6-4-15.3(a)(3) and 31-6-4-18)

TITLE: Carnahan v. State
INDEX NO.: U.11.h.
CITE: (1st Dist. 8/15/90), Ind. App., 558 N.E.2d 845
SUBJECT: Reimbursement for juvenile services - child not adjudicated delinquent
HOLDING: Tr. Ct. had no authority to order parents of juvenile to reimburse state for costs of incarceration at Ind. Boys' School (IBS). D was committed to IBS after being found juvenile delinquent & while out on furlough was involved in accident resulting in criminal indictment. However, he was never waived to criminal Ct., & since he was already committed to IBS, there was apparently no further adjudication or commitment made. Two years after furlough incident, Tr. Ct. entered judgment against D's parents for costs of D's incarceration, payable to state. Ind. Code 31-6-4-13 provides that Tr. Ct. shall inform parent that if child is adjudicated delinquent, parents may be held financially responsible for any services provided. Ind. Code 31-6-4-15 provides that upon finding of delinquency, probation officer or caseworker shall prepare financial report, & Ind. Code 31-6-4-18 provides that county shall pay for services but that parents shall be held financially responsible for them unless they are unable to pay, payment would force unreasonable hardship on family, or justice would not be served by ordering payment. These statutes provide authorization for reimbursement of county for services rendered to child who has been adjudicated delinquent & provide framework for doing so. Ct. App. finds that failure to comply with statutory scheme is fatal. Also, statutes provide only for reimbursement to county, & parents here were ordered to reimburse state. Tr. Ct. relied in part upon common law for authority to order repayment, but Ct. App. notes that where statutes provide remedy, it must be pursued & parties cannot resort to common law remedy. [Citations omitted.] Held, judgment reversed.

TITLE: F.A. v. State
INDEX NO.: U.11.h.
CITE: (05/01/2020), Ind. Ct. App., 148 N.E.3d 328
SUBJECT: Erroneous imposition of costs for juvenile's secure detention - no inquiry into parent's ability to pay
HOLDING: Trial court abused its discretion in ordering juvenile F.A. and her mother to pay more than $11,000 for secure detention costs without conducting an inquiry into ability to pay the costs. At a prior dispositional hearing for F.A.'s four delinquency cases, the probation department's pre-dispositional report left F.A.'s parents' financial information blank except for noting that F.A.'s mother receives $645 per month in "food stamps." Regardless of whether DCS or the county is responsible for paying the services, the reimbursement statutes do not allow juvenile courts to order the child to pay the costs of secure detention. Moreover, before imposing costs of secure detention upon a parent, a court must inquire into the parent's ability to pay. I.C. § 31-40-1-3(c); I.C. § 31-40-1-3.8(c). If the juvenile court orders F.A.'s mother to pay reimbursements, it shall follow the applicable requirements related to the Child Support Rules and Guidelines. Held, judgment reversed and remanded for inquiry into F.A.'s mother's ability to pay.

TITLE: L.J.F. v. Lake County Department of Public Welfare
INDEX NO.: U.11.h.
CITE: (3rd Dist., 10/22/85), Ind. App., 484 N.E.2d 40
SUBJECT: Parental reimbursement for services rendered for child
HOLDING: Juv. Ct. erred in failing to follow statutory procedures for securing parental reimbursement for services rendered for child. Statutory procedures outlined in Ind. Code 31-6-4-18 must be followed in order for Juv. Ct. to order parent to reimburse county for services rendered for child. Ind. Code 31-6-4-18 states in part that cost of any services ordered by Juv. Ct. for any child shall be paid by county and reimbursed by child's parent or guardian of child's estate, unless parent or guardian is unable to pay, or justice would not be served by ordering payment. Here, in CHINS proceeding, Juv. Ct. ordered direct payment from father rather than reimbursement for services to daughter and failed to inquire into family's assets or needs before ordering payment. Held, order for reimbursement reversed and remanded.

TITLE: Matter of C.K.
INDEX NO.: U.11.h.
CITE: (4th Dist., 5-20-98), Ind. App., 695 N.E.2d 601
SUBJECT: Juvenile - costs & reimbursement for services
HOLDING: Although parents may be held responsible for costs of juvenile placement & services that exceed amount contributed through weekly support order, before ordering payment, Tr. Ct. must strictly follow procedures set forth in statutes. Parent is financially responsible for any services ordered by Ct. Ind. Code § 31-6-4-18(a). Juvenile Ct. shall order child's parents to pay for services provided unless Ct. finds: (1) that parent is unable to pay; or (2) that justice would not be served by ordering payment from parent. Ind. Code § 31-6-4-18(e). Here, Office of Family & Children ("OFC") had, over course of juvenile's detention, expended $59,116.00, of which father had already reimbursed OFC $6,840 through weekly payments. Although juvenile's parents may be held responsible for remaining $52,276 it cost to house juvenile, there was nothing in record to indicate that Tr. Ct. considered either parent's ability to pay remaining $52,276 or whether justice would be served by ordering parents to reimburse OFC for costs of juvenile's placement, which exceeded what father had paid through weekly support. Thus, cause was remanded to Tr. Ct. to determine parents' ability to pay remaining cost & whether justice required parents' reimbursement of remaining costs. Held, judgment reversed.

RELATED CASES: E.M., 128 N.E.3d 1 (Ind. Ct. App.) (Tr. Ct. abused its discretion in ordering juvenile's parents to reimburse costs totaling $7997 without a hearing and without considering statutory factors including his parents' ability to pay and whether reimbursement served the interest of justice); J.T., 111 N.E.3d 109 (Ind. Ct. App 2018) (no error in ordering J.T.'s mother to pay $20 per month toward total of $8,363 for costs and fees incurred in his various delinquency proceedings).

U. JUVENILE

U.12. Proceedings after disposition

TITLE: A.C. v. State

INDEX NO.: U.12.

CITE: (4/6/20), Ind. Ct. App., 144 N.E.3d 810

SUBJECT: Juvenile commitment to DOC after probation violation affirmed even though his sentence had not been suspended

HOLDING: Trial court has authority to commit a juvenile defendant to the Department of Correction for a probation violation even without having suspended a portion of the juvenile's "sentence" in its original disposition order. Here, at disposition, A.C. was placed on supervised probation and ordered to have placement at Transitions Academy. Subsequently, the State filed two motions to modify A.C.'s placement, alleging he had violated terms of his probation. Following a hearing on the State's second motion to modify supervision, the juvenile court awarded wardship of A.C. to the Department of Correction. A.C. argued on appeal that the modification was like a probation violation in adult court and the juvenile court lacked authority to award wardship to the DOC at a supervision modification hearing absent part of A.C.'s original "sentence" at disposition having been suspended. Court of Appeals held that the juvenile court had statutory authority to modify A.C.'s placement and in doing so, the court followed the juvenile code's statutory scheme, which does not require a suspended commitment to the DOC in order for a juvenile to be placed on probation.

TITLE: F.H. v. State

INDEX NO.: U.12.

CITE: (1-23-20), Ind. Ct. App., 141 N.E.3d 65

SUBJECT: Juvenile's disposition did not meet statutory requirements for determinate sentence

HOLDING: A juvenile is not subject to a determinate term in the Department of Correction absent a specific determination by the juvenile court that statutory criteria have been satisfied. Here, the statutory requirements were not met, thus Court remanded case for a new dispositional order.

TITLE: In Re Matter of B.L. v. State
INDEX NO.: U.12.
CITE: (1st Dist., 12-12-97), Ind. App., 688 N.E.2d 1311
SUBJECT: Juvenile - proceedings after disposition; contempt
HOLDING: Contempt statutes did not authorize juvenile Ct. to hold repeat status offender in contempt of Ct. & to impose incarceration as appropriate punishment.

Child who is status offender may not be committed to Indiana Department of Corrections ("DOC") as initial disposition. Ind. Code 31-6-4-6.5(a). However, Ind. Code 31-6-7-16(f) sets forth procedure for DOC commitment of truant, who is status offender. Although Cts. have inherent power, pursuant to Ind. Code 34-4-7-3, to hold individual who acts in willful disobedience of any order in indirect contempt, juvenile Cts. cannot be permitted to accomplish incarceration of status offenders indirectly when they cannot accomplish it directly. Thus, juvenile Ct. may not use its inherent contempt power to incarcerate status offender for willful violation of Ct. order but must follow procedures established by Ind. Code 31-6-7-16 when it modifies dispositional decree & orders repeat status offender's commitment. Here, juvenile willfully disobeyed order to attend school, but juvenile Ct. failed to follow procedure set forth in Ind. Code 31-6-7-16(f) when ordering her committed to Indiana Girl's School. Held, order of contempt reversed.

RELATED CASES: K.L.N., App., 881 N.E.2d 39 (Juvenile court erred by finding K.L.N. in contempt of court and lacked authority to extend K.L.N.'s 120-day commitment by adding a 77-day term of detention based on K.L.N.'s failure to follow detention facility rules).

TITLE: In Re Ort
INDEX NO.: U.12.
CITE: (3rd Dist., 7-23-80), Ind. App., 407 N.E.2d 1162
SUBJECT: Proceedings after disposition - right to bail
HOLDING: Juvenile adjudged delinquent does not have statutory or constitutional right to bail pending appeal. Thus, Tr. Ct. did not err in vacating its own order allowing appeal bond for juvenile D. Held, judgment affirmed.

TITLE: M.C. v. State
INDEX NO.: U.12.
CITE: (10-9-2019), 134 N.E.3d 453 (Ind. Ct. App.)
SUBJECT: No abuse of discretion in awarding wardship of juvenile to Department of Correction
HOLDING: Following a disposition modification hearing, trial court did not abuse its discretion in granting wardship of M.C. to the Department of Correction. The separate systems for juvenile delinquents and adult criminals are rationally related to the goal of ensuring rehabilitation of juveniles and therefore do not violate the Equal Protection Clause under the 14th Amendment or the Privileges and Immunities Clause of the Indiana Constitution. Because the goal in Indiana is rehabilitation for juvenile offenders, the wardship to the Department of Correction was not a sentence or penalty but based upon principles of rehabilitation and therefore not within the meaning of the Eighth Amendment to the United States Constitution and did not violate the proportionality provision of Article I, Section 16 of the Indiana Constitution. Because M.C. had prior less restrictive placements, wardship to the Department of Correction was not an abuse of discretion.

U. JUVENILE

U.12. Proceedings after disposition

U.12.a. Modification of dispositoins (IC 31-6-7-16)

TITLE: Matter of L.J.M.
INDEX NO.: U.12.a.
CITE: (4th Dist. 1/24/85), Ind. App., 473 N.E.2d 637
SUBJECT: Modification of disposition
HOLDING: Tr. Ct. erred in ordering D's removal from shelter care facility without notice & D's arrest & detention in county jail. Notice is required under Ind. Code 31-6-7-16(b). Arrest & detention were improper for probation violation (breaking facility rules, poor grades). Policy of juvenile code is to keep children out of detention whenever possible, favoring shelter care facilities. See Ind. Code 31-6-4-6.5(b). Ct. can offer D, now in Boys School, no remedy. Tr. Ct. also abused discretion by removing D from facility & sending him to Boys School. Record does not support finding that such commitment was in D's best interest or necessary for safety of community as required by Ind. Code 31-6-4-16(d). Tr. Ct.'s assumption that poor grades indicated lack of cooperation at facility was improper. Ct. rejects D's contention that caseworker's testimony re his lack of cooperation/poor grades was inadmissible hearsay. Hearsay rule is inapplicable in modification proceedings. Excluding hearsay at disposition hearings in many cases would disserve child by excluding relevant information that might support less restrictive disposition. Held, reversed & remanded; Tr. Ct. to determine proper disposition. Conover DISSENTS, finding substantial evidence supporting transfer to Boys School.

TITLE: Matter of M.T.
INDEX NO.: U.12.a.
CITE: (06-16-10), Ind. Ct. App, 928 N.E.2d 266
SUBJECT: Modification of juvenile's probation violated due process
HOLDING: Tr. Ct.'s modification of juvenile's probation and committing him to Department of Correction denied juvenile's right to due process because State presented no evidence that juvenile actually violated terms of probation. Even though statute requiring a hearing to modify dispositional decree (Ind. Code 31-37-22-3) does not specify what hearing must include, basic due process principles and fundamental fairness require an evidentiary hearing at which the State presents evidence supporting the allegations listed in the revocation petition. Held, modification of placement reversed.

RELATED CASES: K.A., 938 N.E.2d 1272 (Ind. Ct. App 2010) (following M.T.)

TITLE: P.F.B., Jr. v. State
INDEX NO.: U.12.a.
CITE: (7-13-01), Ind. App., 751 N.E.2d 341
SUBJECT: Modification of juvenile disposition-written warnings required
HOLDING: Juvenile D must receive written warnings of consequences of placement violation before modification can be ordered pursuant to Ind. Code 31-37-22-5. Statute requires that child must have received this written warning at hearing during which placement was ordered. Verbal warnings do not sufficiently comply with statute. Failure to provide written warnings in this case constituted abuse of discretion. Held, judgement reversed.

TITLE: R.J.G. v. State
INDEX NO.: U.12.a.
CITE: (03-10-09), 902 N.E.2d 804 (Ind. 2009)
SUBJECT: Juvenile court may order probation following DOC commitment
HOLDING: In entering a dispositional decree, a juvenile court may simultaneously order commitment to the Department of Correction and probation following release. Ind. Code 31-37-19-5 and 6 give juvenile courts a myriad of dispositional alternatives to fit the unique and varying circumstances of each child's problems. J.J.M. v. State, 779 N.E.2d 602 (Ind. Ct. App 2002), which interpreted Ind. Code 31-30-2-1 to divest juvenile court's jurisdiction to order probation once it orders any term of commitment to DOC, was incorrectly decided. There is no jurisdictional bar to ordering more than one disposition in the same order. The juvenile court has jurisdiction over the person and the subject matter at the time it makes its dispositional decree and therefore has jurisdiction at that time to order both probation and commitment to the DOC. Entry of multiple dispositions in the initial order is not inconsistent with reinstatement of jurisdiction for additional dispositions upon release from DOC pursuant to Ind. Code 31-30-2-3. Held, transfer granted, judgment affirmed.

TITLE: S.L.B. v. State
INDEX NO.: U.12.a.
CITE: (3rd Dist., 4/29/82), Ind. App., 434 N.E.2d 155
SUBJECT: Modification of Juv. Ct. disposition - written notice not required
HOLDING: Juv. Ct. did not err in failing to serve D with written notice of hearing to modify disposition. Here, D was adjudicated delinquent, sentenced to probation and placed at Faith House. D left placement and was arrested on bench warrant. D was again adjudicated delinquent, and Juv. Ct. ordered suspended commitment to Indiana Girls' School. Juv. Ct. warned D that if she failed to remain in placement, Juv. Ct. would execute commitment order. D again ran away from court-ordered placement, and Juv. Ct. executed D's commitment without giving D written notice of grounds to be relied upon and of opportunity to be heard. Ind. Code 31-6-7-16, which governs modification of dispositions in Juv. Ct., requires notice, but does not specify written notice setting forth grounds to be relied upon. Ct. found that D was aware that modification of disposition was purpose for which she was called before Juv. Ct. and was given opportunity to be heard, therefore Juv. Ct. did not violate D's due process rights. Held, judgment affirmed.

TITLE: W.L. v. State
INDEX NO.: U.12.a.
CITE: (4th Dist., 3-18-99), Ind. App., 707 N.E.2d 812
SUBJECT: Re-opening case for restitution after dispositional decree
HOLDING: Juvenile Ct. that retains jurisdiction over juvenile following sentencing may modify dispositional decree so long as it retains such jurisdiction. Ind. Code 31-37-22-1(2)(E). In this case, however, juvenile Ct. discharged D upon entry of dispositional decree & thus did not retain jurisdiction. After being divested of jurisdiction, juvenile Ct. could reacquire jurisdiction only through means set forth in Ind. Code 31-30-2-3 or Ind. Code 31-30-2-4.

IND. CODE 31-30-2-3 allows juvenile Ct. to reinstate jurisdiction over child within thirty days after receiving notification from department of correction (DOC) that child over whom department has guardianship has been released from its custody. Juvenile Ct. could not reacquire jurisdiction through this statute because DOC was never appointed D's guardian. Ind. Code 31-30-2-4, which permits DOC to petition juvenile Ct. to reinstate jurisdiction to modify dispositional decree, did not apply here because prosecutor filed petition to reopen for specific purpose of seeking restitution. Thus, juvenile Ct. was without jurisdiction to rule upon State's motion to reopen for restitution. Held, judgment reversed.

U. JUVENILE

U.12. Proceedings after disposition

U.12.b. Appeals (IC 31-6-7-17)

TITLE: Graddy v. State
INDEX NO.: U.12.b.
CITE: (1st Dist., 5/31/78), Ind. App., 376 N.E.2d 506
SUBJECT: Appeal - insufficient evidence on essential element must negate lesser included offenses
HOLDING: Where adjudication of delinquency is grounded in D's commission of act that would be crime if committed by adult, adjudication may be successfully challenged on appeal for State's failure to prove essential element of crime only if failure negates all lesser included offenses of crime alleged. Here, D was adjudged delinquent for crime of second-degree burglary. D argued that State presented insufficient evidence to prove essential element of "breaking." Court found that even if D's allegation were true, Juv. Ct. could have concluded that State had proven crime of entering to commit a felony, "breaking" not being essential element of that offense. Entering to commit a felony is lesser included offense of second-degree burglary. Adjudication of delinquency could have been based upon the lesser included offense, and Juv. Ct. could have imposed identical disposition under liberal disposition guidelines of Juvenile Code. Held, judgment affirmed.

TITLE: Haluska v. State
INDEX NO.: U.12.b.
CITE: (2nd Dist., 4-17-96), Ind. App., 663 N.E.2d 1193
SUBJECT: Petition to file belated appeal of delinquency adjudication & T.R. 60
HOLDING: After finding of delinquency was returned against D, trial counsel failed to file timely praecipe. Pursuant to Post-Conviction Rule 2, Section 3, Appellate counsel filed petition for permission to file belated appeal with Ct. App. Following Chief Justice Shepard's concurring opinion in Jordan v. State, 516 N.E.2d 1054 (Ind. 1987), Ct. held that D's verified petition for permission to file belated appeal under P-C. Rule 2-3 should be treated as petition for relief from judgment under T.R. 60 in Tr. Ct. In Davis v. State, 368 N.E.2d 1149 (Ind. 1977), S. Ct. held that petition for post-conviction relief is functional equivalent of Rule 60(B) motion. Held, remanded for purpose of D filing T.R. 60 motion for Tr. Ct.'s consideration.

Note: Decision does not discuss Van Meter v. State, 650 N.E.2d 1138 (Ind. 1995), which held that T.R. 60(B) motion is inappropriate in criminal proceeding where petition for post-conviction relief is available. However, juvenile adjudications are not convictions. Thus, post-conviction relief is not procedure used in juvenile Ct. process. Jordan v. State, 512 N.E.2d 407 (Ind. 1987).

RELATED CASES: J.A., 904 N.E.2d 250 (Ind. Ct. App 2009) (failure to file notice of appeal after juvenile disposition is not *per se* IAC); Perkins, App., 718 N.E.2d 790 (T.R. 60(B) is means by which to raise ineffective assistance of counsel claim in juvenile delinquency proceedings); N.Y., App., 681 N.E.2d 1178 (Trial Rule 60 is proper remedy for juveniles seeking relief following guilty pleas).

TITLE: J.H. v. State
INDEX NO.: U.12.b.
CITE: (5th Dist., 6-03-04), Ind. App., 809 N.E.2d 456
SUBJECT: Delinquency proceedings - must use TR 60 to appeal from guilty plea
HOLDING: Ct. determined that juvenile's appeal was not ripe as he was required to file a Trial Rule 60 motion in juvenile Ct. following his admission to the facts of the offense. M.Y. v. State, 681 N.E.2d 1178, 1179 (Ind. Ct. App.1997). Ct. noted that pleading guilty restricts one's ability to challenge a true finding on direct appeal & because post-conviction relief is not available in juvenile Ct., a juvenile must file a TR 60 motion to perfect an appeal. See Tumulty v. State, 666 N.E.2d 394, 395 (Ind.1996) & Jordan v. State, 512 N.E.2d 407, 408 (Ind.1987). Here, juvenile had challenged his true finding for Driving a Vehicle Without a License, arguing that he was not properly advised of the nature, extent & importance of his right to counsel prior to waiving it, pleading guilty & receiving a commitment of 12 months to the DOC. Held, appeal dismissed & remanded to Tr. Ct. to allow the filing of a motion for relief from judgment; Bailey, J., concurring, notes his questions about the constitutionality under equal protection principles of statutory provisions that allow juveniles in Marion & Lake counties to receive juvenile adjudications for certain traffic offenses that are treated as adult offenses in other counties.

RELATED CASE: J.W., 113 N.E.3d 1202 (Ind. 2019) (before J.W. may pursue an appeal, he must first seek relief from the trial court under Trial Rule 60(B); see full review, this section).

TITLE: J.W. v. State
INDEX NO.: U.12.b.
CITE: (1/9/2019), 113 N.E.3d 1202 (Ind. 2019)
SUBJECT: Must use TR 60(B) motion to challenge agreed delinquency adjudications
HOLDING: Juvenile challenged his agreed adjudication on direct appeal because claims were clear on the record and there was no need to develop record further. Nonetheless, Indiana Supreme Court established bright line rule that a juvenile's claim that his agreed delinquency adjudication is unlawful, along with any claim premised on the agreement's illegality, cannot be raised on direct appeal but must first be brought in the juvenile court in a post-judgment motion under Trial Rule 60. A juvenile who challenges the validty of his consent judgment through a post-judgment motion is entitled to legal representation. Held, transfer granted, Court of Appeals' memorandum vacated, appeal dismissed without prejudice and remanded for further proceedings.

U. JUVENILE

U.12. Proceedings after disposition

U.12.c. PCR

TITLE: Jordan v. State
INDEX NO.: U.12.c.
CITE: (9/1/87), Ind., 512 N.E.2d 407
SUBJECT: Juvenile - PCR
HOLDING: A person adjudged to be delinquent child in juvenile proceeding because of acts which would have constituted crime if committed by adult may not file PCR petition to attack legality of that adjudication. Juvenile adjudications are civil matters & do not constitute criminal convictions. Pallett 381 N.E.2d 452. Statutory provision is made for expungement of delinquency records. This is greater right & remedy than is provided to criminally convicted adults. D has shown no prejudice by Ct.'s refusal to apply PC rules to him, no benefit should the Ct. do so. Adjudication of delinquency is not fact which can be used to enhance criminal sentence, although sentencing Ct. may determine whether there exists pattern of criminal conduct that is likely to continue. Evans 497 N.E.2d 919. Sims, App., 421 N.E.2d 698. Held, Ct. App. opinion vacated, Tr. Ct. affirmed. See Jordan, App., 499 N.E.2d 759. DeBruler & Dickson, DISSENT.

NOTE: Neither majority nor dissent discuss Ind. Code 35-50-2-2-1 [effective 6/1/85] which makes felony sentence non-suspendible if D has particular juvenile record. In denial of rehearing, Jordan 516 N.E.2d 1054, C.J. Shepard suggested T.R. 60 motion. D's subsequent motion was denied as untimely & denial affirmed. Jordan, App., 549 N.E.2d 382.

RELATED CASES: Newsom, App., 851 N.E.2d 1287 (because juvenile D is not a "convicted person" & juvenile ct.'s disposition does not constitute a "sentence," Ct. concluded that motion to correct erroneous sentence is not available to D as a means to challenge his juvenile disposition).

TITLE: Matter of D.D.J. v. State

INDEX NO.: U.12.c.

CITE: (3rd Dist., 10-6-94), Ind. App., 640 N.E.2d 768

SUBJECT: Cts. may use T.R.60(B) time limitations to determine merits of motions challenging delinquency adjudications

HOLDING: Where D requested relief from juvenile Ct.'s adjudication of delinquency almost two years after original disposition, juvenile Ct. did not abuse discretion by denying motion as untimely. Although motions challenging delinquency adjudications brought under TR 60(B)(8) are not subject to one-year time limitation if brought within reasonable time, & juvenile Ct. has continuing jurisdiction to modify dispositional decree, express time limitations of TR 60 are applicable & equally available to juvenile Cts. in determining merits of motions.

Ct. first rejected D's reliance on TR 60(B)(2), which requires filing of motion within one year from date of judgment. Ct. then rejected D's claim that motion was brought within reasonable time under TR 60(B)(8), noting that he was represented by counsel less than one year after original disposition & fourteen months prior to filing TR 60 motion. D had ample opportunity but failed to appeal or promptly file appropriate motion. Ct. held that Ind. trial & appellate rules provide sufficient avenues for relief even though post-conviction remedies are unavailable in juvenile proceedings, rejecting argument that denial of TR 60 motion improperly precludes collateral attack on juvenile Ct.'s disposition.

RELATED CASES: G.B., App., 715 N.E.2d 951 (Tr. Ct. abused discretion in denying D's T.R.60 (B) motion as untimely; Tr. Ct. Erroneously relied on strict one-year time period instead of applicable "reasonable time" standard of T.R. 60(B)(8).

U. JUVENILE

U.13. CHINS (IC 31-6-4-3 and 3.1)

TITLE: A.P. v. DCS

INDEX NO.: U.13.

CITE: (715/2020), 150 N.E.3d 292 (Ind. Ct. App. 2020)

SUBJECT: CHINS reversed because there was no showing that the coercive intervention of the Court was required despite Mother's admitted drug use, DCS did not present any evidence that Mother used marijuana while the Child was in the home or that DCS had ever perceived Mother to be under the influence of drugs.

HOLDING: CHINS adjudication under Indiana code section 31-34-1-1 requires proof of three basic elements: the parent's actions or inactions have seriously endangered the child; the child's needs are unmet; and "perhaps most critically," those needs are unlikely to be met unless the State intervenes. It is the last element that guards against unwarranted State interference in family life. State intrusion is warranted only when parents lack the ability to provide for their children. In other words, the focus is on the best interests of the child and whether the child needs help that the parent will not be willing or able to provide. Here, the evidence reflects that Mother admitted to having a substance abuse problem, especially when she felt stressed or overwhelmed and although Mother agreed to participate in services through an Informal Adjustment—which was extended once—she failed to submit consistently to drug screens and conceded to using marijuana on several occasions. Despite Mother's admitted drug use, DCS did not present any evidence that Mother used marijuana while the Child was in the home or that DCS had ever perceived Mother to be under the influence of drugs. The DCS conceded that "the basic needs of the [Child] are being met" and a safety plan was in effect that placed the Child with Maternal Grandmother if Mother felt overwhelmed and in need of marijuana. The DCS concern, without more, that "[i]llegal substance use impairs your thinking, your response, . . . your normal thought processes and action" is not sufficient to support a CHINS determination. CHINS reversed.

TITLE: C.E. vs DCS

INDEX NO.: U.13.

CITE: (10/24/2022), 188 N.E.3d 827 (Ind. Ct. App. 2022)

SUBJECT: Coercive intervention of the court not required when conditions leading to CHINS remedied at time of fact-finding, including concern for housing conditions and mother's mental health crisis.

HOLDING: Mother and Father left child #1 with neighbor who knew the family and had previously watched the child when they took Mother to hospital in attempt to get psychiatric treatment for her psychotic break due to post-partem depression. The parents were gone about eight hours. In the meantime, DCS became involved, and child became ward of DCS. DCS became involved with the second child because Mother and Father were concerned for second child's safety when she was with her paternal grandmother, who had a sex offender living in her house. When paternal grandmother refused to release second child to Mother and Father, police officers contacted DCS. Court of Appeals held that Mother's mental illness in and of itself is not enough to find child CHINS and also conditions at the time of the removal of the children, and the parents' dirty house without utilities had been remedied at the time of the fact-finding hearing, therefore the coercive intervention of the court was not required. Held, judgment reversed; Vaidik, J., dissenting, would give deference to the factfinder that children are CHINS.

TITLE: In the Matter of A.R.
INDEX NO.: U.13.
CITE: (10/6/2022), 196 N.E.3d 723 (Ind. Ct. App. 2022)
SUBJECT: Juvenile court had jurisdiction over CHINS case
HOLDING: Mother and children, ages 15 and 6, live in West Virginia. When they traveled through Indiana on their way to Arizona, Mother stopped at an Indianapolis hospital because she was feeling ill. When medical personnel tried to draw blood, Mother complained that they were trying to inject her with medication used to euthanize animals. The 15-year-old child reported Mother had not slept in days and was acting paranoid. While at the hospital, Mother called DCS and asked that someone come get her children. DCS staff came and took the children into emergency custody. The next day, DCS filed a CHINS petition for the two children alleging domestic violence between Mother and her boyfriend, unstable housing, and the fact Mother had been placed on a mental health hold "thereby leaving the children without a caregiver." The day after the CHINS petition was filed, Mother was discharged from the hospital. She filed a motion to dismiss the CHINS action for lack of personal jurisdiction and a motion asking the court to place the children with her at their family home in West Virginia. The trial court denied both motions. DCS filed a motion to determine if Indiana was a convenient forum under IC 31-21-5-8 and Mother filed an amended motion to dismiss, arguing the court had no personal jurisdiction or subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJA) under IC 32-21 et. al. Mother further asserted that the emergency situation prompting DCS's involvement had been resolved. The trial court determined it had personal jurisdiction, that Indiana was the convenient forum, and adjudicated the children as CHINS after a factfinding hearing. But the court also issued an order declining continued jurisdiction over the case because "West Virginia is the more appropriate forum for disposition of the matter" and ordered the parties to begin transitioning the case to West Virginia. The court denied a subsequent motion by DCS to hold the dispositional hearing within 30 days of adjudication because the trial court stayed the proceedings as required by the UCCJA until West Virginia took over the case. For the same reasons, the court also denied a motion to dismiss filed by Mother on grounds that it had failed to hold a timely dispositional hearing. West Virginia eventually accepted jurisdiction over Mother's youngest child, then residing with Mother in West Virginia, but declined jurisdiction over the 15-year-old, who remained in foster placement in Indiana. The Indiana juvenile court eventually entered its dispositional order as to A.R. The Court of Appeals held the trial court had subject matter jurisdiction under the UCCJA because the court had temporary emergency jurisdiction over the CHINS matter under IC 31-21-5-4(a). The Court further held that the trial court correctly determined Indiana was a convenient forum for the CHINS proceeding under the UCCJA because the trial court considered factors listed in Indiana Code section 31-21-5-8(b) as well as other relevant factors. And the existence of other facts suggesting West Virginia was the more convenient forum did not invalidate the trial court's decision. Finally, the Court found no abuse of discretion in the trial court's failure to hold a dispositional hearing within 30 days of the CHINS adjudication. As required by IC 31-21-5-8(c)(1), the trial court stayed the proceedings until the West Virginia court could determine whether it would assume jurisdiction over the CHINS cases. Also, considering the time after the CHINS adjudication but before the stay, four days, and the time between the lift of the stay and the dispositional hearing, twenty-six days, the court held the dispositional hearing within thirty days of the CHINS adjudication. Held: judgment affirmed.

TITLE: In re Des. B.
INDEX NO.: U.13.
CITE: (2/4/2014), 2 N.E.3d 828 (Ind. Ct. App. 2014)
SUBJECT: CHINS - drug use
HOLDING: Tr. Ct. properly found that Mother's drug use presented a substantial risk of harm to her children and that the drug use, along with her other behavior, supported a CHINS determination. A single admitted use of drugs outside the presence of one's children, without more, is insufficient to support a CHINS determination. Perrine v. Marion County Office of Child Services, 866 N.E.2d 269 (Ind. Ct. App 2007).

Here, Mother admitted using marijuana daily and cocaine once or twice per week. Before DCS's involvement, Mother pleaded guilty to marijuana possession and OWI. After DCS's involvement, Mother failed a drug test. Although there is no evidence that Mother used drugs in the presence of her children, her daily drug use could affect her ability to parent and resulted in legal problems. Mother was the daily care-giver for her two children under three-years-old. Finally, the drug use was not the exclusive basis for the CHINS determination. She also had violent relationships with the children's fathers, hid the children from DCS and was not truthful during the CHINS investigation. Thus, Tr. Ct. did not err when it concluded that Mother's behavior represented a substantial risk of endangering the children. Held, judgment affirmed.

TITLE: In re F.S. v. Indiana Dept. of Child Services

INDEX NO.: U.13.

CITE: (5/12/2016), 53 N.E.3d 582 (Ind. Ct. App. 2016)

SUBJECT: Erroneous order for DCS interviews with children based on unverified report of drug use and domestic violence

HOLDING: Tr. Ct. erred in compelling Mother to consent to the Department of Child Services (DCS) interviewing two of her children without evidence suggesting abuse or neglect; thus, the order violated Mother's right to raise her family without undue interference by the State. Ind. Code § 31-33-8-7 allows the DCS to interview children for the purpose of classifying reports of neglect as substantiated or unsubstantiated. Declining to follow In re A.H., 992 N.E.2d 960 (Ind. Ct. App. 2013), Court held that the statute was unconstitutionally applied to Mother because it allowed Tr. Ct. to issue the order compelling her to allow the children be interviewed without any evidentiary showing of need. The only evidence the DCS presented in this case was a report from an undisclosed source that mother and father were doing drugs and that there was domestic violence between the parents. The statute requires a showing of "good cause," but the DCS did not present evidence that interviewing the children was necessary for it to complete its assessment of the neglect reports. Held, judgment reversed.

NOTE: Court declined to dismiss appeal as moot even though Mother was subsequently arrested for drug use and signed a consent for the children to be interviewed because the issue involves constitutional right to raise a child and is of great public interest.

TITLE: In Re Heaton
INDEX NO.: U.13.
CITE: (1st Dist. 11/26/86), Ind. App., 503 N.E.2d 410
SUBJECT: CHINS - lack of subject matter jurisdiction
HOLDING: Tr. Ct. lacked subject matter jurisdiction over CHINS proceeding; therefore, any order or judgment rendered by Tr. Ct. is a nullity & ordered vacated. Here, CHINS petition was never filed, fact-finding hearing was never held (as required by Ind. Code 31-6-4-14), & child's parents did not receive notice of proceeding prior to child's admission to CHINS. Welfare Dept. asserts it had authorization to detain child under Ind. Code 31-6-4-6(d)(4), & that Tr. Ct. was authorized to make finding of CHINS without fact-finding hearing pursuant to Ind. Code 31-6-4-13.5. Ct. finds Welfare Dept. failed to follow statutory scheme. Statutes clearly set forth jurisdictional prerequisites & it is only after petition has been authorized, with notice to parents that Tr. Ct may engage in disposition of matters pending re child. Held, judgment reversed & vacated.

TITLE: In re I.I.

INDEX NO: U.13.

CITE: (10/05/2021), 177 N.E.3d 864 (Ind. Ct. App. 2021)

SUBJECT: Technical difficulties at Zoom termination hearing did not violate parent's due process rights

HOLDING: Mother argued specific limitations caused by the Zoom hearing deprived her of her constitutional right to due process. The issues included that: (1) some of Mother's testimony was cut off due to a technical issue, (2) witnesses referenced personal notes, (3) witnesses had third parties present during testimony, and (4) counsel could not properly object to testimony. Court of Appeals concluded that, in this circumstance, these issues did not rise to the level of a due-process violation. There was only one instance when Mother's testimony could not be heard by the court. When it happened, the trial court noted the technical issue for the record, stated the last part of the testimony it heard and had Mother continue from that point once the technical issue was resolved. This brief interruption in her testimony did not deny Mother an opportunity to be heard. The witnesses using notes were instructed not to do so early in their testimony. The witnesses who appeared with others present were instructed to have those people leave the room. The attorney whose objection was inaudible was allowed to restate it later. Ultimately, while there were errors in the proceedings, they were minor and quickly remedied, so the risk of an inaccurate result was low. "We do not doubt that conducting a termination hearing by remote technology could—in some situations—violate a parent's due-process rights." But the Court found no violation in this case. The Court found sufficient evidence to support the termination order because periods of Mother's growth were followed by periods of regression.

TITLE: In re K.D.
INDEX NO: U.13.
CITE: (03-13-12), 962 N.E.2d 1249 (Ind. 2012)
SUBJECT: Due process requires fact-finding parent if either parent contests CHINS allegation
HOLDING: Juvenile court erred and denied stepfather's right to due process when it denied his request for a fact-finding hearing on CHINS allegations, even though Mother had already admitted the allegations. Although Ind. Code 31-34-10-8 provides that a court shall enter judgment following admission by a parent, guardian, or custodian to the CHINS petition, Ind. Code 31-34-11-1 states the juvenile court shall hold a fact-finding hearing if the allegations of the petition have not been admitted. Failure to provide a fact-finding hearing for stepfather deprived him of due process at the CHINS adjudication stage, and he was thus sent through one barrier between him and DCS having the statutory authority to file a termination of parental rights petition without the opportunity to even challenge the evidence. When one parent wishes to admit and another parent wishes to deny the child is in need of services, Tr. Ct. shall conduct a fact-finding hearing as to the entire matter. Held, transfer granted, Court of Appeals' opinion at 942 N.E.2d 894 vacated, judgment reversed and remanded to provide stepfather with a fact-finding hearing.

See also: In re T.N., 963 N.E.2d 467 (Ind. 2012) (contested dispositional hearing did not replace the due process rights Father lost when he was not allowed a contested fact-finding hearing; it is ultimately in the child's best interest that parents are given due process at all stages of the proceeding).

RELATED CASES: In re L.C., 23 N.E.3d 37 (Ind. Ct. App 2015) (Tr. Ct. denied Father's right to due process by not holding complete hearing on DCS's CHINS petition where Mother, who had temporary custody of child and lived apart from Father, earlier admitted allegations in CHINS petition, but where Father disputed need for court to intervene to protect safety and best interests of child); In re S.A., 15 N.E.3d 602 (Ind. Ct. App 2014) (by adjudicating S.A. a CHINS prior to Father's fact-finding hearing, Tr. Ct. deprived Father of a meaningful opportunity to be heard; see full review at U.13.a).

TITLE: In re M.R.
INDEX NO.: U.13.
CITE: (10-14-10), 934 N.E.2d 1253 (Ind. Ct. App. 2010)
SUBJECT: CHINS - Improper parental participation order
HOLDING: In CHINS dispositional hearing, juvenile court was without authority to enter parental participation order against incarcerated Father without first establishing paternity to determine that Father was indeed a "parent" pursuant to IND. CODE 31-9-2-88. Father's mere status as a party did not confer authority to juvenile court to order his parental participation prior to a determination that he is, in fact, a parent. Moreover, before parental participation can be ordered as part of CHINS disposition, certain procedural requirements must be met. Mikel v. Elkhart County Dept. of Pub. Welfare, 622 N.E.2d 225 (Ind. Ct. App. 1993). Absent the filing of a proper verified parental participation petition, a juvenile court does not have authority to order parental action. Held, vacated in part and remanded.

TITLE: In the Matter of To.R.

INDEX NO.: U.13.

CITE: (10/04/2021), 177 N.E.3d 478 (Ind. Ct. App. 2021)

SUBJECT: Child with severe medical needs found to be CHINS when parents demonstrated inability to understand and appreciate child's medical condition, did not have stable housing, and had substantial health issues of their own independent of child.

HOLDING: Child was born critically ill in 2016 with multiple health issues including chronic lung disease, hypertension, and kidney failure. Among other issues child required a feeding tube, a ventilator, and a constant tracheotomy to keep his airway from collapsing. In 2020, DCS received a report of medical neglect involving Mother stemming from Mother's conduct and disputes with medical staff about child's care while child was at Riley Hospital. Parents were kicked out of Ronald McDonald house after an altercation where they were both intoxicated. In a consolidated appeal, Father argued the trial court's findings were erroneous in stating Father needed requisite training to care for child, but child was placed at a facility that did not offer the requisite training. The Court of Appeals found that while Covid-19 did play a part in parents' failure to get training, there were other facilities parents could attend to obtain the necessary training, but that training would not be ordered until child was ready to leave facility and parents had not remedied other challenges such as stable housing that would permit placement of child outside the facility. Father is a double amputee and argued he cannot be denied placement based upon his disability. The Court of Appeals found there were multiple other findings regarding father's inability to care for child and that he was not denied placement of child due to his disability. Parents argued coercive intervention of the court was not required because child's needs are being met by medical providers. However, Court of Appeals finds this ignores underlying issues that prevented child from being placed in parents' care, including chronic housing issues, domestic violence, alcohol abuse, criminal activity, mental and physical health issues. Father filed a motion to transfer the CHINS to St. Joseph County where father resided and argued the trial court erred in not granting his motion to transfer venue until after the dispositional hearing. When father filed his motion to transfer venue, the child resided in a facility in Cass County, not St. Joseph County where father requested case to be transferred. Thus, father's motion was not properly governed by IC 31-32-7-3 because he did not request the case be transferred to county in which the child resided, and the trial court did not abuse its discretion when it waited to transfer the case until after it entered the dispositional order. Held, CHINS affirmed.

TITLE: K.S. v. DCS

INDEX NO.: U.13.

CITE: (03/15/2021), 164 N.E.3d 834 (Ind. Ct. App. 2021)

SUBJECT: Children placed in relative's care may still need coercive intervention of the court through CHINS finding to provide the legal authority for relative to care for children absent guardianship, custody, or power of attorney.

HOLDING: DCS opened a CHINS case *citing* neglect and domestic violence between parents. Mother had left the children in Father's care and Mother's Mother (Grandmother) then moved the children into her home. Mother appealed the CHINS finding, arguing because the children were safely with their grandmother there was no evidence, she had endangered the children or that the coercive intervention of the State was needed. Court of Appeals held that coercive intervention of the Court was needed because Mother had abandoned the children, which did endanger them, and that the CHINS finding should continue to provide legal authority for Grandmother to care for the children because there was no guardianship, power of attorney or custody agreement in place.

TITLE: L.T. and S.T. v. DCS
INDEX NO.: U.13.
CITE: (04/23/2020), 145 N.E.3d 864 (Ind. Ct. App. 2020)
SUBJECT: Admission of hearsay and telephonic testimony in CHINS case
HOLDING: In CHINS fact-finding hearing, trial court erred in permitting a DCS witness to testify by telephone outside the clear parameters of Administrative Rule 14(B), but the error was harmless due to other evidence that supported the CHINS determination. Over objection, a probable cause affidavit outlining charges against Father and which had attached to it an investigative report by DCS containing statements from a doctor, nurse and DCS caseworker was admitted into evidence. Also admitted over objection was father's prior criminal conviction. Court held the probable cause affidavit was admissible to show the reason Father was charged and not admitted for the truth of the matter asserted. Evidence of Father's conviction was permissible under Indiana Rule of Evidence 405(b) as relevant character evidence to support trial court's assessment of Father's ability to parent child. Judge Tavitas, concurring in result, believes the probable cause affidavit was hearsay and wrongfully admitted but the error was harmless.

TITLE: M.M. and M.G. v. DCS
INDEX NO.: U.13.
CITE: (08/06/2019), 130 N.E.3d 1171 (Ind. Ct. App. 2019)
SUBJECT: Chins adjudication affirmed; witness testifying telephonically harmless error
HOLDING: Trial court committed harmless error in allowing a witness to testify telephonically during a CHINS factfinding hearing. The Department of Child Services (DCS) failed to follow Indiana Admin. Rule 14(B), which sets out when a trial court may permit telephonic communication. The error was harmless because DCS presented other evidence of probative value to support the CHINS determination. Court affirmed the CHINS finding and also affirmed trial court's order that parents participate in services tailored to reunification that were not specific to the reasons for removal of the children.

TITLE: M.B. v. Indiana Dept. of Child Services
INDEX NO.: U.13.
CITE: (12-20-19), 139 N.E.3d 1066 (Ind. Ct. App. 2019)
SUBJECT: CHINS finding upheld - venue, admission of evidence and need for coercive court intervention
HOLDING: Trial court did not err in denying parents' motion to dismiss CHINS petition at factfinding hearing for lack of venue. CHINS proceedings are not criminal, so the parents had no constitutional right to have their case tried in any particular county. Further, Ind. Code § 31-32-7-1 "does not state, or even suggest, that DCS is required to prove venue in a CHINS proceeding, and the statute's venue provisions are permissive, not mandatory.

The Court also rejected the parents' claim that their due process rights were violated when testimony was admitted regarding unpled allegations of Father's status as a sex offender and the conditions of the home. The trial court's CHINS order does not even mention Father's sex offender status, and although the order mentions the conditions of Parents' home in passing, those conditions are not cited as a basis for the trial court's CHINS finding.

Finally, DCS carried its burden to establish the need for coercive court intervention in light of the fact that Parents did not take steps for Children to receive the therapy they need during the pendency of the CHINS proceeding.

TITLE: In re V.C.
INDEX NO.: U.13.
CITE: (04-27-12), 967 N.E.2d 50 (Ind. Ct. App. 2012)
SUBJECT: CHINS determination affirmed
HOLDING: In CHINS proceeding, juvenile court did not violate incarcerated Father's procedural due process rights as set forth in Ind. Code. 31-32-2-3(b) by: 1) failing to issue requested subpoena to maternal aunt after Father failed to provide court with aunt's address and 2) denying Father's request for continuance of fact-finding hearing. Court rejected Father's argument that CHINS determination was unnecessary because a suitable relative placement existed at time V.C. was removed from Mother's care. Held, judgment affirmed.

TITLE: Matter of A.C.

INDEX NO.: U.13.

CITE: (10/21/2022), 198 N.E.3d 1 (Ind. Ct. App. 2022)

SUBJECT: Order prohibiting parents from discussing topic of child's transgender identity during visits did not violate parents' freedom of religion or speech

HOLDING: DCS received reports alleging that Parents were verbally and emotionally abusing Child because they do not accept Child's transgender identity. DCS filed a CHINS petition containing allegations under the CHINS-1 and CHINS-2 statutes. After a combined initial and detention hearing, the court ordered Child's removal from the home. DCS later amended its petition to add an allegation that Child was substantially endangering Child's own health and that Child was a CHINS pursuant to the CHINS-6 statute. The amendments alleged Child's eating disorder was worsening, Child had lost "a significant amount of weight," was throwing away/hiding food and neglecting to eat full meals, and Child did not believe that Child had an eating disorder, had lost weight, or needed treatment. At a hearing, the parties informed the court that they had reached an agreement that DCS would dismiss the CHINS-1 and CHINS-2 allegations, unsubstantiate and expunge the record of any reports related to the Parents and proceed under the CHINS-6 statute. Child then admitted to being a CHINS-6, and the Parents verified that they had no objection to Child's admission. The court found a factual basis for the admission, accepted the admission, and adjudicated Child a CHINS. In its dispositional order, the trial court found that Child needed "services to treat anorexia as well as individual and family therapy to ensure emotional, mental, and psychological safety and well-being." The court also ordered Child's continued removal from the home. Parents appealed the initial/detention order and dispositional order. The Court of Appeals held Parents could not challenge the initial/detention order because it was moot. No relief was available due to any alleged error in the court's initial CHINS probable cause determination because the CHINS-1 and CHINS-2 allegations had been dismissed. Effective relief regarding Child's removal from the home, if warranted, may be granted based on the Parents' appeal of the Dispositional Order. The Court also found the issue did not fall under the public interest exception to mootness because the policy issues presented by Parents were addressed in the context of their challenge to the Dispositional Order. Parents challenged Child's continued removal from the home in the Dispositional Order, arguing it was clearly erroneous because it contravened the CHINS-6 statute and was unsupported by sufficient evidence that it is in Child's best interest. The Court of Appeals held the order did not contravene the CHINS-6 statute because while the trial court recognized a connection between Child's medical and psychological issues and Child's disagreement with the Parents, it did not run contrary to the CHINS-6 statute. As the trial court emphasized, this is an extreme case where Child has reacted to a disagreement with the Parents by developing an eating disorder and self-isolating, which seriously endangers Child's physical, emotional, and mental well-being. Sufficient evidence showed removal was in Child's best interest. Parents had no objection to Child's CHINS admission or the factual basis for it, which included that Child had an eating disorder fueled in part by Child's self-isolation from the Parents and that behavior was likely to reoccur if Child was placed back in the home with the Parents. Finally, the Court held the dispositional order did not violate Parents' Fourteenth Amendment or First Amendment rights. Because Parents' arguments on the Fourteenth Amendment rehashed much of their arguments on sufficiency of evidence, the Court was not persuaded. The Court also found no violation of Parents' freedom of religion. At the initial hearing, Father testified that the Parents cannot affirm Child's transgender identity or use Child's preferred pronouns based on their sincerely held religious beliefs. But the Court of Appeals determined the Dispositional Order was based on Child's medical and psychological needs and not on the Parents' disagreement with Child's transgender identity. Even if the Parents were able to demonstrate that the Dispositional Order imposes a substantial burden on their religious freedom, their claim that Child's continued removal from the home violates the Free Exercise Clause would fail. U.S. Supreme Court cases have already recognized that protecting a child's health and welfare is well recognized as a compelling interest justifying state action that is contrary to a parent's religious beliefs. The State has a compelling interest in protecting Child's physical and mental health. The State had a compelling interest in protecting Child's physical and mental health. In addition, Child's removal from the home is narrowly tailored to serve the State's compelling interest based on the same analysis that supports our conclusion that continued removal from the home is

in Child's best interest. Finally, the Court of Appeals held the trial court's order that Parents not discuss the topic of transgender identity with Child during visitation did not violate Parents' freedom of speech. The Court found guidance from In re Paternity of G.R.G., 829 N.E.2d 114 (Ind. Ct. App. 2005), in balancing a parent's free speech rights and the welfare of the child. Parents' claim failed because the order involves only the Parents' private speech with Child rather than public speech. It was also narrowly tailored because the speech limitation directly targets the State's compelling interest in addressing Child's eating disorder and psychological health. Further, the order is narrowly tailored because it restricts the Parents from discussing the topic with Child only during visitation but permits the topic to be discussed in therapy. Accordingly, the order restricting conversation on that topic outside of family therapy was a permissible prior restraint. Held: judgment affirmed.

TITLE: Matter of A.D.D.
INDEX NO.: U.13.
CITE: (9/3/2021), 172 N.E.3d 714 (Ind. Ct. App. 2021)
SUBJECT: Trial court lacked authority to order informal adjustment
HOLDING: Trial court was without statutory authority to order Father to participate in an informal adjustment without his consent, and once the trial court determined that there was insufficient evidence to support a CHINS adjudication, it was required to discharge the Children from its jurisdiction. DCS agreed that Indiana statutory law does not support the trial court's order and that reversal is appropriate. See Ind. Code § 31-34-8-2 ("The child and the child's parent, guardian, custodian, or attorney must consent to a program of informal adjustment."); Ind. Code § 31-34-11-3 ("If the court finds that a child is not a child in need of services, the court shall discharge the child."). Held, order directing Father to participate in informal adjustment reversed.

TITLE: Matter of A.R.

INDEX NO.: U.13.

CITE: (8/31/2018), 110 N.E.3d 387 (Ind. Ct. App. 2018)

SUBJECT: Indiana court had jurisdiction, but DCS presented insufficient evidence to support CHINS finding

HOLDING: Indiana had jurisdiction to enter a CHINS adjudication or disposition under the Uniform Child Custody and Jurisdiction Act (UCCJA), where Mother took two of her children from North Carolina and brought them to Indiana, where she demonstrated an inability to care for them. There were no CHINS cases related to these two children open in North Carolina at the time of the CHINS proceeding, so the Indiana court had jurisdiction to oversee the CHINS proceedings.

However, CHINS finding was not supported by sufficient evidence and was thus clearly erroneous. Although Father has some history of making poor choices involving substance abuse and domestic violence with Mother, the record reflects that he has made every effort to remedy the situation and become a suitable caregiver. At time of the fact-finding hearings, Father was actively participating in all services, his home was approved by North Carolina DCS, and there were no specific concerns for his ability to care for the children. Thus, DCS failed to prove by preponderance of evidence that children needed care or treatment that was unlikely to be provided or accepted without juvenile court's coercive intervention. Held, judgment reversed.

TITLE: Matter of Ce.B
INDEX NO.: U.13.
CITE: (4/7/2017), 74 N.E.3d 247 (Ind. Ct. App. 2017)
SUBJECT: CHINS finding affirmed - stipulation at factfinding hearing
HOLDING: After stipulating at factfinding hearing that facts contained in CHINS petitions and reports of preliminary inquiry were true, custodian failed to set forth any grounds for cause either below or on appeal that juvenile court erred in denying his request to withdraw his stipulation. Based on stipulated facts contained in reports, juvenile court made a legal determination that the children were CHINS. Held, judgment affirmed

TITLE: Matter of E.T. v. Ind. Dept. of Child Services
INDEX NO.: U.13.
CITE: (7/31/2020), 152 N.E.3d 634 (Ind. Ct. App. 2020)
SUBJECT: CHINS - separate factfinding hearings did not violate due process
HOLDING: Trial court did not violate Father's due process rights by adjudicating child a CHINS in mother's case without giving him an opportunity to be heard. Father had been twice convicted of criminal charges related to domestic violence episodes against Mother. As a result of Mother's protective order and fear of Father, trial court granted DCS's motion for separate fact-finding hearings. The separate hearings were unavoidable because both parents could not be present at the same fact-finding hearing, Father received the due process to which he was entitled because he had the opportunity to be heard at a meaningful time and in a meaningful manner Father had the opportunity to be heard, the trial court did not violate Father's due process rights. The Court of Appeals also found no error in holding Father's fact finding and disposition hearings outside the statutory time frames, which Father waived.

TITLE: Matter of G.W.
INDEX NO.: U.13.
CITE: (10/10/2012), 977 N.E.2d 381 (Ind. Ct. App. 2012)
SUBJECT: Child molest - order to parents to make child available to DCS
HOLDING: Tr. Ct. may order a parent to make his or her child available for an interview requested by the DCS to assess that child's "condition," where the child's sibling has made and then recanted allegations of sexual abuse against a family member who lives in the children's home. DCS's "assessment [into a report of child abuse], to the extent reasonably possible, must include the following: . . . (3) The names and conditions of other children in the home." Ind. Code 31-33-8-7(a). If a custodial parent of a child refuses to allow DCS to interview the child after the caseworker has attempted to obtain the consent of the custodial parent to interview the child, DCS may petition a court to order the custodial parent to make the child available to be interviewed by the caseworker. Ind. Code 31-33-8-7(d).

Here, twelve-year-old M.F. made an allegation that her step-father had sexually abused her. Later, during a DCS interview with M.F., she recanted and claimed that she lied because she was angry at her mother for failing to spend as much time with her. Despite the recantations, DCS requested an interview with M.F.'s nine-year-old sister, G.W., and the mother refused the request. Over Mother's objection, Tr. Ct. ordered her to take G.W. to Susie's Place for a forensic interview in which the Mother could not be present and law enforcement would be watching. Ind. Code 31-33-8-7 requires DCS to investigate the condition of the other children in the home, and specifically contemplates that DCS may interview those other children to determine their conditions if necessary to facilitate such interviews. In the context of child abuse investigation, common sense dictates that DCS must assess the overall conditions of other children in the home, including their physical, psychological and emotional status. Thus, Tr. Ct. did not abuse its discretion by ordering the interview. Held, judgment affirmed; Riley, J., dissenting on basis that simply because the DCS is to assess the names and conditions of other children in the home does not equate to subjecting the other children to an invasive forensic interview, and the statutes refer to the child who is the subject of the abuse and not the non-subject child.

RELATED CASES: In re A.H., 992 N.E.2d 960 (Ind. Ct. App 2013) (procedures for DCS to investigate unverified reports of abuse or neglect by interviewing the child do not violate parent's rights to due process).

TITLE: Matter of J.N. (Child) CHINS and J.N. v. DCS
INDEX NO.: U.13.
CITE: (4/29/2021),168 N.E.3d 1030 (Ind. Ct. App. 2021)
SUBJECT: CHINS finding reversed where record shows no need for further State intervention
HOLDING: The CHINS court found that an intense and escalating legal dispute between the parents created a highly contentious domestic relationship and that the child's mental condition was seriously impaired or endangered in her parents' care. The Court of Appeals found that neither finding was supported by the evidence. The record shows legal disagreements between the parties, but not the intense, escalating battle the CHINS court described. And while there were three reports of molestation of the child by the father made to DCS, and found to be unsubstantiated, the identity of the reporter was not disclosed. DCS offered no evidence the child's mental or physical health was endangered. DCS did not request the child receive any services except for a therapeutic evaluation, which resulted in no further referrals or services. DCS failed to establish by a preponderance of the evidence the child needs care, rehabilitation, or treatment she is not receiving and would be unlikely to be provided without the coercive intervention of the state. Held, judgment reversed.

TITLE: Matter of J.R.
INDEX NO.: U.13.
CITE: (4/17/2018), 98 N.E.3d 652 (Ind. Ct. App. 2018)
SUBJECT: Untimely fact-finding hearing required dismissal of CHINS petition
HOLDING: Tr. Ct. erred in denying parents' motion to dismiss CHINS petitions, where fact-finding hearing was not completed within the statutorily-required 60-day period after the filing of the CHINS petitions. Ind. Code § 31-34-11-1(d), added in 2012, provides that a court "shall dismiss the case without prejudice" if a CHINS factfinding hearing is not held within the 60-day limit set out in subsection (a). Held, judgment reversed and remanded with instructions to dismiss the CHINS petitions without prejudice. Court noted that if DCS chooses to refile the petitions, it will have to present new evidence regarding the children's current conditions.

TITLE: Matter of M.W.
INDEX NO.: U.13.
CITE: (1/30/2019), 119 N.E.3d 165 (Ind. Ct. App. 2019)
SUBJECT: CHINS finding reversed - physical altercation between teenage sisters
HOLDING: Teenage sisters got in physical altercation. Mom called police to deescalate the situation. From there DCS became involved. Mother was not ordered to complete services, yet she did anyway. Mother had suitable housing, reliable income and was undisputably an engaged and loving parent. In a scathing rebuke, the Court of Appeals found this evidence insufficient to support a finding of CHINS.

TITLE: Matter of T.T.
INDEX NO.: U.13.
CITE: (10/10/2018), 110 N.E.3d 441 (Ind. Ct. App. 2018)
SUBJECT: Untimely fact-finding hearing required dismissal of CHINS petition
HOLDING: Juvenile court erred in denying Mother's motion to dismiss CHINS petitions, where factfinding hearing was not completed within the statutorily-mandated timeframe. In so holding, Court rejected DCS's argument that Ind. Code § 31-34-11-1 did not create "a hard and fast deadline," and found Mother's agreement to a continuance did not constitute waiver. "To allow the parties to agree to dates beyond the maximum 120-day limit would thwart the legislative purpose of timely rehabilitation and reunification of families that are subject to CHINS proceedings." Held, judgment reversed and remanded with instructions to dismiss CHINS petitions without prejudice.

RELATED CASES: K.S., 130 N.E.3d 109 (Ind. Ct. App. 2019) (statutory dismissal sanction for failure to conduct timely factfinding hearing is not a mechanism for setting aside a CHINS adjudication once it has been entered for the benefit and protection of a child; Matter of T.T. and other cases involved objections prior to CHINS adjudications).

TITLE: M.S. v. Dept. of Child Services
INDEX NO.: U.13.
CITE: (2-20-2020), 140 N.E.3d 279 (Ind. Ct. App. 2020)
SUBJECT: 120-day statutory deadline to conclude factfinding hearing in CHINS case may be extended upon showing of good cause
HOLDING: Ind. Code § 31-34-11-1(d) requires a trial court to dismiss a petition alleging a child is in need of services if the court does not conclude a fact-finding hearing within 120 days of the filing of the petition by the State. However, under Indiana Trial Rule 53.5, a party may to move for a continuance if that party can show "good cause" for why a continuance is necessary in a particular case. The Indiana Supreme Court held that a trial court may extend the CHINS 120-day deadline upon a finding of "good cause."

In a footnote, the Court urged trial courts "to carefully consider whether parties have truly shown good cause for an extension of time. This may, at minimum, require a hearing to determine whether good cause has been shown. But to create a clean record, we urge trial courts to make a finding, on the record, that good cause has been shown for an extension of time. See James v. State, 716 N.E.2d 935, 941 (Ind. 1999) (emphasizing the importance of making a record for appellate review))

RELATED CASES: F.D., 190 N.E.3d 385 (Ind. Ct. App. 2022) (Mother was not denied due process when CHINS was continued beyond the 120 day timeframe when trial court found good cause for DCS's continuance to procure a fact witness and assess Mother's mental health); In the matter of K.W. and R.W., 178 N.E.3d 1199 (Ind. Ct. App. 2021) (CHINS fact-finding hearing and dispositional hearings were properly continued for good cause pursuant to Trial Rule 53.5, due to delays caused by the COVID-19 pandemic, Father's failure to appear for the August hearing, and Father's request for new counsel).

TITLE: T.W. v. Dept. of Child Services
INDEX NO.: U.13.
CITE: (3/24/2016), 52 N.E.3d 839 (Ind. Ct. App. 2016)
SUBJECT: Appeal dismissed for lack of subject matter jurisdiction
HOLDING: Tr. Ct.'s order denying Mother's motion to modify a permanency plan in a CHINS case and granting DCS's motion to terminate visitation with child was not a final appealable judgment under Appellate Rule 2(H). In so holding, Court of Appeals distinguished In re: E.W., 26 N.E.3d 1006 (Ind. Ct. App. 2015), where Court addressed Mother's appeal even though the Tr. Ct.'s order did not qualify as a final judgment. Child in In re: E.W. was much older and had another planned permanent living arrangement, which was not at issue in this case. Held, appeal dismissed.

U. JUVENILE

U.13. CHINS (IC 31-6-4-3 and 3.1)

U.13.a. CHINS, in general

TITLE: A.M. v. DCS
INDEX NO.: U.13.a.
CITE: (11/30/2015), 45 N.E.3d 1252 (Ind. Ct. App 2015)
SUBJECT: CHINS finding reversed
HOLDING: No evidence supported Tr. Ct.'s finding that Mother's four children were CHINS as the State failed to show under Ind. Code § 31-34-1-1 that Mother: 1) has endangered her children; 2) failed to meet their needs, and 3) is unlikely to meet those needs without the State's coercive intervention. In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014). It is true Mother sporadically used marijuana and that H.G. was born with marijuana in his meconium, but once Mother learned she was pregnant with H.G., she stopped using marijuana. Also, there is no evidence Mother used drugs or was impaired while in the presence of the children. She passed all drug screens during the CHINS case; in fact, the substance abuse assessment did not even recommend substance abuse treatment for Mother. Finally, there is also no evidence the children lacked for food, shelter, or love and care. Held, judgment reversed.

RELATED CASES: S.K., 57 N.E.3d 878 (Ind. Ct. App. 2015) (Children cannnot become CHINS by the mere happenstance of a family's economic misfortune; here, children were not endangered by the acts or omissions of the parents, who took deliberate action to avoid placing children in the endangering condition of homelessness).

TITLE: A.M. v. Indiana Dept. of Child Services
INDEX NO.: U.13.a.
CITE: (5/31/2018), 103 N.E.3d 709 (Ind. Ct. App. 2018)
SUBJECT: CHINS finding reversed - Mother's marijuana use and presence of marijuana in home
HOLDING: Tr. Ct. erred when it adjudicated children to be CHINS because there is insufficient evidence that children were seriously endangered or even impacted by Mother's actions or inactions. When determining whether a child is a CHINS under Ind. Code § 31-41-1-1, courts should consider the family's condition not just when the case was filed, but also when it is heard. In re S.D., 2 N.E.3d 1283 (Ind. 2014). Here, although there were problems with Mother's living arrangements and with one incident of domestic violence at the time DCS filed the CHINS petition, Mother has remedied the housing situation and has moved away from Father and filed for a protective order against him. And even though children have seen marijuana and Mother continues to use marijuana, DCS presented no evidence that either the Children's observation of marijuana or Mother's use of it has endangered the Children or impacted them in any way. Evidence of one parent's use of marijuana and fact that marijuana has been found in the family home, without more, does not demonstrate that a child has been "seriously endangered" for purposes of Ind. Code § 31-41-1-1. Held, judgment reversed.

TITLE: C.S. v. Indiana Department of Child Services

INDEX NO.: U.13.a.

CITE: (3/6/2019), 123 N.E.3d 699 (Ind. Ct. App. 2019)

SUBJECT: Termination of parental rights - Tr. Ct. must adopt evidence presented at hearing as "fact" rather than reiterating testimony in findings of fact and conclusions of law

HOLDING: Mother and Father each faced challenges including addiction and neither took advantage of services offered through DCS, resulting in termination of their parental rights. On appeal, Court notes that the trier of fact must adopt the testimony of a witness before the “finding” may be considered a fact. However, neither parent challenged the Tr. Ct.'s findings so they were accepted as true and issue was waived. With respect to the termination, Court held the Parents’ long-term substance abuse issues supported the finding that the circumstances leading to removal would not be remedied. There was also sufficient evidence termination was in the child’s best interest because the family case manager recommended termination, neither parent has demonstrated an ability to use the services provided, and child is doing well in foster placement with her paternal grandfather. Held, judgment affirmed.

TITLE: E.P. v. Marion County Office of Family and Children
INDEX NO.: U.13.a.
CITE: (5th Dist., 7/20/95), Ind. App., 653 N.E.2d 1026
SUBJECT: Parent in CHINS proceeding is not entitled to jury trial
HOLDING: In Child in Need of Services (CHINS) case, Juv. Ct. did not err in denying mother's motion for jury trial. Under Ind. Code 31-6-2-1.1, Juv. Ct. has exclusive original jurisdiction in CHINS proceedings. Ind. Code 31-6-7-10(c) provides that all matters in Juv. Ct. shall be tried to Ct. except trial of adult charged with crime. Indiana Constitutional right to jury trial applies only to actions triable by jury at common law. Gray v. Monroe County DPW, App., 529 N.E.2d 860. Because no special judicial system for juveniles existed at common law, Indiana Constitution, Art. I § 20 does not give party right to jury trial in Juv. Ct. proceedings. Right to jury trial under 7th Amendment to U.S. Constitution is limitation on federal government but does not prohibit restriction of right to jury in state courts. Finally, Ind. Tr. Rule 38(B) does not provide right to jury trial, but merely sets forth procedure for exercising already existing right. Held, judgment affirmed.

TITLE: Hallberg v. Hendricks County Office of Family and Children
INDEX NO.: U.13.a.
CITE: (1st Dist., 2/26/96), Ind. App., 662 N.E.2d 639
SUBJECT: Notice not required for emergency CHINS protective order
HOLDING: Tr. Ct's issuance of emergency protective order against father was valid, despite failure to give father notice of emergency hearing to determine whether children were Children in Need of Services (CHINS) and whether order was appropriate. Upon motion of child's parent, caseworker, or any person providing services to child or child's parent, guardian, or custodian, Juv. Ct. may issue order to control conduct of any person in relation to child. Juv. Ct. must give notice to any person whose conduct will be regulated by order. Ind. Code 31-6-7-14(c). However, if Juv. Ct. determines upon review of record or by sworn testimony or affidavit that emergency exists, Juv. Ct. may issue emergency protective order without hearing. Ind. Code 31-6-7-14(f). Here, Tr. Ct. conducted emergency hearing where witness testified under oath that child had described being sexually abused by father. Tr. Ct. issued emergency protective order finding that children were CHINS and prohibiting father from having any contact with children until final hearing could be held. Father argued that Tr. Ct. lacked subject matter jurisdiction to issue protective order against him because it failed to give him notice of hearing. Ct. found that Tr. Ct. properly acted under Ind. Code 31-6-7-14(f). Held, judgment affirmed.

TITLE: Ind. Dept. of Child Services v. J.D.

INDEX NO.: U.13.a.

CITE: (5/26/2017), 77 N.E.3d 801 (Ind. Ct. App. 2017)

SUBJECT: CHINS - Tr. Ct. imposed "inappropriately high" evidentiary burden on DCS to trigger Presumption Statute

HOLDING: Department of Child Services presented sufficient evidence to trigger presumption pursuant to Ind. Code § 31-34-12-4 that Child was a CHINS, thus Tr. Ct. committed reversible error in denying CHINS petition. In doing so, Tr. Ct. rejected physician's unanimous opinions that Child's injuries were not accidental and indicative of child abuse. Although a fact-finder is not obligated to credit expert testimony, in this case Tr. Ct.'s "problematic" statements make it clear that its decision was driven by a misunderstanding and misapplication of the law. There is no question that Child was seriously injured, and evidence presented at the fact-finding hearing established that from the time of birth until his removal, Child was continuously in his parents' care. Additionally, three physicians concluded based on their training and experience that Child was abused. Tr. Ct. erroneously concluded that the physicians were unqualified to opine as to the nature of the Child's injuries. This evidence was competent and probative, and therefore sufficient to trigger the application of the Presumption Statute and shift the burden of producing evidence to rebut the presumption to the Child's parents. Held, judgment reversed and remanded for further proceedings.

TITLE: In re A.H.
INDEX: U.13.a.
CITE: (8/18/2016), 58 N.E.3d 951 (Ind. Ct. App. 2015)
SUBJECT: Court blasts DCS & juvenile court in CHINS case
HOLDING: In reversing a CHINS adjudication, Court excoriated DCS for not complying with five Tr. Ct. orders to schedule a psychological evaluation of A.H. and blasted the juvenile court for failing to sanction DCS for "violat[ing] court orders with impunity."

A.H.'s difficult childhood included bullying for being interracial, becoming pregnant when she was 14, and being raped when she was eight months pregnant. She was diagnosed with anxiety disorder, separation anxiety, and depression. She was arrested several times for violent outbursts. DCS became involved when she allegedly hit her brother. DCS failed to schedule a psychological evaluation for four months. At the CHINS hearing, A.H.'s mother testified that A.H. was benefiting from therapy, but the juvenile court found that A.H. was a CHINS, finding that medical care was "unlikely to be provided or accepted without the coercive intervention of the court." Ind. Code 31-34-1-1(2)(B). The Court found that the findings showed that, in fact, Mother is "willing and able to engage with all needed services on behalf of [A.H.]" See In re S.D., 2 N.E.3d 1283, 1285 (Ind. 2014).

The Court concluded with this harsh assessment: "The CHINS adjudication is particularly troubling . . . given DCS's inexcusable lack of diligence in referring [A.H.] for a psychological evaluation..... The delay lasted so long that the results of the evaluation were not ready at the fact finding hearing four months later. For DCS to fail to refer [A.H.] to a psychological evaluation for four months, and despite multiple court orders, and then to pursue a CHINS petition in which it claims that Mother was unable to supply [A.H.] with medical care, is simply indefensible. Moreover, we question why the juvenile court put absolutely no consequences in place for DCS's repeated failure to comply with court orders. DCS should not be permitted to violate court orders with impunity." Held, judgment reversed.

TITLE: In re B.W.
INDEX NO: U.13.a.
CITE: (9/5/2014), 17 N.E.3d 299 (Ind. Ct. App. 2014)
SUBJECT: Tr. Ct. abused discretion appointing guardians for children
HOLDING: Because DCS failed to present clear and convincing evidence that Mother is currently unable to provide a safe home for her two children or that guardianships are in the children's best interest, the Tr. Ct. abused its discretion in appointing guardians for the children. See In re Guardianship of B.H., 770 N.E.2d 283, 287-88 (Ind. 2002). The undisputed evidence showed that Mother successfully completed all requirements of the 22-part parental participation plan. At the guardianship hearing, the only evidence DCS presented in favor of guardianship was Mother's unwillingness to take a polygraph or otherwise divulge information about how one of her children was injured in 2011. Polygraphs are notoriously unreliable. Hubbard v. State, 742 N.E.2d 919, 923 (Ind. 2001). Further, DCS's arguments for the guardianship are based solely on conditions that no longer exist; this is not a valid reason for a CHINS adjudication as a Tr. Ct. should consider the parents' situation at the time the case is heard. In re R.S., 987 N.E.2d 155, 159 (Ind. Ct. App. 2013). Held, judgment reversed.

TITLE: In re C.G.
INDEX NO.: U.13.a.
CITE: (10-11-11), 954 N.E.2d 910 (Ind. 2011)
SUBJECT: New standard to determine if incarcerated parent may personally attend TPR hearing
HOLDING: Whether an incarcerated parent is permitted to attend a termination of parental rights hearing is a matter of Tr. Ct. discretion. In exercising that discretion, the Tr. Ct. judge should balance the following factors: (1) The delay resulting from parental attendance; (2) the need for an early determination of the matter; (3) the elapsed time during which the proceeding has been pending; (4) the best interests of the child(ren) in reference to the parent's physical attendance at the termination hearing; (5) the reasonable availability of the parent's testimony through a means other than his or her attendance at the hearing; (6) the interests of the incarcerated parent in presenting his or her testimony in person rather than by alternate means; (7) the effect of the parent's presence and personal participation in the proceedings upon the probability of his or her ultimate success on the merits; (8) the cost and inconvenience of transporting a parent from his or her place of incarceration to the courtroom; (9) any potential danger or security risk which may accompany the incarcerated parent's transportation to or presence at the proceedings; (10) the inconvenience or detriment to parties or witnesses; and (11) any other relevant factors. State of West Virginia ex rel. Jaenette H. v. Pancake, 529 S.E.2d 865, 877 (W. Va. 2000).

Here, Marion County has a standing order that prohibits the transportation of incarcerated parents to Marion County juvenile court proceedings. Thus, the Mother, who was incarcerated in Henderson, Kentucky, was not allowed to attend the termination of parental rights hearing. However, the Mother was represented by counsel and was allowed to participate in the proceedings telephonically. Nonetheless, a parent's physical absence from a hearing hinders a Tr. Ct.'s ability to assess the credibility of the parent. Further, a blanket prohibition on attendance of incarcerated individuals is fraught with the danger of allowing Tr. Ct's to "hide behind such a blanket order," forcing appellate courts "to surmise why the Tr. Ct. issued such an order. This is not good policy." Here, however, the Tr. Ct. would have reached the same conclusion about the Mother's attendance at the hearing even if the blanket order did not exist. Held, transfer granted, judgment affirmed.

TITLE: In re C.R.
INDEX NO.: U.13.a.
CITE: (7/28/2017), 80 N.E.3d 279 (Ind. Ct. App. 2017)
SUBJECT: CHINS -continued placement with foster parents not in children's best interests
HOLDING: In CHINS proceeding, record supported Tr. Ct.'s finding that foster mother had become obsessed with the notion that the three children were molested, making continued placement with her not in the children's best interests. Foster parents were not denied due process when Tr. Ct. did not cite to the legal standard it would use when deciding the case. Tr. Ct. primarily considered the children's best interest when it denied foster parents' motion for return of the children, petition for guardianship, and for custody. Held, judgment affirmed.

TITLE: In re D.B.
INDEX NO.: U.13.a.
CITE: (9/2/2015), 43 N.E.3d 599 (Ind. Ct. App. 2015)
SUBJECT: Interstate Compact on Placement of Children (ICPC) does not apply to out-of-state biological parents
HOLDING: The ICPC, which addresses placement of children in other states, does not apply when the contemplated placement is with the biological parent. The plain language of Ind. Code § 31-28-4-1 art. III makes clear that the ICPC applies only to placement of a child in foster care or as a preliminary to a possible adoption. Thus, to the extent juvenile court's CHINS determination rested on fact that the ICPC process had not yet been completed with respect to father, Court discounted that basis of the adjudication.

Court also found insufficient evidence to support CHINS determination. D.B., a 2-year-old, was found to be a CHINS after her mother was murdered by her half-brother's father. After filing the CHINS petition, the Indiana Department of Child Services (DCS) began but did not complete the process set forth by the ICPC for both the child's father and maternal grandmother. Father lives out of state and is a virtual stranger who has had very little contact with Mother and did not regularly pay child support. But fact that DCS was unable to gather sufficient information about the father's fitness as a parent does not meet DCS's burden to prove him unfit. In re K.E., No. 82S04-1508-JT-491 (Ind. Aug 20, 2015). Held, judgment reversed; Brown, J., dissenting, believes the ICPC applies under these circumstances and Ind. Code § 31-28-4-1 art. VIII does not preclude the ICPC's application to agency placements with non-resident parents.

RELATED CASES: S.R., 130 N.E.3d 114 (Ind. Ct. App. 2019) (Court cautioned Magistrate who "respectfully disagree[d] with [Ct's] position" on this point of law and Judge who signed off on her decision that Ind. Code of Judicial Conduct requires judicial officers to uphold the law; see full review at N.4); Matter of B.L.P., 91 N.E.3d 625 (Ind. Ct. App. 2018) (to extent termination was based on Father's failure to complete assessment ordered pursuant to the ICPC, trial court committed legal error as ICPD doesn't apply to out-of-state parents; other evidence supporting termination was insufficient).

TITLE: In re D.J. v. Department of Child Services
INDEX NO.: U.13.a.
CITE: (2/7/2017), 68 N.E.3d 574 (Ind. 2017)
SUBJECT: Record did not support CHINS finding
HOLDING: The record did not support Tr. Ct. 's finding that parents needed the Tr. Ct. 's coercive intervention to provide for their sons' needs at the time of the disposition hearing. Mother was bathing four-year-old D.J. and 14-month-old G.J. (the boys) when she went downstairs to let out the family dog. When she returned upstairs, G.J. was lying face down in the bath water. The next day, Mother and her husband J.J. consented to a home inspection by a police officer and a DCS family case worker, who, when entering the home, "almost gagged on the smell of feces and animal feces and urine." The home was cluttered and in disarray. There were no beds for the boys; they slept in the same bed as Parents. The boys were removed, and DCS began providing services to Parents. When the Tr. Ct. held its fact-finding hearing, the parents had completed or were about to complete all services DCS required. Nonetheless, the Tr. Ct. found the boys were CHINS, concluding that the coercive intervention of the court was necessary to ensure that Parents attended to the boys' care and treatment. See Ind. Code 31-34-1-1(2)(b).

While the Tr. Ct. 's findings support its conclusion that Parents required coercive court intervention early in the CHINS process, the findings did not show that Parents needed ongoing coercive intervention and especially did not show that Parents needed such intervention by the time of the fact-finding hearing. Testimony by a social worker, a family coach and caseworker, and a clinical therapist established that Parents were open and willing to receive services, serious about what the court had ordered, were implementing what they had learned in parenting classes, and were "extremely compliant." By the time of the fact-finding hearing, Parents did not require any more individual or family therapy and had met all their goals. Held, transfer granted, Court of Appeals' opinion vacated, and judgment reversed.

RELATED CASES: Matter of E.K., 83 N.E.3d 1256 (Ind. Ct. App. 2017) (DCS failed to present sufficient that E.K. was a child in need of services, where the CHINS finding was based on one spanking incident that resulted in bruising to E.K., an unruly, out-of-control child, and where parents were taking positive steps).

TITLE: In re E.W.

INDEX NO.: U.13.a.

CITE: (2/25/2015), 26 N.E.3d 1006 (Ind. Ct. App. 2015)

SUBJECT: Child in need of services (CHINS) - parenting time; terminating all contact between Mother and Child

HOLDING: Evidence was sufficient to support juvenile court's order terminating Mother's supervised visitation and phone contact with her daughter E.W., who was placed in foster care at age 10. Tr. Ct. may not restrict parenting time unless it finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development. Ind. Code § 31-17-4-2.

Here, supervised visits often included inappropriate sexual comments and behaviors from the mother. E.W. already had a sexual history at age 10, which was part of the reason she was found to be a CHINS. Mother has refused to participate in court-ordered services to improve her parenting skills and mental health. She often undermined E.W.'s foster parents and the girl's therapist testified that her Mother's presence in her life is a stressor and the visits negatively affect her. Court agreed with juvenile court's conclusion that cessation of the visits would be in E.W.'s best interests. Held, judgment affirmed.

TITLE: In re J.K.
INDEX NO.: U.13.a.
CITE: (5/12/2015), 30 N.E.3d 695 (Ind. 2015)
SUBJECT: Judicial conduct in CHINS case deprived Father of due process
HOLDING: Court reversed CHINS adjudication where judge's comments deprived Father of a fair tribunal and coerced his admission that 17 year-old J.K. was in need of services.

At the fact-finding hearing, the judge expressed impatience regarding the potential overlap between custody in the divorce and placement in the CHINS case, and during the hearing she called the parties' dispute "ridiculous and retarded," faulted the parties for "stupidity," and continued the hearing to order mediation. When mediation failed, judge again made disparaging comments about the matter, calling the parties "knuckleheads" and then told father that he should admit to the CHINS adjudication so that J.K., if placed with him, could be bused to her current school district. Father could not drive J.K. to school because of a suspended driver's license and his work schedule. Judge replied, "If I were you I'd waive fact-finding otherwise you're going to find your butt finding a new job." Father did not want to admit to the adjudication, but relented.

Court noted that "the right to an impartial judge is no less vital in CHINS cases than any other proceeding. Here, "[a]fter making several derogatory remarks over the course of two hearings about the parties and the nature of their dispute, the Tr. Ct. pressured father to waive his right to a fact-finding hearing and instead admit that his daughter was in CHINS." Because the cumulative effect of Tr. Ct.'s remarks and conduct breached the court's duty of impartiality and amounted to coercion of the father, Court reversed.

TITLE: In re K.S.
INDEX NO.: U.13.a.
CITE: (6/29/2017), 78 N.E.3d 740 (Ind. Ct. App. 2017)
SUBJECT: CHINS adjudication reversed - insufficient evidence
HOLDING: DCS failed to prove by a preponderance of the evidence that K.S.'s physical and mental condition was seriously impaired or endangered as a result of Mother's inability, refusal, or neglect to supply K.S. with necessary food, clothing, shelter, medical care, education, or supervision. Ind. Code § 31-34-1-1(1). Mother admitted that she had used marijuana two months before K.S.'s birth to increase her appetite during pregnancy. However, there is no evidence showing how, specifically, Mother's use of marijuana two months prior to giving birth seriously impaired or seriously endangered K.S. Testimony at the hearing revealed that during his first days of life, K.S. was "feeding well" and that there was nothing other to note. Mother did well during supervised visits. K.S.'s foster mother testified that he was developing well and meeting his milestones. DCS presented absolutely no evidence that Mother did not have stable housing. Future concern that Mother would be asked to move out of her cousin's home are not enough to support CHINS adjudication. Held, judgment reversed.

TITLE: In re K.V.

INDEX NO.: U.13.a.

CITE: (01/13/2023), 201 N.E.3d 700 (Ind. Ct. App. 2023)

SUBJECT: DCS not required to make reasonable efforts to reunfiy with foster parents before terminating foster placement

HOLDING: In 2018, the Children were adjudicated CHINS and placed in Foster Parents' home as a foster placement. In August 2020, the parental rights of the Children's biological parents were terminated. Foster Parents later petitioned to adopt the Children, but they rejected the amount the State offered in adoption assistance. A month later, DCS visited Foster Parents' home and was concerned regarding the home's condition. The home was "very unsanitary," and pills were found on the floor. DCS and Foster Parents agreed to temporarily place the Children in a Respite Care home with another foster family for two or three weeks so that Foster Parents could have time to clean and organize their home. However, after three weeks, DCS determined that "[s]ince being placed in the Respite Care home, Children have made measurable improvements in sleeping through the night, potty training, and bathing and hygiene[.]" DCS filed a petition to modify the dispositional decree and permanently place the Children with the new foster family. Foster parents objected and, at a hearing, presented photos of their clean home. The FCM and CASA testified a change in placement was in the best interests of the children. The juvenile court entered an order terminating the Children's foster placement with Foster Parents and authorized the new foster family to be the permanent placement going forward. Foster Parents filed a motion to correct error, arguing the juvenile court's decision regarding the Children's placement was error. They also filed motions to intervene in the CHINS proceedings and to establish custody. The motions were denied except for the motion to establish custody, which was stayed until completion of the CHINS proceedings. Foster Parents appealed, arguing that DCS was statutorily required to make reasonable efforts to reunify the Children with them but failed to do so. The Court of Appeals concluded that the "reasonable efforts" requirement under IC 31-34-21-5.5(c) did not apply to Foster Parents because IC 31-34-23-6 sets out the requirements for DCS regarding a change of out-of-home placement. That provision contains no provision for either reunification or a grace period for improvement is required. Thus, DCS was only required to show that continued removal of the Children from Foster Parents' home and placement in a new home was in the Children's best interest, which it did. Further, the juvenile court did not abuse its discretion by relying on future concerns rather than present facts because future concerns were not the sole basis for the court's order. The juvenile court also did not abuse its discretion in denying Foster Parents' motion to intervene because they failed to demonstrate their intervention is in the best interest of the Children. Finally, the juvenile court did not err in staying the motion to establish custody. The stay was appropriate under In re Custody of M.B., 51 N.E.3d 230, 234 (Ind. 2016), which held a third party, who seeks to commence an independent child custody action may do so, "but if a CHINS case is pending when the custody action is filed and no exception . . . is applicable, the circuit court should abstain from exercising its jurisdiction and stay any proceedings on the custody action until final disposition of the CHINS proceeding." Held: judgment affirmed.

TITLE: In re L.P.
INDEX NO.: U.13.a.
CITE: (4/7/2014), 6 N.E.3d 1019 (Ind. Ct. App. 2014)
SUBJECT: Parent's one-time meth use does not support CHINS
HOLDING: A single admitted use of drugs outside the presence of one's children, without more, is insufficient to support a child in need of services (CHINS) finding. Perrine v. Marion County Office of Child Services, 866 N.E.2d 269 (Ind. Ct. App. 2007). Relevant inquiry is whether L.P. was seriously impaired or endangered and in need of care and supervision unlikely to be provided without coercive intervention of the court.

Here, the State proved a single use of methamphetamine and there is no suggestion that it took place in presence of child. Even more compelling than the circumstances in Perrine, Mother voluntarily and consistently took drug screens with 10 negative results after her isolated use of methamphetamine. Held, judgment reversed.

TITLE: In re M.K.
INDEX NO: U.13.a.
CITE: 964 N.E.2d 240 (Ind. Ct. App. 2012) (01-31-12)
SUBJECT: CHINS finding clearly erroneous - overzealous DCS
HOLDING: Evidence was insufficient to support Tr. Ct.'s order designating children as CHINS. This case involved an intact family that experienced unusual, unforeseen circumstances. First, Father had to leave Baltimore to tend to his seriously ill mother in Texas. Shortly thereafter, Mother and Children were temporarily displaced from their apartment by neighbor's kitchen fire. Mother sought lodging with her ex-boyfriend, only to be assaulted by him. It was only then that Mother decided to take her three youngest children to Fort Wayne to contact relatives. A winter storm intervened, and lack of available local bus service caused Mother to seek transportation from other bus passengers and then from police. Although Mother had brought money for an inexpensive motel, police officer took her and Children to a nearby shelter instead. At her earliest opportunity, Mother took Children from shelter to a motel as originally planned. Mother had cash to pay for a motel, as well as money in her bank account, and packed ample supplies for Children during their stay in Fort Wayne. DCS case manager testified that Children appeared to be well fed and properly clothed in winter attire.

This evidence does not support Tr. Ct.'s finding that Mother relocated to Fort Wayne without a plan for housing and that she and Children were "in and out of hotels and shelters." While Court appreciates DCS's concern for the well-being of children, "its overzealousness in this case has caused great disruption to an intact family in which the parents tried their best to cope with challenging circumstances." Record does not support conclusion that Children were endangered by any neglect on part of Mother or Father or that they were unable or unwilling to supply Children with stable food, housing, food, clothing, care, or supervision. Held, judgment reversed.

RELATED CASES: Matter of K.P.G, (4/9/2018), 99 N.E.3d 677 (Ind. Ct. App. 2018) (Sufficient evidence for CHINS finding where mother refused heart surgery for K.P.G. and refused to take medication for her mental illness); J.C., 3 N.E.3d 980 (Ind. Ct. App. 2014) (each CHINS determination is very specific to the condition of that particular child; here, evidence was sufficient to support Tr. Ct.'s designation of J.C. a CHINS, but DCS failed to meet its burden of demonstrating that J.C.'s eleven year-old brother's condition was seriously endangered); L.S., 987 N.E.2d 155 (Ind. Ct. App. 2013) (where Parents made positive changes in their lives, fact that they could not provide for their past three special needs children who required considerable therapy was not sufficient evidence to adjudicate their healthy newborn a CHINS; an adjudication cannot be based solely on conditions that no longer exist); B.N., 969 N.E.2d 1021 (Ind. Ct. App. 2012) (there was no evidence that the children's physical or mental condition was seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of Mother to supply children with necessary food, clothing, shelter, medical care, education or supervision).

TITLE: In re N.E.
INDEX NO.: U.13.a.
CITE: (01-06-10), 919 N.E.2d 102 (Ind. 2010)
SUBJECT: CHINS - separate analysis for each parent not required
HOLDING: A separate analysis as to each parent is not required in making a CHINS determination because a CHINS adjudication reflects the status of a child without establishing the culpability of a particular parent. However, a separate analysis may sometimes be necessary. Held, transfer granted, Ct. App. opinion at 903 N.E.2d 80 vacated, judgment reversed and remanded for juvenile court to determine whether Father is willing and able to appropriately parent N.E. since N.E. is a CHINS with respect to Mother.

RELATED CASES: Matter of E.Y., 93 N.E.3d 1141 (Ind. Ct. App. 2018) (whatever culpability Mother had because of her mental illness and unstable housing situation was irrelevant because DCS failed to show these issues actually hurt the child).

TITLE: In re S.A.
INDEX NO: U.13.a.
CITE: (8/15/2014), 15 N.E.3d 602 (Ind. Ct. App. 2014)
SUBJECT: CHINS adjudication contrary to due process & evidence insufficient - lack of parenting experience
HOLDING: Tr. Ct. erred in adjudicating S.A. as a CHINS. Court initially noted that by adjudicating S.A. a CHINS prior to Father's fact-finding hearing, Tr. Ct. deprived Father of a meaningful opportunity to be heard. Moreover, Tr. Ct. simply issued a parental participation order requiring Father to complete a parenting assessment/psychological examination and erroneously failed to issue a dispositional decree or written findings reflecting its consideration of statutory factors set forth in Ind. Code § 31-34-19-10(a). Thus, Tr. Ct.'s CHINS adjudication was contrary to due process.

Court reversed the CHINS finding because the Department of Child Services (DCS) did not establish that S.A's father is unlikely to meet the child's needs absent court intervention based on his lack of parenting experience and previous diagnosis of having post-traumatic stress disorder. Father was on active duty in the military most of S.A.'s life and had only seen the child twice before the CHINS proceedings were initiated. His paternity was not established until these proceedings began. S.A. was removed from his mother's care due to her drug use and adjudicated as a CHINS. S.A. lived with his maternal grandmother and step-grandfather at the time of the adjudication and remained in their care. After his paternity was established, Father began spending time with his son and wanted to receive custody of the boy. He visited the child at the grandmother's house, and while he was a little slow changing diapers and clothes on the child, he interacted well with him.

Court noted that "DCS does not satisfy its burden of proof by simply highlighting Father's shortcomings as a parent; rather, DCS must establish that Father is unlikely to meet the Child's needs absent coercive court intervention. Neither the Tr. Ct.'s findings nor the other evidence in the record supports such a conclusion. If it were sufficient for the purposes of CHINS adjudications that a parent has no prior parenting experience or training, then all new parents would necessarily be subject to DCS intervention."

Father had resolved the allegations in the CHINS petition by the time of the fact-finding hearing. Also, his voluntary admission of his PTSD history was relied on by DCS as a post hoc justification, as it was not raised in the petition as a basis for DCS involvement. Held, judgment reversed.

RELATED CASES: In re S.A., 27 N.E.3d 287 (Ind. Ct. App 2015) (on rehearing, Ct. held that a CHINS adjudication should involve both parents at the same time, if possible, but if multiple hearings are unavoidable, then Tr. Ct. should, if at all possible, refrain from adjudicating the child a CHINS until evidence has been heard from both parents; if an adjudication is unavoidable before evidence has been heard from second parent, thenTr. Ct. must give meaningful consideration to the evidence provided by the second parent in dtermining whether the child remains a CHINS).

TITLE: In re S.D.
INDEX NO.: U.13.a.
CITE: (2/12/2014), 2 N.E.3d 1283 (Ind. 2014)
SUBJECT: CHINS - limits of coercive intervention
HOLDING: A CHINS allegation of under Ind. Code § 31-34-1-1 requires that: (1) the parent's actions or inactions have seriously endangered the child; (2) that the child's needs are unmet; and (3) that those needs are unlikely to be met without State coercion. This final prong requires an inability to meet the child's needs and not just a "difficulty in meeting a child's needs." Lake County Division of Family & Children Services. v. Charlton, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994).

Here, Tr. Ct.'s sparse findings on first two elements were adequate, establishing child had "special medical needs" and that Mother was not yet able to meet those needs, sufficiently implying S.D. would be endangered. But without any Tr. Ct. findings on the element of need for "coercive intervention," Court examined whole record (and recommended that best practice would be to enter findings on each necessary element"). Court found even though some of Mother's decisions were questionable, she was not less effective than any other similarly situated parent of a special-needs child. "Mother's most significant failure to complete the home-care simulation—appears as much a product of DCS's intervention as it is a sign of her need for that intervention." Mother was only one step away from S.D. returning home, and the delay "was at least partly a matter of DCS's own doing." Though the evidence showed Mother had difficulty meeting the child's needs, Court could not say she was unwilling or unable to do so without the court's compulsion, so the State's coercive intervention into the family could not stand. Held, transfer granted, Court of Appeals' memorandum opinion vacated, CHINS finding reversed.

Note: Although S.D. had been returned to Mother's care and CHINS case was closed, Court noted appeal was not moot. A CHINS finding can have harmful collateral consequences for the parent, and reversal would grant Mother real relief from those consequences.

RELATED CASES: Matter of E.K., 83 N.E.3d 1256 (Ind. Ct. App. 2017) (DCS failed to present sufficient that E.K. was a child in need of services, where the CHINS finding was based on one spanking incident that resulted in bruising to E.K., an unruly, out-of-control child, and where parents were taking positive steps), D.J., 68 N.E.3d 574 (Ind. 2017) (record did not support Tr. Ct. 's finding that Parents needed the Tr. Ct. 's coercive intervention to provide for their sons' needs at the time of the disposition hearing); A.H., 58 N.E.3d 951 (Ind. Ct. App. 2015) (in finding that Mother could provide adequate mental health services for A.H. without coercive intervention of juvenile court, Court of Appeals excoriated DCS for not complying with five orders to schedule a psychological evaluation and blasted juvenile court for failing to sanction DCS; see full review, this section).

TITLE: In re S.K.
INDEX NO.: U.13.a.
CITE: (7/28/2016), 57 N.E.3d 878 (Ind. Ct. App. 2015)
SUBJECT: CHINS finding based on family's economic misfortune reversed
HOLDING: To be a CHINS, a child must be seriously impaired or endangered "as a result of the inability, refusal, or neglect of the child's parent" to provide necessary care. Ind. Code § 31-34-1-1. Children cannnot become CHINS by the mere happenstance of a family's economic misfortune; the statute requires an action or failure to act by the parent that leads to serious endangerment of children as a result of the lack of necessary care. In re S.M., 45 N.E.3d 1252, 1256 (Ind. Ct. App. 2015).

Here, Mother and Father were separated and the children lived with Father until his employment and housing became unstable. He took them to live with Mother, and the children had to change schools, but they stayed in school and had good grades. DCS heard that Mother's boyfriend was using drugs in the childrens' presence. The children denied ever having seen Mother or her boyfriend take medicine or pills, except for one child who said the boyfriend "took a lot of pills for his back." Mother tested positive for methamphetamine, however. The case manager removed the children and placed them with a family member. Mother's next drug screen showed a much lower level of metabolites, and subsequent testing came back clean. Father moved into a new home with his girlfriend and told the case manager he could take the children if Mother could not.

DCS filed a CHINS petition. Uncle testified that the children became withdrawn after contact with either parent, and did not like Father's girlfriend, although he could not see why. Tr. Ct. concluded that the children's emotional condition was endangered, and adjudicated them all CHINS.

Court of Appeals reversed, finding the evidence insufficient to support CHINS determination. The children never lacked shelter and there is no evidence they missed school or were not enrolled. An isolated instance of a parent's methamphetamine use, not in the children's presence, does not support the CHINS finding. In re L.P., 6 N.E.3d 1019 (Ind. Ct. App 2014). The children were not endangered by the acts or omissions of the parents, who took deliberate action to avoid placing children in the endangering condition of homelessness. Held, judgment reversed.

TITLE: In re T.S.
INDEX NO.: U.13.a.
CITE: 906 N.E.2d 801 (Ind. 2009)
SUBJECT: CHINS - expedited appeal of placement order; standard of review
HOLDING: In expedited interlocutory appeal challenging Tr. Ct.'s placement order for T.S., a child in need of services, Court held that: 1) Indiana Appellate Rule 14.1 expedited appeals are available to the process of modifying dispositional decrees regarding child placement where a juvenile court does not follow DCS's recommendation; 2) juvenile court must accept DCS's placement recommendations unless it finds by a preponderance of evidence that the recommendation is "unreasonable" or "contrary to the welfare and best interests of the child" pursuant to Ind. Code 31-34-19-6.1(d); 3) a finding by the juvenile court that DCS's recommendation is unreasonable or contrary to the child's welfare and best interests is reviewed on appeal for clear error pursuant to Indiana Trial Rule 52(A).

Here, juvenile court properly rejected DCS's recommendation to immediately return T.S. to his mother's custody, finding that it was in T.S.'s best interest to remain in foster care with his Grandparents until the end of the academic school year. The juvenile court's placement order did not result from a periodic review hearing but a modification hearing on court's initial order on disposition. It constituted a new dispositional decree and was therefore eligible for expedited review pursuant to Appellate Rule 14.1. Court agreed with DCS that Ind. Code 31-34-19-6.1 creates in juvenile court a presumption of correctness for the DCS final recommendations. However, once juvenile court has appropriately considered the DCS recommendations in light of relevant evidence and reached a contrary conclusion, appellate court considers first whether the evidence supports the findings and then whether the findings support the judgment. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143 (Ind. 2005). Findings are "clearly erroneous" when there are no facts or inferences drawn therefrom that support them. Quillen v. Quillen, 671 N.E.2d 98 (Ind. 1996). In this case, juvenile court's decision to reject final DCS placement recommendation was supported by specific factual findings and was not clearly erroneous. Held, transfer granted, judgment affirmed.

RELATED CASES: A.B. v State, 949 N.E.2d 1204 (Ind. 2011) (rather than review a DCS Director's disapproving decision under Ind. Code 31-40-1-2(f) using clearly erroneous standard of Appellate Rule 14.1, appropriate standard is governed by Indiana's Administrative Orders and Procedures Act).

TITLE: In re V.H.
INDEX NO.: U.13.a.
CITE: (05-22-12), 967 N.E.2d 1066 (Ind. Ct. App. 2012)
SUBJECT: Erroneous CHINS finding and participation decree
HOLDING: Evidence was insufficient to prove that V.H., a 16-year-old girl, needed care, treatment, or rehabilitation that she was not receiving and unlikely to be provided without coercive intervention of the juvenile court. V.H., who outweighed her mother by about 30 pounds, had been the aggressor in at least two physical altercations with her mother, one of which involved DCS after police responded to mother's 911 call when the child became physical. There was no evidence of abuse or neglect, and mother had been proactive in seeking psychological and behavioral treatment because DCS failed to do so in a timely manner after the agency became involved. Despite these facts, DCS proceeded on allegation that V.H. was a CHINS because of Mother's neglect. Mother argued that V.H. was not a CHINS because she was providing for V.H.'s needs without the coercive intervention of the court and alternatively argued that if V.H. was a CHINS, that juvenile court make finding under IND. CODE 31-34-1-6 (CHINS 6), which applies when a child is a danger to themselves or others without a finding of parental abuse or neglect.

"Under these facts and circumstances, it is apparent that Mother, who is a working single parent, was addressing V.H.'s behavioral issues. This is something for which we should applaud parents rather than condemn them through coercive action." Court also held that, even if the CHINS adjudication had been affirmed, it would vacate the parental participation order because it required Mother to accept unnecessary services and satisfy requirements unrelated to the CHINS adjudication. Court discouraged juvenile courts from using such boilerplate language and requirements in CHINS cases. See A.C. v. Marion County Department of Child Services, 905 N.E.2d 456 (Ind. Ct. App. 2009). Held, judgment reversed.

TITLE: In the Matter of B.P.
INDEX NO.: U.13.a.
CITE: (7/7/2022), 190 N.E.3d 995 (Ind. Ct. App. 2022)
SUBJECT: Insufficient evidence to support CHINS finding
HOLDING: Mother has a history of mental illness that she used to manage through the medication, Klonopin. She stopped taking Klonopin when she became pregnant with twins and her mental health suffered as a result. Five months after her twins were born, Mother lost electricity in the home. She was in an accident on the way to pay the electric bill and was later arrested for leaving the scene. The day she went to jail, her oldest child, age 15, looked after the four younger children. When the children didn't go to school the next day, DCS investigated and found the children at home without electricity or adult supervision. The children's grandmother came to stay with them, and the electricity was turned back on. During court proceedings in the CHINS case, Mother got angry and used profanity with the court. She was ordered to undergo a psychiatric evaluation. DCS placed the children with their aunt, with whom Mother was not on good terms, without getting permission from the trial court or notifying Mother. When Mother tried to take her children back from the aunt's home, she was arrested. At the factfinding hearing, Mother used profanity and told the judge to shut up. The mother said she could not remain calm when the State had kidnapped her children. The trial court held Mother in contempt and found the children were CHINS. The Court of Appeals found insufficient evidence that the children were seriously endangered as a result of Mother's mental illness or that their needs were unmet. As for the children being left in the care of their younger sibling and missing school, the Court found no evidence suggesting the fifteen-year-old was incapable of caring for the children and it is not unusual for children to sometimes miss school in an emergency. Mother's courtroom conduct was inappropriate, but nothing showed the children were actually or seriously endangered by Mother's mental illness. Her behavior was directed toward DCS workers and the trial court. The Court noted the proper focus here is upon the condition of the children, not Mother’s conduct. The additional stress that Mother had experienced in her life because of her struggle to get mental health treatment early in the pandemic was situational, and the situation has abated. Given Mother’s history of voluntarily seeking treatment for her mental illness, there is simply no evidence that the coercive intervention of the State is needed here. And there is undisputed evidence that the separation has been harmful both to the children and to Mother. A CHINS finding cannot be based on speculation that a parent might direct their bad behavior toward their children in the future. Held: reversed. Judge Bradford dissented, finding the CHINS adjudication was supported by Mother's history with DCS and her troublesome behavior.

TITLE: K.B. v. Ind. Dept. of Child Services
INDEX NO.: U.13.a.
CITE: (1/16/2015), 24 N.E.3d 997 (Ind. Ct. App. 2015)
SUBJECT: CHINS determination affirmed - exposure to domestic violence and substance abuse
HOLDING: In a case where there was a domestic violence incident between father and custodial girlfriend in presence of children, Court found sufficient evidence to support Tr. Ct.'s determination that the Children are CHINS, and Tr. Ct.'s intervention was necessary to coerce Father into providing the Children with necessary care and treatment. A CHINS adjudication under Ind. Code § 31-34-1-1 requires three basic elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and--perhaps most critically--that those needs are unlikely to be met without State coercion.

Here, two children lived with their father and his girlfriend, along with the girlfriend's child. But after police responded to a domestic violence call and DCS caseworker spoke to father and girlfriend when they appeared impaired with the children at home, DCS intervened. Assessing the evidence as a whole, there is ample indication that father and girlfriend did little-to-nothing to cooperate with DCS throughout these proceedings. Father and girlfriend failed to address their domestic violence and substance abuse problems through home-based counseling. The record is also replete with father's and girlfriend's missed appointments with DCS. Father's lack of cooperation with DCS highlights his inability or refusal to properly care for the Children. Accordingly, Court could not say that Tr. Ct.'s conclusion that the coercive intervention of the court was necessary is clearly erroneous. Held, judgment affirmed.

RELATED CASES: K.A.H., 119 N.E.3d 1115 (Ind. Ct. App. 2019) (devastating physical trauma that Mother and M.G. suffered, and Mother's inability to recognize the effects of domestic violence on her parenting and on her children's well-being, warranted coercive intervention of the CHINS court); K.P.G, 99 N.E.3d 677 (Ind. Ct. App. 2018) (Sufficient evidence for CHINS finding where mother refused heart surgery for K.P.G. and refused to take medication for her mental illness).

TITLE: K.S. v. Indiana Dept. of Child Services

INDEX NO.: U.13.a.

CITE: (11/29/2022), 199 N.E.3d 1232 (Ind. Ct. App. 2022)

SUBJECT: Challenge to timeliness of CHINS disposition waived by failing to file a motion to dismiss

HOLDING: Ind. Code section 31-34-19-1 allows the juvenile court not more than thirty (30) days after the date the court finds a child is a child in need of services to complete the dispositional hearing or "upon a filing of a motion with the court, the court shall dismiss the case without prejudice." Here, the juvenile court did not hold the disposition hearing within that time limit, but Mother did not file a motion to dismiss. The Court noted that the issue of whether a party waives his or her challenge to the timeliness of a dispositional hearing by failing to file a motion to dismiss has not previously been addressed. But in In re J. S., 130 N.E.3d 109 (Ind. Ct. App. 2019), the Court of Appeals found a party waives his or her challenge to the timeliness of a CHINS fact-finding hearing under Ind. Code sec. 31-34-11-1(d), which contains language identical to section (d) of the statue regarding dispositional hearings. The Court held that a party waives his or her challenge to the timeliness of a dispositional hearing by failing to file a motion to dismiss prior to said hearing.

Mother also challenged the sufficiency of the evidence supporting the juvenile court's finding that her children were CHINS. The Court of Appeals noted the trial court's findings that the children had been present and/or witnessed multiple acts of domestic violence in the home both against and by Mother, that Mother had failed to enroll a child adversely affected by the violence in therapy to address the effects of that violence, and that Mother continued to engage in an "on-again, off-again" relationship with Father. The Court held the trial court's finding that Mother failed to provide proper supervision was supported by sufficient evidence. Held, judgment affirmed.

TITLE: M.M. v. Indiana Dept. of Child Services
INDEX NO.: U.13.a.
CITE: (1/25/2019), 118 N.E.3d 70 (Ind. Ct. App. 2019)
SUBJECT: CHINS adjudication reversed
HOLDING: A CHINS adjudication cannot be based solely on conditions that no longer exist, and Tr. Ct. should consider the parents' situation at the time the case is heard by the court. Here, DCS failed to prove by a preponderance of the evidence that coercive intervention of the court was needed in order to provide children with necessary services at the time of fact finding. Tr. Ct.'s order adjudicating the children CHINS focused on facts and circumstances leading up to and surrounding the removal of the children from Mother's care, and not situation at time the case was heard. The children had been in the non-custodial Father's care for several months at the time of the CHINS adjudication. the needs of children were met by Father, and legal possibility of children returning to Mother's caser does not alone mean that the children required services.

Court also noted that the CHINS court in this case could have modified custody itself pursuant to the 2017 revisions to Ind. Code § 31-30-1-13.

RELATED CASES: L.N., 118 N.E.3d 43 (Ind. Ct. App. 2019) (Chins finding reversed when DCS focus was on future concerns and past actions instead of current conditions).

TITLE: M.P. and J.P. v. Indiana Dept. of Child Services

INDEX NO.: U.13.a.

CITE: (1/27/2021), 162 N.E.3d 585 (Ind. Ct. App. 2021)

SUBJECT: CHINS finding reversed -- insufficient evidence coercive intervention of court was necessary

HOLDING: DCS did not prove by a preponderance of the evidence that the coercive intervention of the court was necessary to ensure the children's care, thus the juvenile court clearly erred in adjudicating the Children to be CHINS. Mother 's admission at the fact-finding hearing that the children were CHINS is not dispositive. The record revealed Father maintained a positive relationship with the children from the moment he re-obtained contact with them and that they spoke on the phone regularly, often daily. The older child was adamant she wanted to be placed with Father, Father voluntarily provided $400 a month in child support and had already taken steps to secure a larger residence by the date of the fact-finding hearing. Every worker or therapist who had contact with Father agreed he had been compliant and willing to do whatever is required to take care of the Children. The Court concluded the evidence strongly suggests that, at the relevant time, Father was willing to provide a safe and stable living environment. Held, CHINS finding reversed and remanded.

TITLE: Matter of A.Q.
INDEX NO.: U.13.a.
CITE: (6/18/2018),____N.E.3d_____(Ind. Ct. App. 2018)
SUBJECT: Sufficient evidence supported order changing goal of CHINS permanency plan from reunification to termination of parental rights
HOLDING: On interlocutory review, the Court ruled that sufficient evidence supported the Tr. Ct.'s order to change the goal of the CHINS permanency plan from reunification to termination of parental rights. DCS provided adequate services to the parents, but the parents only partly complied with the requirements of the services. Also, the parents were making no progress under those services, evinced, in part, by the parents' refusal to accept responsibility for abusing their daughter A.Q. Nonetheless, those services are still available to the parents.

Further, the fact that the order did not include a concurrent plan for reunification did not make it clearly erroneous. "Concurrent planning . . . requires the identification of two (2) permanency plan goals and simultaneous reasonable efforts toward both goals with knowledge of all participants." Ind. Code § 31-9-2-22.1(b). Mother contends DCS should have proposed a concurrent permanency plan that included reunification because she and Father were active participants in services. She also claims a concurrent plan was in the best interests of the children given the length of time it would take to proceed through termination proceedings. However, while the statute permits a Tr. Ct. to adopt a concurrent permanency plan, it does not mandate such a plan. Further, the changes to the permanency plan do not terminate reunification services for the parents. Regardless of the time it takes to complete termination proceedings, the parents are still able to participate in services and make the necessary progress to regain custody of their children. Held, judgment affirmed.

Note: Even though the Court reviewed this case on the merits, it noted that an order changing a permanency plan is generally not suitable for interlocutory review because the change does not prejudice the parents. This is so because the parents will have a separate termination hearing, and at that hearing, DCS will bear a higher burden of proof to show that termination of parental rights is appropriate than the burden it carried to convince the Tr. Ct. to modify the permanency plan. See above.

TITLE: Matter of D.H. v. Marion County Office of Family & Children
INDEX NO.: U.13.a.
CITE: (5th Dist., 01-10-07), Ind. App., 859 N.E.2d 737
SUBJECT: Evidence insufficient to support CHINS finding - speculation
HOLDING: Evidence was insufficient to support trial Ct.'s finding that six children are children in need of services (CHINS). In the CHINS petition, Marion County Department of Child Services (MCDCS) alleged that stepfather had molested Children's sibling, S.L., & that Mother took no protective measures other than to send S.L. to reside with her father. Trial Ct. specifically declined to find that stepfather molested S.L, but nevertheless concluded that the Children were CHINS, stating that"...[S.L.'s] allegations, *if true*, will endanger the wellbeing of the...children." (emphasis added). At no point did trial Ct. finds that MCDCS proved the allegations of the CHINS petition by a preponderance of the evidence. Moreover, trial Ct. did not find that Children were seriously endangered as required by Ind. Code 31-34-1-1. To permit Children to be declared CHINS based upon speculation that children would be endangered if the allegations regarding S.L. were true would contravene the CHINS statutes. Maybaum v. Putnam County Office of Family & Children, 723 N.E.2d 951 (Ind. Ct. App. 2000). Held, judgment reversed.

TITLE: Matter of E.Q.W.
INDEX NO.: U.13.a.
CITE: (7/6/2018), 106 N.E.3d 536 (Ind. Ct. App. 2018)
SUBJECT: Due process, res judicata concerns with litigating piecemeal CHINS cases
HOLDING: Mother waived argument that her due process rights were violated when DCS was allowed to file a second CHINS petition based on substantially similar allegations that were found insufficient in the first factfinding hearing. DCS filed a CHINS Petition based on parents' alleged drug use, but it failed to present any evidence of drug use at the first factfinding hearing. Thus, the trial court dismissed the CHINS petition. The next day, DCS filed a new CHINS petition based on allegations of positive drug screens, Father's erratic behavior, and the parents' struggle to pay their bills. After a factfinding hearing, the trial court found the children to be CHINS, and Mother appealed. Court held that Mother waived the due process and res judicata issues on appeal because she did not move to dismiss the CHINS petition based on those issues during the fact-finding hearing. Although Court was unable to grant relief to Mother on this argument, it "in no way...intend[s] to condone the way in which DCS litigated this case" and "explicitly discourag[ed] DCS from adopting this process on a regular basis." Court shared Mother's concerns that such a process "allows DCS 'to take multiple bites at the apple by litigating piecemeal until a court of competent jurisdiction finally determine(s) that the facts presented (are) sufficient to carry (DCS's) burden.'" Despite its disapproval, Court held that the evidence supports trial court's conclusion that the children are CHINS. Mother argued she was denied due process because the CHINS petition did not allege educational neglect, but DCS presented evidence about the children's education at the CHINS hearing. This issue was likewise waived because trial counsel failed to object. Held, judgment affirmed.

RELATED CASES: In the Matter of J.L & J.R., 144 N.E.3d 686 (Ind. S. Ct. 2020) (doctrine of claim preclusion barred DCS from filing a successive CHINS action after the first petition was dismissed with prejudice).

TITLE: Matter of K.T.
INDEX NO.: U.13.a.
CITE: (5/5/2022), ___ N.E.3d ____ (Ind. Ct. App. 2022)
SUBJECT: No error in holding factfinding hearing 123 days after CHINS petition filed
HOLDING: Good cause existed to continue CHINS factfinding hearing beyond the 120-day deadline based on: (1) the parties' representations to the court that a settlement was likely; and (2) the court's reliance on those representations in scheduling a minimal amount of time for the hearing. Mother had the opportunity to contest DCS's representations that "a resolution was imminent" and did not. Held, judgment affirmed.

TITLE: Matter of M.O.
INDEX NO.: U.13.a.
CITE: (3/21/2017), 72/527 (Ind. Ct. App. 2017)
SUBJECT: DCS consented to hearing Parents' evidence that Child was CHINS 6
HOLDING: Trial court did not err in finding Child was a CHINS on different grounds than what DCS alleged in its petition because DCS tried those alternative grounds by consent. See Ind. Trial Rule 15(B); In re V.C., 867 N.E.2d 167 (Ind. Ct. App 2007).

Child, age 16, was looking for a place to live after leaving St. Joseph Carmelite Home in East Chicago. Child's father would not accept her in his home because he feared she was still violent, and DCS decided Child's mother was not a good option for housing because she would not take a drug screen. Therefore, DCS filed a CHINS 1 petition, alleging parental neglect, and arguing that coercive intervention was necessary to provide housing and mental health treatment. See Ind. Code 31-34-1-1. Soon after, Child's Parents filed a joint notice of intent to seek a determination that Child was a CHINS 6 because she was allegedly a danger to herself and others. See Ind. Code 31-34-1-6. Neither DCS nor the Child objected to the Parents' CHINS 6 filing. After DCS presented its case at the fact-finding hearing, the Parents moved for judgment on the evidence on DCS's CHINS 1 claim, which the trial court granted. The Parents then presented their case that Child is a CHINS 6. DCS did not object to the hearing proceeding on these grounds.

Pursuant to Trial Rule 15(B), issues not set forth in pleadings may be tried by the express or implied consent of the parties. In re V.C., 867 N.E.2d at 178. Where a trial concludes without objection to a new issue, the evidence presented at trial controls. Id. Here, DCS and the Child were on notice that Parents wanted Child declared a CHINS 6, and when the matter was adjudicated at the hearing, DCS did not object to moving forward on those grounds. Thus, the CHINS 6 issue was tried by consent under Trial Rule 15(B), so the juvenile court did not err in adjudicating Child as a CHINS on grounds different from those alleged in DCS's petition. Held, judgment affirmed.

TITLE: Matter of N.C.
INDEX NO.: U.13.a.
CITE: (3/21/2017), 72/519 (Ind. Ct. App. 2017)
SUBJECT: CHINS - failure to prove coercive intervention needed at time of fact-finding hearing
HOLDING: Trial court erred in declaring N.C. to be a child in need of services (CHINS), where the neglect N.C. experienced due to Mother's drug use and domestic violence issues at the outset of the case was rectified by being placed in father's home by the time of the factfinding hearing. N.C. and mother's other children were removed from her home after authorities learned she had been using methamphetamine in the presence of her children. Although evidence supported a "CHINS condition" early in the proceedings, by the time of the fact-finding hearing, Father had obtained a temporary custody order, had custody of N.C. for two months, and DCS had no concerns about him or about N.C.'s placement with him. DCS failed to prove by a preponderance of the evidence that coercive intervention of the court was necessary to ensure N.C.'s well being. Held, judgment reversed.

Note: Although case was moot by the time of final briefing because the CHINS case was closed, Court concluded that nevertheless, "a decision on the merits is warranted and necessary. A CHINS adjudication, even one as short-lived as this one, can have serious consequences for families. Indiana Code section 31-35-2-4(b)(2)(B)(iii) provides that two separate CHINS adjudications can be the basis for a petition to terminate parental rights. Although N.C. is not currently a CHINS, it is still on record that he has been adjudicated a CHINS and if that adjudication was erroneous, it must be corrected to protect the integrity of the family going forward."

TITLE: Q.J. v. Department of Child Services
INDEX NO.: U.13.a.
CITE: (1/17/2018), 92 N.E.3d 1092 (Ind. Ct. App. 2018)
SUBJECT: Ineffective assistance of counsel claim in CHINS case rejected
HOLDING: In appeal of CHINS determination, Father argued that he was denied the effective assistance of counsel for failure to file a motion for relief from judgment under Indiana Trial Rule 60(B)(2) based on newly discovered evidence. Ind. Code § 31-34-4-6 entitles Father to an attorney at each court proceeding on a CHINS petition. But Father has not directed Court to any case law that the statute creates a cause of action for ineffective assistance of counsel in a CHINS proceeding, or under what standard such a claim might be determined. In any event, had Father's attorney filed a motoin for relief from judgment, it would not have been successful because the newly discovered evidence (i.e., statements made in son's psychological evaluation) would merely be impeaching. Held, judgment affirmed.

TITLE: Western v. State
INDEX NO.: U.13.a.
CITE: (1st Dist., 4-13-00), Ind. App., 726 N.E.2d 857
SUBJECT: Child in need of services (CHINS) - no jurisdiction
HOLDING: Juvenile Ct. lacked subject matter jurisdiction to determine whether daughter (TG) was CHINS after her eighteenth birthday. Ind. Code 31-30-1-1 grants exclusive original jurisdiction to juvenile Ct. in proceedings in which child is alleged to be CHINS. "Child" is defined as person who is underage of eighteen or who is eighteen, nineteen or twenty years of age & who has been adjudicated a CHINS before person's eighteenth birthday. Ind. Code 31-9-2-13. Jurisdiction over any child adjudicated to be CHINS may continue until child reaches age of twenty-one. Ind. Code 31-30-2-1. Here, CHINS proceeding involving TG was initiated month prior to TG's eighteenth birthday. At that point in time, juvenile Ct. had subject matter jurisdiction over proceeding. However, error occurred when juvenile Ct. held fact-finding hearing & made final determination as to TG's status as CHINS after TG had reached age of eighteen. Ind. Code 31-9-2-13 clearly mandates adjudication prior to child's eighteenth birthday in order for Ct. to maintain jurisdiction over child. Held, reversed & remanded with instructions to dismiss action.

U. JUVENILE

U.13. CHINS (IC 31-6-4-3 and 3.1)

U.13.b. Admissibility of evidence (IC 31-6-15; Ind. Code 31-6-16)

TITLE: Matter of D.P.
INDEX NO.: U.13.b.
CITE: (3/30/2017), 72 N.E.3d 976 (Ind. Ct. App 2017)
SUBJECT: Judicial notice did not provide sufficient evidence that child is a CHINS
HOLDING: DCS failed to present sufficient evidence that D.P. is a CHINS, as it relied solely on Mother's admission that D.P. was CHINS and judicial notice about Father's drug use and pending criminal charges.

DCS alleged that Father has a history of substance abuse. At the fact-finding hearing, which Father did not attend, Mother agreed that D.P. was a CHINS because Father is facing domestic violence charges. A family case manager testified that Father was incarceratedand that she knew this by consulting "the Marion County website." Father's drug use and the fact that he was incarcerated was established solely through Mother's admission and judicial notice of previous filings in the case and that domestic charges had been filed.

While a court may take judicial notice of court documents and the filing of charges, "judicial notice should be limited to the fact of the record's existence, rather than to any facts found or alleged within the record of another case." Brown v. Jones, 804 N.E.2d 1197, 1202 (Ind. Ct. App 2004). Therefore, taking notice of substantive facts contained in preliminary filings in the case exceeded the proper bounds of judicial notice principles. As to the pending charges against Father, DCS presented no documentation regarding the charges, though that is not fatal to taking judicial notice. See Horton v. State, 51 N.E.3d 1154, 1161-62 (Ind. 2016). However, while the Odyssey case management system confirms that Father has been charged with domestic violence, it is inappropriate to delve into the facts supporting the charge. Doing so would cross the line into adopting facts that cannot be readily determined as accurate. See Ind. Evidence Rule 201(a)(1)(B). Therefore, DCS failed to present sufficient evidence that the coercive intervention of the court was necessary. Held, judgment reversed. Kirsch, J., dissenting, contending that D.P.'s family is a family in crisis and that the Tr. Ct. acted appropriately to protect the child.

TITLE: Matter of M.B.
INDEX NO.: U.13.b.
CITE: (3rd Dist., 8/8/94), Ind. App., 638 N.E.2d 804
SUBJECT: Child's out of court statement admissible were testifying at hearing would harm child
HOLDING: Child's out-of-court statement is admissible in Child in Need of Services (CHINS) case or case involving termination of parental rights if Tr. Ct. finds that statement is sufficiently reliable and child is unavailable as witness because psychiatrist, physician, or psychologist certifies that child's participation in proceeding creates substantial likelihood of emotional or mental harm to child. Ind. Code 31-6-15-3. Here, parents asserted that failure of Department of Public Welfare (DPW) to have children present at termination proceeding should have resulted in statements being excluded. Child psychologist submitted affidavit stating that children would be traumatized if forced to recount their abuse or listen to events recounted by counselors and foster parents. Parents argued that affidavit was insufficient to satisfy the statutory requirement of certification that testifying would harm children because affidavit was based on hearsay. Ct. noted that psychologist examined children, and his opinion was, therefore, based in part on personal observation. Further, expert witness may utilize hearsay information in forming opinion. Cox v. American Aggregates Corp., App., 580 N.E.2d 679. Ct. concluded that Tr. Ct. properly admitted psychologist's affidavit and children's' statements into evidence. Held, termination of parental rights affirmed.

TITLE: Matter of M.O.
INDEX NO.: U.13.a.
CITE: (3/21/2017), 72 N.E.3d 527 (Ind. Ct. App 2017)
SUBJECT: DCS consented to hearing Parents' evidence that Child was CHINS 6
HOLDING: Trial court did not err in finding Child was a CHINS on different grounds than what DCS alleged in its petition because DCS tried those alternative grounds by consent. See Ind. Trial Rule 15(B); In re V.C., 867 N.E.2d 167 (Ind. Ct. App 2007).

Child, age 16, was looking for a place to live after leaving St. Joseph Carmelite Home in East Chicago. Child's father would not accept her in his home because he feared she was still violent, and DCS decided Child's mother was not a good option for housing because she would not take a drug screen. Therefore, DCS filed a CHINS 1 petition, alleging parental neglect, and arguing that coercive intervention was necessary to provide housing and mental health treatment. See Ind. Code 31-34-1-1. Soon after, Child's Parents filed a joint notice of intent to seek a determination that Child was a CHINS 6 because she was allegedly a danger to herself and others. See Ind. Code 31-34-1-6. Neither DCS nor the Child objected to the Parents' CHINS 6 filing. After DCS presented its case at the fact-finding hearing, the Parents moved for judgment on the evidence on DCS's CHINS 1 claim, which the trial court granted. The Parents then presented their case that Child is a CHINS 6. DCS did not object to the hearing proceeding on these grounds.

Pursuant to Trial Rule 15(B), issues not set forth in pleadings may be tried by the express or implied consent of the parties. In re V.C., 867 N.E.2d at 178. Where a trial concludes without objection to a new issue, the evidence presented at trial controls. Id. Here, DCS and the Child were on notice that Parents wanted Child declared a CHINS 6, and when the matter was adjudicated at the hearing, DCS did not object to moving forward on those grounds. Thus, the CHINS 6 issue was tried by consent under Trial Rule 15(B), so the juvenile court did not err in adjudicating Child as a CHINS on grounds different from those alleged in DCS's petition. Held, judgment affirmed.

TITLE: Matter of N.C.
INDEX NO.: U.13.a.
CITE: (3/21/2017), 72 N.E.3d 519 (Ind. Ct. App 2017)
SUBJECT: CHINS - failure to prove coercive intervention needed at time of fact-finding hearing
HOLDING: Trial court erred in declaring N.C. to be a child in need of services (CHINS), where the neglect N.C. experienced due to Mother's drug use and domestic violence issues at the outset of the case was rectified by being placed in father's home by the time of the factfinding hearing. N.C. and mother's other children were removed from her home after authorities learned she had been using methamphetamine in the presence of her children. Although evidence supported a "CHINS condition" early in the proceedings, by the time of the fact-finding hearing, Father had obtained a temporary custody order, had custody of N.C. for two months, and DCS had no concerns about him or about N.C.'s placement with him. DCS failed to prove by a preponderance of the evidence that coercive intervention of the court was necessary to ensure N.C.'s well being. Held, judgment reversed.

Note: Although case was moot by the time of final briefing because the CHINS case was closed, Court concluded that nevertheless, "a decision on the merits is warranted and necessary. A CHINS adjudication, even one as short-lived as this one, can have serious consequences for families. Indiana Code section 31-35-2-4(b)(2)(B)(iii) provides that two separate CHINS adjudications can be the basis for a petition to terminate parental rights. Although N.C. is not currently a CHINS, it is still on record that he has been adjudicated a CHINS and if that adjudication was erroneous, it must be corrected to protect the integrity of the family going forward."

TITLE: McKinney v. Greene County Office of Family and Children
INDEX NO.: U.13.b.
CITE: (5th Dist., 1-29-97), Ind. App. 675 N.E.2d 1134
SUBJECT: Admission of CHINS allegations - collateral estoppel
HOLDING: In proceeding to terminate parental rights, mother was not estopped from challenging her admission of allegations in prior CHINS petition. Collateral estoppel generally bars re-litigation of issue litigated in prior proceeding. Sullivan v. American Casualty Co., 605 N.E.2d 134. Where estoppel is raised, Ct. considers whether (1) there was final judgment on merits in former suit in Ct. of competent jurisdiction, (2) identity of issues is substantially same in each case and (3) party to be estopped was party in prior action or in privity therewith. Primary consideration is whether party against whom judgment is sought had full and fair opportunity to litigate issue in previous action, and whether it would be otherwise unfair under circumstances to apply estoppel. Tofany v. NBS Imaging Systems, Inc., 616 N.E.2d 1034. Courts consider party's incentive and ability to litigate issue in prior action, including how party perceived interest at stake in previous proceeding.

Here, mother submitted written admission of allegations in CHINS petition and later repudiated same allegations in proceeding to terminate parental rights. She argued that she had signed admission upon her attorney's advice that it would be only way child could receive government services. Ct. found that parent's interest in litigating CHINS petition significantly differs from interest in preventing termination of parental rights, since latter constitutes permanent severance of parent-child relationship. Mother's prior admissions were admissible to support termination of parental rights, but mother was not estopped from presenting evidence during termination hearing to refute prior admissions. Held, termination of parental rights affirmed on other grounds.

U. JUVENILE

U.14. Termination of parental rights

TITLE: A.A. v. Dept. of Child Services
INDEX NO.: U.14
CITE: (2/18/2016), 2016 Ind. LEXIS 126 (Ind. 2016)
SUBJECT: Termination of parental rights reversed - Father's refusal to live separately from mentally ill Mother
HOLDING: Evidence did not clearly and convincingly support termination of Father's parental rights. Father and Mother were married and living together with their two-year-old child when DCS became involved because of Mother's request for help. DCS's main concern was Mother's severe mental illness that made her unable to care for the child. Both Father and Mother participated in services provided by DCS, but Mother refused to follow the recommended treatment for her mental health issues. DCS told Father he would have to choose between living with Mother and with child, but Father was unwilling to live separately from Mother.

Court held, "Father's unwillingness to live separately from a mentally ill spouse, without more, is an insufficient basis upon which to terminate his parental rights." Court also declined to fault Father for his inability to make Mother take her recommended medications--something that the DCS' appointed psychiatrist was unable to do. Trial court erred in determining that conditions necessitating child's removal will not be remedied, as Father never said he would not ensure Mother never had unsupervised care. Also, Mother's inability to care for the child should have no bearing on Father's parental rights.

The DCS failed to show that the child's interest in permanency would be served by termination: "it cannot be the case that relegating V.A. as a permanent ward of the State for an undetermined period of time until a special needs adoptive placement is identified clearly and convincingly shows that termination is in V.A.'s best interests by establishing permanency." The rights of parents to raise their children should not be terminated solely because there is a better home available for them.

The goal of permanency in this case may best be served by allowing child to remain with her current foster family while DCS pursues the goal of reunification with Father as he receives the appropriate services that enable him to better understand how to parent his child while simultaneously caring for his mentally ill wife. Should reunification prove unfeasible, appointment of a legal guardian for child may be best option. Held, transfer granted, Court of Appeals' memorandum opinion vacated, judgment reversed.

TITLE: A.B. v. Indiana Dept. of Child Services
INDEX NO: U.14.
CITE: (11/22/2022), 199 N.E.3d 790 (Ind. Ct. App. 2022)
SUBJECT: Clear and convincing evidence standard satisfies the Due Course of Law Clause of the Indiana Constitution in termination of parental rights proceedings
HOLDING: Mother is the biological mother of two children and Father is the biological father of the older child and both parents appealed the termination of their parental rights. Mother raised the sole issue of whether the "clear and convincing evidence" burden of proof in termination cases is unconstitutional under Article I, Section 12 of the Indiana Constitution, which provides in part that "every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law." Rejecting Mother's assertion, the proper standard of proof for injuries to reputation is beyond a reasonable doubt, the Court of Appeals found that the clear and convincing evidence standard satisfies the Due Course of Law Clause in the Indiana Constitution for findings in termination of parental rights proceedings. The U.S. Supreme Court in Santosky v. Kramer, 455 U.S. 475 (1982), addressed the same issue in the context of the Due Process Clause of the Fourteenth Amendment and held that the clear and convincing standard was constitutional, considering the strong private interests held by parents, the risk of error in implementing a lower standard, and the important government interests in preserving and promoting child welfare. The Court of Appeals found that "Mother's argument would have us hold that a higher burden is required in termination cases not based on a parent's rights over their child but based on the reputational harm of termination" and concluded it does not believe there is support for such a holding.

The Court also found that the trial court did not go beyond what it may judicially notice when it took notice of a pending criminal case against Father and also found the alleged victim in the case was his live-in girlfriend, which could affect his housing stability. The Court also held that sufficient evidence supported the trial court's findings, noting that Father's issues with substance abuse have not been remedied and pose a safety risk if the child were returned to his care and that the totality of the evidence supports the trial court's determination that termination of Father's parental rights is in the child's best interests. Held, judgment affirmed.

TITLE: C.A. v. Indiana Dept. of Child Services
INDEX NO: U.14.a.
CITE: (8/12/2014), 15 N.E.3d 85 (Ind. Ct. App. 2014)
SUBJECT: Termination of parental rights did not violate due process
HOLDING: Failure of DCS to provide Mother with a copy of case plan, as Ind. Code 31-34-15-3 requires, did not violate Mother's right to due process in the termination of her parental rights. See M.L.B. v. S.L.J., 519 U.S. 102, 116-17 (1996) (parental rights to raise children protected by Fourteenth Amendment).

The case plan was discussed at regular team meetings, which were attended by Mother, the DCS family case manager, Mother's various service providers, and the court-appointed special advocate. Held, judgment affirmed.

RELATED CASES: A.B., 61 N.E.3d 1182 (Ind. Ct. App. 2016) (Tr. Ct. did not violate Father's due process rights in terminating his telephonic participation during final hearing; Father was given meaningful opportunity to be heard, but due to his own disruptive actions and his decision not to appear in person despite clear ability to do so, he caused his own absence from the hearing).

TITLE: A.B. and C.B. v. Indiana Dept. of Child Services
INDEX NO.: U.14.
CITE: (6/21/2019), 130 N.E.3d 122 (Ind. Ct. App. 2019)
SUBJECT: TPR
HOLDING: Court reversed termination of parental rights finding because there was insufficient evidence that the conditions resulting in placement outside Mother's custody could not be remedied, that the continuation of the parent-child relationship poses a threat to Child's well-being, and that the termination is in the child's best interest. Court additionally noted, *sua sponte*, that the exhibits containing drug test results should have been inadmissible as hearsay and did not fall under the business records exception. The Court explained such exhibits need to be verified with expert testimony. Court declined to hold against Mother her inability to participate in referred services because she was twice incarcerated during the pendency of the case and declined to sanction the circular logic DCS employed in this case regarding visitation. Despite Mother testing positive for methamphetamines several times during the pendency of the case, she had maintained her sobriety at the time of the termination hearing for at least three months, if not longer. Also, the Mother had stable employment at the time of the hearing and was working to secure stable housing. Held, trial court's order terminating Mother's parental rights reversed.

TITLE: C.B. v. Indiana Dept. of Child Services

INDEX NO.: U.14.

CITE: (1/23/2020), 141 N.E.3d 75 (Ind. Ct. App. 2020)

SUBJECT: Termination of parental rights reversed where termination was not in the Children's best interests.

HOLDING: Trial court terminated Mother's parental rights to her two children but denied the petition to terminate Father's parental rights. Mother struggled with issues of substance abuse, domestic violence, and mental health over the years, but was able to progress to an extent that those issues were no longer concerning. She was bonded to the children and has generally shown appropriate and loving parenting skills. At the time of the termination hearing, the only lingering concern was Mother's inability to find stable housing. Mother's seizure disorder prevented her from working in a factory setting and prevented her from driving, which left her with decreased employment options and dependent on public transportation. Additionally, a prior felony conviction made her ineligible for section 8 housing options. The Court of Appeals concluded that termination was not in the children's best interests, given that reunification with Father is still an option and there is no reason Mother cannot continue to spend time with Children while they are in kinship care or reunified with Father. The Court held that it was not in their best interests to impose the most extreme measure possible when there are less restrictive options available.

TITLE: C.C. v. Indiana Dept. of Child Services

INDEX NO.: U.14.

CITE: (5/19/2021), 1701 N.E.3d (Ind. Ct. App. 2021)

SUBJECT: Mother not entitled to remand in termination case to challenge possible fraudulent drug screens when she had other positive screens beyond the ones she proposed to challenge

HOLDING: Mother suffers from drug use disorder and has difficulty caring for a special needs child. Mother failed to appear for her termination of parental rights fact-finding hearing. On appeal, Mother argued she failed to receive sufficient notice of the fact-finding hearing, she was denied Due Process in the denial of her continuance of the fact-finding hearing, and she was entitled to a remand of her case to challenge potentially fraudulent drugs screens. Court of Appeals finds there was sufficient notice of the fact-finding hearing and no due process violation because: 1) Mother was represented by counsel who appeared at the hearing and in her absence made argument and cross-examined witnesses; 2) Mother and her counsel received actual notice of the hearings from the court; and 3) the notice issue was waived for not being raised in the trial court. Further, the trial court did not abuse its discretion in denying a continuance absent a showing of good cause. Mother filed a motion for remand to challenge potential fraudulent drug screens through TOMO lab. The motions panel of the Court of Appeals deniedthe motion for remand, and Court found Mother was not entitled to remand. Although she was challenging two potentially fraudulent lab results from TOMO lab, there were other unchallenged lab test results from other labs that found Mother tested positive for a variety of illegal substances. Held, termination of parental rights affirmed.

TITLE: D.B. v. Indiana Dept. of Child Services
INDEX NO.: U.14.
CITE: (9/15/2016), 61 N.E.3d 364 (Ind. Ct. App. 2015)
SUBJECT: Termination of parental rights affirmed despite premature filing of petition
HOLDING: Although termination of parental rights petition was prematurely filed five days short of 15-month waiting period set forth in Ind. Code § 31-35-2-4(b)(2)(A)(iii), any error from premature filing was harmless, as it had no effect on provision of services to parents and they were not prejudiced in any way. Court rejected DCS's argument that the statute is satisfied if the child has been removed for 15 of most recent 22 months immediately preceding termination hearing. The filing date of the petition, not the date of termination hearing, controls. In re Q.M., 974 N.E.2d 1021 (Ind. Ct. App. 2012). Although failure to strictly comply with the termination statutes amounts to error, this does not preclude application of the harmless error rule.

Father also challenged Tr. Ct.'s finding that there is a reasonable probability conditions resulting in daughters' removal will not be remedied. Problems in the parents' relationship had been remedied, he claimed, as the couple was separating. But Tr. Ct. was free to give greater weight to Mother's pattern of not following through with threats to leave Father than to her current claims she was moving out. And evidence showed Father had made "no real progress toward addressing his parenting deficiencies." Tr. Ct.'s finding "is amply supported by the evidence." Held, judgment affirmed.

TITLE: G.F. & J.W. v. DCS

INDEX NO.: U.14.

CITE: (11-19-19), 135 N.E.3d 654 (Ind. Ct. App. 2019)

SUBJECT: Evidence sufficient to support termination of parental rights of incarcerated father who did not participate in services even when not incarcerated

HOLDING: Father appealed the termination of his parental rights, arguing that the trial court's findings did not establish that continuation of the parent-child relationship would pose a threat to the Child's wellbeing. Father was first aware of his paternity when Child was almost ten years-old and returned to Indiana to meet her. However, after a single supervised visit, Father relapsed into drug abuse and was arrested on multiple felony offenses. He did not maintain contact with DCS even when he was not incarcerated, and he was incarcerated at the time of the hearing. Child had been in the same foster home for nearly three years and the foster parents wished to adopt her.

The Court of Appeals found ample evidence to establish that Father engaged in destructive and dangerous behavior due to his drug abuse and criminal acts, the behavior was ongoing without any serious sign of improvement, and that the behavior posed a threat to Child. Father's behavior during the 15 months leading up to the termination hearing established that he was not a safe or available option for Child and his parental rights should be terminated.

TITLE: In re A.B.
INDEX NO.: U.14.
CITE: (03-12-10), 922 N.E.2d 740 (Ind. Ct. App. 2010)
SUBJECT: Erroneous denial of right to testify at parental termination hearing
HOLDING: Mother was denied due process of law when she was not permitted to testify during remainder of her parental termination hearing. Although mother was twenty minutes late to termination hearing, which itself commenced more than an hour behind schedule, she should have been afforded the opportunity to testify. When State seeks to terminate a parent-child relationship, it must do so in a manner that meets the constitutional requirements of the due process clause. See Ind. Code 31-35-2-6.5 (court shall provide parent opportunity to be heard and make recommendations) and 31-32-2-3 (parent entitled to cross-examine witnesses and introduce evidence). The slight delay, the small, additional cost and even any incremental emotional strain upon the children that may have resulted from permitting mother to participate in the remainder of the evidentiary hearing are far outweighed by the fairness that mother's participation would have ensured. Held, judgment reversed and remanded.

RELATED CASES: In re D.P., 27 N.E.3d 1162 (Ind. Ct. App. 2015) (Tr. Ct. deprived Mother of due process when, in Mother's absence and without representation of counsel, it converted a pretrial status (omnibus) hearing on a termination of parental rights matter into a final hearing while Mother was not present, which led to the termination of her parental rights).

TITLE: In Re Adoption of A.G.
INDEX NO.: U.14.
CITE: (12/9/2016), 64 N.E.3d 1246 (Ind. Ct. App. 2016)
SUBJECT: Right to counsel in adoption proceedings
HOLDING: The Tr. Ct. abused its discretion in allowing A.R.'s counsel to withdraw from an adoption proceeding. A.R. is the mother of A.G. and J.G. M.G. and his wife filed a petition to adopt the children, claiming M.G. is their biological father. After finding that A.R. was indigent, the Tr. Ct. appointed counsel for her. Counsel later moved to withdraw, claiming A.R. failed to communicate with him; the Tr. Ct. granted the request.

Those whose parental rights may be terminated, including parents in adoption proceedings, have the right to counsel. In re Adoption of G.W.B., 776 N.E.2d 952, 953-54 (Ind. Ct. App. 2002); Ind. Code § 31-35-1-12. Under Madison County Local Rule LR48-TR3.1-26 § B, an attorney's motion to withdraw will be granted if 1) another attorney simultaneously appears for the party, 2) the attorney provides satisfactory evidence that the party has discharged the attorney, or 3) the party agrees to the withdrawal. If at least one of the conditions of Section B is not fulfilled, Section C requires an attorney to give 21 days' written notice of his intent to withdraw. Because the motion to withdraw did not comply with either Section B or C of the local rule, the Tr. Ct. abused its discretion in granting the motion. See K.S. v. Marion Cnty. Dep't of Child Services, 917 N.E.2d 158, 164-65 (Ind. Ct. App. 2009).

TITLE: In Re A.G.
INDEX NO.: U.14.
CITE: (10/27/2015), 45 N.E.3d 471 (Ind. Ct. App. 2015)
SUBJECT: Termination of parental rights affirmed
HOLDING: Termination of Father's parental rights was not clearly erroneous, even though Father's paternity was established only four months before termination proceedings began, because the termination requirement that the child has been removed from the parent for at least 15 of the most recent 22 months refers to removal from the child's home, not the home of a particular parent. See Ind. Code § 31-35-2-4(b)(2)(A)(iii).

Mother gave birth to A.G. on July 5, 2013, while Father was incarcerated. Soon after, A.G. was placed in intensive care due to severe drug withdrawal from the drugs mother had been taking, including cocaine, heroin, marijuana, Xanax and Klonopin. A few weeks later, A.G. was placed in the custody of DCS, declared a CHINS, and placed in foster care. Father's paternity was established in September 2014, 14 months after A.G. was born. Four months later, DCS filed a petition to terminate Father's rights.

Father claims that because he did not know he was A.G.'s father until only four months before the termination hearing, the State failed to prove that A.G. had been removed from him the requisite time under Ind. Code § 31-35-2-4(b)(2)(A)(iii). Father is mistaken because A.G. was "constructively" removed from him nearly 14 months before, when A.G. was taken from his mother shortly after he was born. The focus of the inquiry is the length of time the child has been in temporary custody, not the length of time the child was removed from a particular parent. Thus, the removal period begins when the child is removed from his home, not the home of the particular parent. This reading serves "the State's very legitimate interest in promoting adoptions of children who have been removed from the parental home for extended periods of time," instead of endless foster care placements. Phelps v. Sybinsky, 736 N.E.2d 809, 818 (Ind. Ct. App. 2000). Held, judgment affirmed.

TITLE: In re A.P.
INDEX NO.: U.14.
CITE: (11/15/2012), 981 N.E.2d 75 (Ind. Ct. App. 2012)
SUBJECT: Termination of Parental Rights affirmed
HOLDING: Tr. Ct. did not err in its decisions to place children with grandparents and revoke parental rights for a mother who used methamphetamine while pregnant and continued to use drugs after her children were judged in need of services, and father was often absent. Mother passed only four of 53 drug screens under court supervision that resulted from CHINS adjudication and father indicated he was uninterested in services and failed to participate. Mother's strong bond with the children does not eradicate the effects that her continued behavior has and will have upon them. Based upon family case manager's and guardian ad litem's testimonies, and upon totality of circumstances, Court cannot conclude that Tr. Ct. erred in determining that termination is in the children's best interests. Held, judgment affirmed.

TITLE: In re A.W.
INDEX NO.: U.14.a.
CITE: (11/10/2016), 62 N.E.3d 1267 (Ind. Ct. App. 2016)
SUBJECT: Termination of parental rights - failure to prove conditions that led to removal would not be remedied
HOLDING: Tr. Ct. erred in terminating Mother's parental rights as to A.W., a child from a previous relationship, and G.A.S, her child with Father, because DCS failed to prove by clear and convincing evidence that the conditions that resulted in the removal of the children would likely not be remedied. Ind. Code § 31-35-2-4(b)(2)(B)(i); In re E.M., 4 N.E.3d 636, 643 (Ind. 2014). While she was incarcerated, Mother participated in and completed individual therapy, AA meetings, parenting classes, and family classes. Further, terminating Mother's parental rights as to both children is incongruous with the Tr. Ct.'s knowledge that once Mother was released from incarceration, she would continue to live with Father and G.A.S. Held, judgment reversed.

TITLE: In re Adoption of C.B.M.

INDEX NO.: U.14.

CITE: (8/16/2013), 992 N.E.2d 687 (Ind. Ct. App. 2013)

SUBJECT: Error in refusing to set aside adoption where previous TPR order was later reversed on appeal

HOLDING: Tr. Ct. erred in denying Mother's T.R. 60(B) motion, which asked court to vacate judgment allowing foster parents to adopt Mother's children. Tr. Ct. granted adoption request while Mother's appeal of termination of parental rights order was pending. Because Court of Appeals reversed termination order, Tr. Ct. should have vacated adoption ruling pursuant to T.R. 60(B)(7), which provides: "the court may relieve a party . . . from a judgment" when "a prior judgment upon which [the current judgment] is based has been reversed or otherwise vacated." Here, the adoption order was based on the termination order. Because the termination order was vacated, Tr. Ct. should have granted Mother relief from the adoption ruling.

Court acknowledged Tr. Ct.'s legitimate concern for speedy, permanent placement of the children but "a fit parent's rights are fundamental and constitutionally protected" - In re Visitation of M.L.B., 983 N.E.2d 583, 586 (Ind. 2013) - and even if the children's best interests would be served by remaining with the adoptive parents, those interests do not necessarily override the "fundamental liberty interest of [Mother] in the care, custody, and management of [the children" even though Mother temporarily lost custody of child to State. See Santosky v. Kramer, 455 U.S. 745, 753 (1982). Held, transfer granted, Court of Appeals' opinion at 979 N.E. 2d 174 vacated, judgment reversed.

RELATED CASES: Sanford, 2016 Ind. App. LEXIS 16, sum. aff'd 51 N.E.3d 1182 (Ind. 2016) (declining to find that In re O.R. should be extended to criminal Ds who already have a remedy for reinstating an untimely appeal through Post-Conviction Rule 2).

TITLE: In re B.C. v. DCS

INDEX NO.: U.14.

CITE: (4/1/20), 142 N.E.3d 427 (Ind. S. Ct. 2020)

SUBJECT: Following waiver of statutory deadline for hearing, invited error doctrine barred mother from seeking dismissal of termination of parental rights petition

HOLDING: Where the parent affirmatively waived the requirement, a parent is not entitled to dismissal of a TPR petition due to the juvenile court's failure to complete a hearing within the statutorily required 180 days. Per curiam. This case involves the statutory requirement that TPR court must complete a TPR hearing within 180 days. See I.C. 31-35-2-6. Indiana Supreme Court finds that Mother affirmatively waived the 180-day statutory time frame and therefore the invited-error doctrine forbids a party from taking advantage of an error she commits, invites, or which is the natural consequence of her own neglect or misconduct. Having affirmatively waived the 180-day statutory requirement that a hearing on a petition for termination of parental rights be completed within 180 days, Mother cannot now invoke it as a basis for reversal.

TITLE: In re C.C. and B.C.
INDEX NO.: U.14.
CITE: (8/25/20), 153 N.E.3d 340 (Ind. Ct. App. 2020)
SUBJECT: Termination of parental rights affirmed for Father's refusal to complete court-ordered services and drug screens
HOLDING: Child was removed from Mother's home due to her substance abuse and placed with Father. The juvenile court adjudicated Child as a CHINS and ordered Father to maintain contact with the DCS and, among multiple other orders, submit to random drug screens. A few months later, Father left Child with a relative, which led to Child's placement in foster care. The juvenile court ordered Father's parental rights to Child to be terminated and issued a detailed statement of findings. The Court of Appeals held Father's refusal to complete court-ordered services and drug screens was a blatant disregard for the juvenile court's authority, thus the juvenile court was "justified in its decision" to terminate his parental rights. Judge Pyle dissented, believing that there were other measures available, short of termination, to convince Father to comply with order to submit to drug screens. After a detailed recitation of facts regarding Father's interaction with DCS, including the removal of the first case manager for "inappropriate conduct" and Father's progress in individual therapy, Judge Pyle concluded that the apparent reason for the Child's removal from Father's care was not drug related, thus he would find the DCS failed to meet its burden and termination is not warranted at this time.

TITLE: In re D.D.
INDEX NO.: U.14.
CITE: (08-29-11), 962 N.E.2d 70 (Ind. Ct. App. 2012)
SUBJECT: State Termination of parental rights - non-compliance with six-month statutory mandate
HOLDING: An involuntary termination of parental rights petition must allege, and the State must prove by clear and convincing evidence, that the child was removed from the parent for at least six months under a dispositional decree at the time the involuntary termination petition was filed. Ind. Code 31-35-2-4(b)(2)(A). In this case, Tr. Ct. made a clear and unequivocal finding that the children were not removed from Mother's care pursuant to a dispositional order until April 15, 2010 and termination petitions were filed on April 19, 2010. Thus, the Department of Child Services (DCS) failed to satisfy the six-month statutory mandate, and Tr. Ct. committed reversible error in granting DCS's involuntary termination petitions. Additionally, Court rejected DCS's assertion the issue was waived for failure to object below. Failure to ensure that the State has fully complied with all of the condition's precedent to the termination of parental rights constitutes fundamental error. Held, judgment reversed and remanded for further proceedings.

RELATED CASES: G.M., 71 N.E.3d 898 (Ind. Ct. App. 2017) (Tr. Ct.'s termination of Father's parental rights was fundamental error because Child had not been removed from Father under a dispositional decree for at least six months, as required by Indiana Code § 31-35-2-4(b)(2)(A)(i); see full review, this section).

TITLE: In re Adoption of J.M.
INDEX NO.: U.14.
CITE: (5/21/2014), 10 N.E.3d 16 (Ind. Ct. App. 2014)
SUBJECT: Tr. Ct. did not err in finding biological parents' consent to adopt was unnecessary
HOLDING: Tr. Ct. did not err in extinguishing the biological parents' right to consent to the adoption of J.M.

DCS removed J.M. from the biological parents' custody because of their ongoing problems with substance abuse and domestic violence. Later, after DCS filed a TPR petition, J.M.'s foster parents filed a petition to adopt J.M.; a few months later, J.M.'s grandparents filed their own petition to adopt, to which the biological parents consented. Because of the competing adoption petitions, Tr. Ct. held a hearing to determine if the biological parents' consent was necessary. Tr. Ct. found that the biological parents were unfit as parents, and thus concluded that their consent was unnecessary. Tr. Ct. eventually granted the foster parents' petition to adopt J.M.

Because the facts support Tr. Ct.'s finding that the biological parents were unfit, it did not err in concluding that their consent to the adopt was unnecessary. See IC 31-19-9-8(a)(11); see also In re Adoption of A.S., 912 N.E.2d 840, 848-49 (Ind. Ct. App. 2009). Held, judgment affirmed.

TITLE: In re Adoption of O.R.
INDEX NO: U.14.
CITE: (9/25/2014), 16 N.E.3d 965 (Ind. 2014)
SUBJECT: Timely filing of notice of appeal is not jurisdictional
HOLDING: In an adoption matter, Court of Appeals erred in dismissing appeal on basis that Father's failure to timely file Notice of Appeal deprived it of subject matter jurisdiction. Past decisions discussing the viability of an appeal have shown "a tendency to confuse jurisdictional defects with legal errors." R.L. Turner Corp. v. Town of Brownsburg, 963 N.E.2d 453, 457 (Ind. 2012). While Appellate Rule 9(A)(5) states that "the right to appeal shall be forfeited" unless the Notice is timely filed, neither that rule nor any other appellate rule states that such a failure deprives an appellate court of jurisdiction over an appeal. Thus, a belated Notice of Appeal is a legal error by which an appeal is forfeited, but it does not deprive appellate courts of authority to, in their discretion, entertain such an appeal. The fact that Appellate Rule 1 allows an appellate court to, on its own motion, to "permit deviation from these Rules" is a recognition that a court may assume jurisdiction over a forfeited appeal.

Here, Tr. Ct. found that Father's consent was not required to grant foster parents' petition to adopt. Four days before Notice of Appeal was due, Father sent letter to Tr. Ct. clerk requesting appointment of appellate counsel. Tr. Ct. did not appoint counsel until well after Notice of Appeal was due. Appellate counsel filed a belated Notice.

Court found compelling reasons to restore forfeited appeal. A parent's interest in the care, custody and control of his child is "perhaps the oldest of fundamental liberty interests." Similarly, the parent-child relationship is "one of the most valued relationships in our culture." Further, Father sought appointment of counsel before the Notice was due. The "unique confluence" of these factors led the Court to restore the appeal and review Father's claim on the merits. Cf. In re Adoption of T.L., 4 N.E.3d 658, 661 n.2 (Ind. 2014); In re K.T.K., 989 N.E.2d 1225, 1229 (Ind. 2013); In re D.L., 952 N.E.2d 209, 212-14 (Ind. Ct. App. 2011); In re J.G. and C.G., 4 N.E.3d 814, 820 (Ind. Ct. App. 2014). Held, appeal reviewed on merits; judgment affirmed.

RELATED CASES: Sanford, *sum. Aff'd* 54 N.E.3d 373 (Ind. 2016) (declining to find that In re O.R. should be extended to criminal Ds who already have a remedy for reinstating an untimely appeal through Post-Conviction Rule 2); Morales, 19 N.E.3d 292 (Ind. Ct. App. 2014) (late notice of appeal did not forfeit appeal where notice was only one day late and courts have interest in judicial economy and finality of post-conviction proceedings, Morales, No. 10A01-1308-PC-353 (Ind. Ct. App. October 15, 2014).

TITLE: In re C.M.
INDEX NO.: U.14.
CITE: (12-08-11), 960 N.E.2d 169 (Ind. Ct. App. 2011)
SUBJECT: Insufficient evidence for termination of Mother's parental rights – no factual determinations re: evidence of changed conditions
HOLDING: Department of Child Services (DCS) failed to establish by clear and convincing evidence that there is a reasonable probability that the reasons for children's continued placement outside home will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the children. See IND. CODE. 31-35-2-4 (b)(2)(B) and (c). Children were initially removed because Father, who suffers from bipolar disorder, discontinued his medication and battered the children while Mother was incarcerated. They were subsequently removed when Mother was arrested a second time when Mother's boyfriend allegedly sold marijuana from home. Historically, although Mother has apparently not directly abused her children, she has been unable or unwilling to protect them from her partners' illegal conduct. However, Mother claimed that she accomplished each of things required to remedy prior conditions and accomplish reunification goals. Her un-contradicted testimony was that she lives alone with her twin infants, she has a current source of income, her home has been deemed suitable by DCS and she is in voluntary, intensive substance abuse treatment. Tr. Ct. made no determination as to whether Mother's testimony was credible or lacking in credibility.

Mother's past parental shortcomings were thoroughly addressed, but Tr. Ct. is to judge parental fitness at time of termination hearing, while taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001). "Here, the court's focus on historical conduct, absent factual findings as to Mother's current circumstances or evidence of changed conditions, is akin to terminating parental rights to punish parent. And, without more, the findings are insufficient to establish each element necessary to support the conclusion that termination is warranted in this case." Moreover, Tr. Ct.'s conclusions of law suggested that Mother had burden of proof that she does not have. Held, judgment reversed.

TITLE: In re G.Y.
INDEX NO.: U.14.
CITE: (04-24-09), 904 N.E.2d 1257 (Ind. 2009)
SUBJECT: Termination of parental rights not in child's best interest despite mother's incarceration
HOLDING: The evidence does not clearly and convincingly demonstrate that Mother's parental rights should be terminated. In order to terminate a parent's rights, State must prove, among other things, by clear and convincing evidence that termination is in the best interests of the child. Ind. Code 31-35-2-4(b)(2). Here, Mother sold cocaine to an undercover police officer in April of 2003. Approximately one year later, Mother gave birth to child. Mother was child's sole caretaker for twenty months during which there are no allegations of criminal behavior or that she was an unfit parent. When child was twenty months old, Mother was arrested for the 2003 dealing. Mother immediately tried to find placement for child, but all attempts failed. Mother agreed that child was a CHINS so child could be placed in foster care. Mother maintained contact with child through monthly visits, calls and cards. Mother also completed parenting classes, college course and drug treatment while in prison. State's caseworker who observed the monthly visits believed there was a bond between Mother and child and that their interactions were appropriate. After receiving credit for her college degree, Mother's release is scheduled for June 2009. However, on May 18, 2007, the State filed petition to terminate Mother's parental rights, and Tr. Ct. found that termination would be in child's best interest because of the likelihood of Mother reoffending, the amount of time that it will likely take Mother to comply with the conditions of court's Participation Decree, the fact that the child currently has a closer relationship with his foster parents than he does with Mother, and the need for immediate permanency through adoption. None of these findings are sufficiently strong reasons, either alone or in conjunction with one another, to warrant a conclusion by clear and convincing evidence that termination of Mother's parental rights is in child's best interest. State presented no evidence that child remaining in foster care until he could be reunited with his mother would be harmful to him. Thus, Tr. Ct. erred in terminating parental rights. Held, transfer granted, Court of Appeals' memorandum opinion vacated, judgment reversed; Boehm, J., dissenting on basis that appellate court should be very reluctant to conduct its own assessment of the cumulative effect of findings found by Tr. Ct.

RELATED CASES: K.E., 39 N.E.3d 641 (Ind. 2015) (evidence insufficient for termination of Father's parental rights where Tr. Ct.'s findings that Father couldn't remedy conditions and that he posed threat to child were based on Father's incarceration and ignored Father's substantial efforts to better himself); R.A., 19 N.E.3d 313 (Ind. Ct. App 2014) (evidence insufficient to support termination of parent-child relationship even though father refused to participate in services while incarcerated awaiting trial; he was not ordered to participate in services until after his release, and record did not establish that father lacks knowledge of parenting or that he was not able to articulate a plan for caring for R.A. upon his release); J.M., 908 N.E.2d 191 (Ind. 2009).

TITLE: In re H.G.
INDEX NO.: U.14.
CITE: (12-14-11), 959 N.E.2d 272 (Ind. Ct. App. 2011)
SUBJECT: Termination of parental rights - need for permanency not sufficient to justify termination
HOLDING: Tr. Ct. abused its discretion by terminating Parents' rights to their three children. In order to terminate a parent- child relationship, DCS must prove by clear and convincing evidence four factors, including that termination is in the best interests of the child. Ind. Code 31-35-2-4(b)(2). In determining the best interests of a child, Tr. Ct. is required to look beyond the factors identified by DCS and to consider the totality of the circumstances. The need for permanency does not justify terminating parental rights. Tr. Ct. is not prohibited from considering the possibility of a parent's early release from prison, nor should it disregard a parent's voluntary efforts while in prison.

Here, C.D., H.G. and E.G. all shared the same Mother. C.L.D. was C.D.'s father and Mother's ex-husband. H.H.G. was H.G. and E.G.'s father, Mother's husband and C.D.'s step-father. CPS filed a petition to terminate parental rights of all three parents. Mother and C.L.D. were in prison for burglary and expected to be released late 2012 or 2013. H.H.G. struggled with drugs and finding work. However, each parent has shown willingness to continue working toward reunification and clearly have a bond with the children. Moreover, no adoptive family has been identified and the children were placed in a foster home shortly before the termination proceedings because of allegations of abusive behavior by the foster parents. Moreover, a grandparent is willing and able to care for the children. Although DCS is not required to prove anything concerning the adequacy of the children's placement in a termination proceeding, that is not the same as saying that the children's placement is never relevant to the facts that it must prove. Such placement is relevant when, as here, DCS relies heavily on the child's need for permanency. Thus, the evidence does not support the Tr. Ct.'s conclusion that termination is in the children's best interest. Held, judgment reversed and remanded.

RELATED CASES: Matter of B.J., 110 N.E.3d 1178 (Ind. Ct. App. 2018) (TPR affirmed despite DCS's failure to comply with notice requirements; Mother was not prejudiced because she hadn't maintained consistent, substantive communication with DCS and did not give them (or her attorney or trial court) a current address; thus, even if DCS had tried to give noticve, it would have go to wrong address).

TITLE: In re H.T.
INDEX NO.: U.14.
CITE: 901 N.E.2d 1118 (Ind. Ct. App. 2009)
SUBJECT: Termination of parental rights - no threat to child's well-being
HOLDING: Tr. Ct. clearly erred in determining that continuation of the parent-child relationship posed a threat to the child's well-being. In the matter of raising children, stability of environment is an important fact. However, this in and of itself is not a valid basis for terminating the relationship between the natural parent and the children. Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006).

Here, four months before child's birth, father was incarcerated for a probation violation. While in prison, Mother had another child with a different man. However, Father still called the child once per week. Through schooling, Father reduced his sentence by three years. While Father was in prison, the child was removed from Mother's home and placed in stepsister's paternal grandparent's home. Father sent letters and cards to child, but foster parents did not respond or give letters to child. State filed a petition to terminate parent-child relationship. One hour after being released from prison, Father showed up at case worker's office. DCS refused to provide service for reunification. One month later, Tr. Ct. granted the termination petition. The child was not in a temporary arrangement pending termination and continuation of the CHINS would have no negative impact on the child. As the Tr. Ct. found, Father is willing and able to complete any services and become the custodial parent of his child. Thus, there is no need for the extreme measure of permanently terminating Father's right to be a parent. Held, judgment reversed and remanded with instructions that Tr. Ct. vacate termination order.

RELATED CASES: In re D.B., 942 N.E.2d 867 (Ind. Ct. App. 2011) (termination order reversed where several of juvenile court's findings, including findings that Father tested positive for drugs throughout the case, did not participate in counseling, and was sporadic with his visitation with D.B., were not supported by the evidence).

TITLE: In re H.T.
INDEX NO.: U.14.
CITE: (2nd Dist., 12-10-08), 911 N.E.2d 577 (Ind. Ct. App. 2008)
SUBJECT: Failure to send adequate notice of termination hearing
HOLDING: Ind. Code 31-35-2-6.5(b) requires Department of Child Services (DCS) to send parents notice of date, time, and location of hearing on a petition to terminate parental rights at least ten days prior to the hearing. This statutory notice is a procedural precedent that must be performed prior to commencing an action. In re T.W., 831 N.E.2d 1242 (Ind. Ct. App. 2005). Here, DCS failed to provide Mother with essential notice of termination hearing. Only notice provided to Mother was a general notice of termination proceedings which specifically informed her that she had "until April 1, 2008" to respond to complaint before her parental rights "may" be terminated. As a result, Mother's statutory right to notice of termination hearing was fatally compromised. Held, judgment terminating Mother's parental rights reversed.

RELATED CASES: H.K., 971 N.E.2d 100 (Ind. Ct. App. 2012) (although copies of involuntary termination petitions and summonses pertaining to initial hearing were mailed to Mother's last known address, record was devoid of any evidence showing DCS likewise attempted to serve Mother with notice of termination hearing; Ct. cannot rely on DCS attorney's unsubstantiated comment to Tr. Ct. that case manager mailed notice of termination hearing to Mother's last known address).

TITLE: In re I.A.
INDEX NO.: U.14.
CITE: (10-05-10), 934 N.E.2d 1127 (Ind. 2010)
SUBJECT: Termination of father's parental rights - lack of clear & convincing evidence
HOLDING: Department of Child Services (DCS) failed to prove by clear and convincing evidence that there is a reasonable probability that the reason for Child's placement outside of Father's home will not be remedied or that the continuation of the parent-child relationship between Father and Child poses a threat to the well-being of the child. See Ind. Code 31-35-2-4(b)(2)(B) and (C). At the time Child was removed, Mother and Father were not residing in the same household and Child was in Mother's sole custody and care. Because of that, the conditions that resulted in Child's removal (i.e., lack of parental supervision) cannot be attributed to Father. Caseworker testified that Father had not bonded with Child after six months of parent-aid services, that Father need considerable direction regarding simple tasks relating to Child's care, and there had been no progress in the relationship between Father and Child.

These factors identified by Tr. Ct. as conditions that will not be remedied are relevant only if those conditions were factors in DCS's decision to place Child in foster care in the first place. Tr. Ct.'s order terminating Father's parental rights was silent on this point, thus termination of Father's parental rights cannot be sustained on this ground.

As an alternative ground for terminating Father's parental rights, Tr. Ct. determined that because Father had "not bonded" with Child, the continuation of the parent-child relationship posed a threat to the Child's well-being. Although record demonstrated that Father's parenting skills are lacking, a case plan for reunification was never developed for Father indicating what was expected of him. Moreover, other than a parent aide, no services were provided to assist Father in developing effective parenting skills. The involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. In re L.S., 717 N.E.2d 204 (Ind. Ct. App. 1999). Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. Court was not convinced that all other reasonable efforts have been employed in this case to unite this Father and son. Held, transfer granted, Court of Appeals' memorandum opinion vacated, judgment reversed; Boehm, J., dissenting, would give "even wider deference to the trial judge's conclusion as to what is in the best interests of the child, and whether the conditions are likely to improve."

RELATED CASES: In re M.W, 942 N.E. 2d 154 (Ind. Ct. App. 2011) (DCS agreed to give Mother a second chance and should follow through with its agreement; Ct. urged Tr. Ct's to carefully review the process by which termination decisions are made, ensuring that it is fair and equitable).

TITLE: In re I.B. and M.L.
INDEX NO.: U.14.
CITE: (09-21-10), 933 N.E.2d. 1264 (Ind. 2010)
SUBJECT: Right to counsel to appeal parental termination - waiver
HOLDING: Although parents have a statutory right to appellate counsel to appeal an order terminating their parental rights (see Ind. Code 31-32-2-5), the right to appeal can be waived, and a parent's trial lawyer cannot pursue an appeal without the parent's authorization. Court of Appeals erroneously limited "proceeding" in statute to Tr. Ct. stage, i.e., time between commencement and entry of judgment on termination of parental rights determination. Statutes dictate that the right to counsel continues through all stages of the proceeding to terminate the parent-child relationship, including appeal.

When the parent does not appear at the termination of parental rights trial, is not present when the termination of parental rights order is issued, or has not had contact with counsel, the parent's trial lawyer has an obligation to contact and inform the client of the result of the termination proceeding. See Ind. Prof'l Conduct R. 1.3 and 1.4. At this point, the attorney can receive instructions with respect to the appeal. If the lawyer does not know the whereabouts of the parent, the lawyer must use due diligence to locate the client and if unable to do so, or unable to get clear instructions from the client with respect to an appeal, the lawyer should not file a notice of appeal. See Ind. Prof'l Conduct R. 1.3 cmt. 4. Should the parent resurface and seek to pursue an appeal after the period for filing a notice of appeal has closed, Indiana trial rules may provide a remedy in certain situations (see, e.g., Trial Rule 60(B)(8)).

Here, mother failed to appear at termination hearing and hearing regarding appointment of appellate counsel following the decision to terminate her parental rights. Her whereabouts were unknown. Due to Mother's own inaction, her counsel could not effectively or ethically represent that she wanted to file an appeal. On these facts, lawyer had no basis to file an appeal and Tr. Ct. was correct not to appoint appellate counsel for that purpose. Held, transfer granted, Court of Appeals' opinion at 923 N.E.2d 62 vacated, denial of motion to appoint appellate counsel affirmed.

TITLE: In re I.P.

INDEX NO.: U.14.

CITE: (3/26/2014), 5 N.E.3d 750 (Ind. 2014)

SUBJECT: Termination of parental rights - replacement magistrate could not make findings of fact and conclusions thereon

HOLDING: Per Curiam. Party in termination of parental rights hearing is entitled to a determination of the issues by the judge who heard the evidence, and, where a case is tried to a judge who resigns before determining the issues, a successor judge cannot decide the issues or enter findings without a trial de novo. Where, as here, a successor judge who did not hear the evidence or observe the witnesses' demeanor attempts to weigh evidence and make credibility determinations, the judge "is depriving a party of an essential element of the trial process." In re D.P., 994 N.E.2d 1228 (Ind. Ct. App. 2013). Father's due process rights were violated when a different magistrate reported findings and conclusions to the judge than the magistrate who heard the termination case. Held, transfer granted, Court of Appeals' opinion at 997 N.E.2d 393 vacated, judgment reversed.

See also: In re S.B., 5 N.E.3d 1152 (Ind. 2014) (Mother's due process rights were violated because magistrate who conducted evidentiary hearing was not the same magistrate who made and reported the recommended factual findings and conclusions thereon to the juvenile court).

RELATED CASES: In re D.P., 994 N.E.2d 1228 (Ind. Ct. App 2013).

TITLE: In re J.K.

INDEX NO.: U.14.

CITE: (9/7/2018), 110 N.E.3d 1164 (Ind. Ct. App. 2018)

SUBJECT: DCS admonished for disturbing, significant due process violations in TPR proceedings throughout Indiana

HOLDING: In appeal of termination of L.R.'s parental rights to her children, DCS conceded that L.R. was denied due process from trial court's failure to enter findings of fact and conclusions of law as required by Ind. Code § 31-35-2-8. Court referenced its June 9, 2018, Order noting that DCS has filed motions for remand in too many cases conceding, as it did in this case, that Appellants' due process rights have been violated. "The increasing frequency of these motions suggest that there are repeated, significant violations of due process occurring in termination of parental rights cases throughout this state. This is a disturbing trend...the Court is obligated to formally admonish DCS for its failure to afford litigants throughout this state the due process rights they are owed." Court also reminded trial courts of their duty to ensure that litigants' due process rights are not violated. Held, reversed and remanded for further proceedings.

RELATED CASES: Matter of C.M.S.T., 111 N.E.3d 207 (Ind. Ct. App. 2018) (Ct. again chastised DCS for denying due process in termination cases; here, one DCS case manager filed a false report, and another had a sexual relationship with Father, among a host of alarming facts).

TITLE: In re J.S.O.

INDEX NO.: U.14.

CITE: (12-07-10), Ind. Ct. App., 938 N.E.2d 271

SUBJECT: Termination order reversed because of due process violations in underlying CHINS proceedings

HOLDING: Procedural irregularities in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights. A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107 (Ind. Ct. App 2000). Pursuant to Ind. Code 31-34-3-4(2), notice that a child has been taken into custody under "must" be given "to each of the child's parents." However, no such notice was ever provided to Father in this case, despite Porter County Department of Child Services' (PCDCS'), actual knowledge of Father's name and whereabouts. Moreover, Father was denied procedural due process when PCDCS failed to provide him with notice of all hearings and copies of all orders and other documents issued during the CHINS proceedings, in violation of numerous additional CHINS statutes. PCDCS was well-aware of Father's name, his incarceration in Lake County Jail and alleged paternity of child throughout the entirety of the CHINS proceedings, but never contacted him. Court "simply cannot ignore PCDCS's and the Tr. Ct.'s failure to follow numerous and substantial statutory mandates in this manner." Held, termination order reversed on procedural due process grounds; Kirsch, J., dissenting, agrees that Father was denied due process during CHINS proceedings, but does not believe that such failures deprived Father of procedural due process with respect to termination of his parental rights.

RELATED CASES: T.N. G.N. v. Dep't of Child Services, 963 N.E.2d 467 (Ind. 2012) (Tr. Ct. erred in not conducting a contested fact-finding hearing that was requested by Father in underlying CHINS proceeding and, thus, violated Father's due process rights.

TITLE: In re K.E.
INDEX NO.: U.14.
CITE: (03-08-12), 963 N.E.2d 599 (Ind. Ct. App. 2012)
SUBJECT: Termination of parental rights - failure to follow statutory mandates
HOLDING: Because parents have a constitutionally protected right to establish a home and raise their children, the Indiana Department of Child Services (DCS) must strictly comply with the statute terminating parental rights. In re J.S., 906 N.E.2d 226 (Ind. Ct. App. 2009). An involuntary termination petition must allege, and State must prove by clear and convincing evidence, that at least one of the requirements of Ind. Code 31-35-2-4(b)(2)(A) is true at time the termination petition is filed.

Here, K.E. was taken into emergency protective custody by Elkhart County DCS in May 2010. Tr. Ct. entered a dispositional order formally removing K.E. from both parents' care and custody on July 13, 2010. DCS filed its petition seeking involuntary termination only five months and 17 days after Tr. Ct. entered its dispositional order and only seven months after K.E. was removed from the family home as result of being alleged to be a CHINS. Additionally, Tr. Ct. never entered a finding that reasonable efforts for family preservation or reunification were not required in the underlying CHINS case. Although further delay in final resolution of K.E.'s case is regrettable, it is clear that the DCS and Tr. Ct. did not follow statute in allowing more time to lapse between the removal and termination or finding that reasonable efforts for reunification had happened or that those efforts weren't required. Held, judgment reversed and remanded.

RELATED CASES: In re B.F., 976 N.E.2d 65 (Ind. Ct. App. 2012) (Tr. Ct. court committed fundamental error in terminating Parents' parental rights when the child was removed under a dispositional decree for less than six months; thus, the only requirement alleged under Ind. Code. 31-35-2-4(b)(2)(A) was not true).

TITLE: In re K.L.

INDEX NO.: U.14.

CITE: (03-03-10), 922 N.E.2d 102 (Ind. Ct. App. 2010)

SUBJECT: Consent to terminate parental rights given in reliance on misrepresentation by county could be withdrawn

HOLDING: A parent's ability to withdraw consent to the termination of his or her parental rights is extremely limited. Youngblood v. Jefferson County Div. of Family & Children, 838 N.E.2d 1164 (Ind. Ct. App. 2005). Her father-maintained visitation and a relationship with his child but felt it was in child's best interest for his sister and her spouse to adopt the child. County department of child services (DCS) consented to adoption and assured father that there were no county reports preventing sister and spouse's adoption of child. Thus, father agreed to relinquish his parental rights and never would have done so if sister could not adopt child. Thereafter, DCS removed the child from sister's home and withdrew its approval of sister's adoption based on discovery of prior report of sexual abuse against sister's spouse. Court held that public policy demanded that termination of father's parental rights be set aside because his consent to terminate was given in reliance on misrepresentation by county. Held, judgment reversed and remanded.

TITLE: In re L.R.

INDEX NO.: U.14.

CITE: (7/14/2017), 79 N.E.3d 985 (Ind. Ct. App. 2017)

SUBJECT: Termination of parental rights petition not premature - dismissal and refiling of CHINS petition

HOLDING: Tr. Ct. did not err in concluding that Child had been removed from Mother and under DCS supervision for at least 15 months when DCS filed its termination proceeding, beginning with the date the child was removed from the home as a result of child being alleged CHINS. Even though DCS dismissed and refiled the CHINS petition, relevant date is still the initial date the child was removed from home, not the date the CHINS petition was refiled. Ind. Code § 31-35-2-4(b)(2)(A)(iii) does not include any language supporting Mother's contention that the only CHINS action that can be considered in calculating the period of removal is the one that is pending when the termination petition is filed. And there is no indication that DCS moved to dismiss the first CHINS petition in this case because it lacked merit or to somehow game the system or prejudice Mother. Rather, the record shows that the parties were in negotiations regarding an admission in the first CHINS action and that the dismissal and refiling were merely a means of addressing the 120-day deadline for holding a CHINS fact-finding hearing. Mother did not object to dismissal-and-refiling procedure and expressly acknowledged the need for it.

Court found no due process violation where DCS filed the second CHINS petition before dismissing the initial CHINS petition, and where Tr. Ct. took its TPR decision under advisement for a year after the termination hearing. Held, judgment affirmed.

TITLE: In re M.B.
INDEX NO.: U.14.
CITE: (11-30-09), 921 NE.2d 494 (Ind. 2009)
SUBJECT: Termination of parental rights - post-adoption visitation privileges
HOLDING: Indiana's open adoption statutes, which authorize Tr. Ct. to grant post-adoption contact privileges to a birth parent who has previously voluntarily relinquished his or her parental rights, do not authorize grant of continued, ongoing post-adoption visitation privileges to a birth parent as a condition precedent to the birth parent's voluntary consent to termination of parental rights. Here, Mother consented to termination of her parental rights but attached an addendum containing a written condition that she could continue visitation with her children. Court held that Addendum's reservation of post-adoption visitation privileges is irreconcilably inconsistent with Ind. Code 31-19-16-1 & 2 because it interferes with open adoption statutes' grants of authority to adoption courts and of consent rights to adoptive parents. However, when Mother voluntarily relinquished her parental rights in this case, it was not subject to unconditional future visitation with her children but only visitation so long as it was in the children's best interests, pursuant to Ind. Code 31-19-16-2. As such, Mother knew and agreed that visitation might be terminated in the future.

However, due process demanded that Mother be given notice and opportunity to be heard before visitation was terminated, pursuant to Ind. Code 31-34-2-1(d) and Ind. Code 31-34-21-4(a)(1) & (b). Neither Mother nor her counsel were notified of hearing where Tr. Ct. terminated visitation rights. Held, transfer granted, Court of Appeals' opinion at 896 N.E.2d 1 vacated, Tr. Ct's acceptance of Mother's voluntary termination of parental rights affirmed, decision to terminate visitation rights reversed and remanded for hearing; Boehm, J., concurring in result with separate opinion.

TITLE: In re M.N.
INDEX NO.: U.14.
CITE: (3/10/2015), 27 N.E.3d 1116 (Ind. Ct. App 2015)
SUBJECT: Dismissal of petition to terminate parental rights improper
HOLDING: Tr. Ct. erred in dismissing Heartland Adoption Agency's ("Heartland") petition to terminate parental rights of Father, to which Father had consented, because the Tr. Ct. erroneously concluded Heartland acted outside the scope of its authority under Ind. Code § 31-35-1-4, by seeking, on behalf of Mother, to terminate Father's parental rights while leaving her rights intact without also raising issues related to the child's placement, supervision, or adoption. The statute does not restrict the reasons of a licensed child placing agency, like Heartland, may file a petition to voluntarily terminate parental rights. Held, judgment reversed and remanded.

TITLE: In re M.R.
INDEX NO.: U.14.
CITE: (10-14-10), 934 N.E.2d 1253 (Ind. Ct. App. 2010)
SUBJECT: CHINS - Improper parental participation order
HOLDING: In CHINS dispositional hearing, juvenile court was without authority to enter parental participation order against incarcerated Father without first establishing paternity to determine that Father was indeed a "parent" pursuant to Ind. Code 31-9-2-88. Father's mere status as a party did not confer authority to juvenile court to order his parental participation prior to a determination that he is, in fact, a parent. Moreover, before parental participation can be ordered as part of CHINS disposition, certain procedural requirements must be met. Mikel v. Elkhart County Dept. of Pub. Welfare, 622 N.E.2d 225 (Ind. Ct. App. 1993). Absent the filing of a proper verified parental participation petition, a juvenile court does not have authority to order parental action. Held, vacated in part and remanded.

TITLE: In re M.S.

INDEX NO.: U.14.

CITE: 898 N.E.2d 307 (Ind. Ct. App. 2008)

SUBJECT: Insufficient evidence for termination - best interest of child; mother's struggles with child's special needs

HOLDING: Tr. Ct.'s termination of mother's parental rights was erroneous. In order to terminate the parental relationship, State must prove by clear and convincing evidence four factors, including that termination is in the best interests of the child. Ind. Code 31-35-2-4(b)(2). Here, M.S. has severe behavioral difficulties, including Pervasive Personality Disorder, which is similar to autism. In August 2002, Mother asked DCS for help because she claimed she was unable to control two-year-old M.S.'s behavior or protect her other child from him. DCS placed M.S. in foster care for a few months. In November 2004, Mother again brought M.S. to DCS due to her problems controlling M.S. and keeping her two other children safe. M.S. remained in foster care for two years. DCS attempted a trial home visit which lasted approximately six months. M.S. was then placed in the Indiana Developmental Training Center in May of 2007. Eventually, DCS moved to terminate. Everyone who testified at the termination hearing agreed that Mother and M.S. loved one another. Moreover, the caseworker even testified that the heart of the family's struggle is not Mother's parenting skills, but M.S.'s special needs. Although at the time of termination hearing, M.S. was still at the Developmental Training Center in an attempt to stabilize him, DCS argued termination was in M.S.'s best interest because he could be adopted into a situation where he is an only child. Mother testified that when M.S. is stabilized on medication, he is "awesome" and she has no problem with him. Although M.S.'s prognosis is unknown, Mother hopes that once he is stabilized, he could return home. To say that Mother's parental rights must be terminated merely because her child has special needs, and she needs help to manage his behavior would send a sobering message to all of the parents in Indiana with children who need ongoing medical or psychological assistance. Rather than taking the radical action of severing the parent-child bond prematurely, DCS and the courts should be focused on helping M.S. to become stabilized and reevaluating his best interests when and if stabilization occurs. Thus, State failed to present sufficient evidence that termination was in M.S.'s best interests.

RELATED CASES: L.S., 183 N.E.3d 362 (Ind. Ct. App. 2022) (TPR affirmed where Mother was unable to complete and maintain the necessary training to properly care for the child's extreme and extraordinary needs); M.A.J., 972 N.E.2d 394 (Ind. Ct. App. 2012) (because undisputed evidence showed Mother’s behavior improved greatly, DCS failed to meet burden to show conditions resulting in removal of Mother’s twins would not be fixed; while Mother’s bad past behavior, including a short period of incarceration in months leading up to termination hearing, was relevant, the dispositive question was whether Mother was fit to care for twins at time of termination hearing).

TITLE: In re N.Q.
INDEX NO.: U.14.
CITE: (10/8/2013), 996 N.E.2d 385 (Ind. Ct. App. 2013)
SUBJECT: Termination of parental rights - reliance on prior termination proceedings & failure to consider existing conditions
HOLDING: Evidence was insufficient to support Tr. Ct.'s judgment terminating parental rights, which was based almost entirely on evidence presented at initial termination proceeding and did not adequately account for current conditions. Initial termination order was reversed because children had not been removed for at least six months pursuant to a dispositional order as required by Ind. Code 31-35-2-4(b)(2)(A)(i). In fact, parents were without the direction of a dispositional decree prior to DCS's filing of petitions for termination. Court thus found it "troubling" that DCS would rely on evidence from first termination hearing, noting that timing requirements provided by statute are in place to insure that parents have an adequate opportunity to make corrections necessary in order to keep their family unit intact.

Moreover, it was error for Tr. Ct. to issue its order without adequately considering evidence presented by parents of their current conditions, including parents' new income and their ability to keep current on their bills and maintain a clean residence. Court also failed to consider the lack of evidence to the contrary presented by DCS, despite the fact it was DCS's burden to prove its case by "clear and convincing" standard. Crux of DCS's presentation of evidence at second termination hearing was that children did not want to leave their foster parents and be returned to parents' care, which is insufficient for involuntary termination. See In re D.B., 942 N.E.2d 867 (Ind. Ct. App. 2011) (noting that a "parent's constitutional right to raise his or her own children may not be terminated solely because there is a better home available for the child"). Held, judgment reversed and remanded for hearing which fully considers parents' current circumstances as well as their habitual patterns of conduct to the extent such patterns exist.

TITLE: In re O.G.
INDEX NO.: U.14.
CITE: (12/21/2016), 65 N.E.3d 1080 (Ind. Ct. App. 2017)
SUBJECT: Erroneous termination of each mother's and father's parental rights
HOLDING: The trial court's termination of each Mother's and Father's parental rights was clearly erroneous because the termination was not supported by sufficient evidence.
The child was removed from Mother's custody in 2011, partly because of her turbulent, violent relationship with Father, who attacked her on numerous occasions. Their romantic relationship ended in 2013.

Mother completed a 26-week class on domestic violence in 2011. Even though there was no evidence of an ongoing violent relationship in 2014, DCS insisted she take the 26-week class again. When the provider declined to accept Mother into the program again, DCS did not refer her to another provider. Mother was diagnosed first with bipolar disorder, and later anxiety and depression, but received treatment, including medication. She successfully completed home-based case management. She was briefly incarcerated three times during the CHINS case. However, DCS had no concerns about her parenting abilities. She had a stable job and housing situation at the time of the termination hearing. "We find it extraordinarily troubling to say that a parent who is a victim of domestic violence, and has taken steps to end that relationship, deserves to have her parental rights terminated because the child's other parent assaulted her." Mother repeatedly asked DCS to re-refer services, but they did not. The family case manager's failure to even speak with Mother during the six months immediately preceding the termination hearing was "appalling."

Father was incarcerated several times during the CHINS case, and the family case manager never tried to contact or visit him, did not send him the CHINS court's orders, and did not inform him of services he could complete while incarcerated, although Father completed a parenting class on his own initiative. "There is an extraordinarily troubling pattern of behavior in this case." Termination of parental rights is a last resort, available only when all other reasonable efforts have failed. Considering DCS's "explicit internal decision that it would exercise no effort whatsoever to reunify Father with Child," the evidence does not support termination. Held, judgment reversed.

TITLE: In re R.S.

INDEX NO.: U.14.

CITE: (8/16/2016), 56 N.E.3d 625 (Ind. 2015)

SUBJECT: Father's failure to appear for CHINS hearings or participate in services is not clear and convincing evidence supporting termination

HOLDING: Fundamental right of a parent to the care, custody and control of his or her child should be severed only when all reasonable efforts to maintain the relationship have failed. In re V.A., 51 N.E.3d 1140 (Ind. 2016). Here, there was insufficient clear and convincing evidence supporting Tr. Ct.'s conclusion that termination of Father's parental rights was in R.S.'s best interests. Since Father's release from incarceration, he has repeatedly demonstrated a desire to parent R.S. and had made progress by his successful completion of probation and maintaining clear drug screens. His failure to attend every scheduled supervised visitation or attend CHINS hearings is not clear and convincing evidence that Father is uninterested or unwilling to parent R.S. Given the loving bond that R.S. and Father share, Father's repeatedly expressed desire to parent R.S. and his exercise of regular visitation with R.S., Court does not believe that this case has reached the "last resort" stage. If in the future reunification is not a viable option, a subsequent petition for termination or the appointment of a legal guardian could be pursued. See Ind. Code § 31-34-21-7.5(c)(1)(E). Held, transfer granted, Court of Appeals' memorandum opinion vacated, judgment reversed.

TITLE: In re S.S.
INDEX NO.: U.14.
CITE: (6/27/2013), 990 N.E.2d 978 (Ind. Ct. App. 2013)
SUBJECT: Denial of continuance of termination hearing affirmed
HOLDING: A mother living in Florida was not denied due process when Tr. Ct. denied her motion to continue a termination of parental rights hearing involving her three children, who were determined to be in need of services in Indiana. After children were removed from Mother's care in Indiana, but before the termination hearing, Mother moved to Florida while expecting her fourth child. Department of Child Services and her attorney communicated with her and told her of date of termination hearing, but she did not appear. Attorney's motion to continue hearing was denied because Tr. Ct. wanted to move toward establishing permanency for the children, who had been out of mother's care for almost a year.

Court found no prejudice by the termination, noting that children suffered from medical conditions that required treatment and preventative measures and Mother did not properly care for them. She was not willing to participate in services and often left the children unattended during visits. Since the children's removal, they have improved. Upon balancing Mother's interest, risk of error by not having Mother present, and State's interest in protecting welfare of children, Tr. Ct. did not deny Mother due process of law when it denied her motion for a continuance. Held, judgment affirmed.

TITLE: In re W.M.L.
INDEX NO.: U.14.
CITE: (8/31/2017), 82 N.E.3d 361 (Ind. Ct. App. 2017)
SUBJECT: Denial of petition to terminate affirmed
HOLDING: Tr. Ct. did not err in denying DCS's petition to terminate the parent-child relationships because DCS did not meet its burden to prove there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied. DCS filed a notice of intent to not file a brief, acknowledging it could not meet the burden for appealing a negative judgment, but the guardian ad litem initiated this appeal *pro se*. The children were first removed from Mother and Father in 2012 because Mother had used marijuana during her pregnancy with A.H., and the family was homeless. The children were returned to the home but then removed again in 2013 after Father battered Mother. At the time of the hearing, Father had completed a batterer's intervention program and completed probation for his domestic battery conviction. He had completed a substance abuse program and had worked for the same roofing company for several years. He never had a positive drug screen. Mother had also completed court-ordered programs and had a full-time job with a lawn care service. She had not used illegal substances for the past year and was willing to do "whatever it took" to be a better parent. Further, Mother and Father, who had been together for sixteen years, had recently married and were living together in a three-bedroom home. When the Mother and Father visited the children, they were "ecstatic" to see their parents. Held, judgment affirmed.

TITLE: J.C. v. Indiana Department of Child Services
INDEX NO: U.14.
CITE: (5/24/2013), 994 N.E.2d 278 (Ind. Ct. App. 2013)
SUBJECT: Termination of parental rights - satisfactory plan for care and treatment of children
HOLDING: Evidence supported Tr. Ct.'s finding of an adequate plan for the children's future care, as a necessary element for termination of parental rights pusuant to Ind. Code 31-35-2-4(b)(1)(D). Mother argued that DCS' plan for the care and treatment of the children following termination is not satisfactory because the children are currently in pre-adoptive placement with paternal grandmother, who has taken the children to prison to visit Father on numerous occasions, but she did not allow similar visitation to Mother while she was incarcerated. Mother is concerned that paternal grandmother, if permitted to adopt, might alienate the children from Mother while allowing a relationship with Father, even though both parents' rights were involuntarily terminated for drug use and criminal activity.

Children were all in pre-adoptive placement with grandmother who had cared for them for almost a year when termination proceedings ended. Tr. Ct.'s finding of an adequate plan for children's future care is not tantamount to affirmation that adoption of these children by their grandmother would be in their best interests. See Ind. Code 31-19-11-1(a). Held, judgment affirmed.

TITLE: J.H. v. DCS
INDEX NO: U.14.
CITE: (01-28-20), 141 N.E.3d 845 (Ind. Ct. App. 2020)
SUBJECT: Parents have no right to determine child's adoptive placement after TPR
HOLDING: In opinion affirming termination of parental rights, Court of Appeals rejected parents' argument that they have a fundamental right to determine adoptive parent and that, by terminating their parental rights, the trial court effectively refused to place daughter with her grandmother, contrary to the desires of the parents, DCS, and a guardian ad litem for the child. Court held that termination cannot be improper because it deprived the Parents of their right to consent to daughter's adoption. Termination is proper because they failed to address their substance abuse problems and because termination is in daughter's best interests. Termination of parental rights includes the right to consent to adoption, which in this case was a consequence of the termination.

TITLE: K.E. and A.C. v. DCS

INDEX NO: U.14.

CITE: (01-13-21), 162 N.E.3d 565 (Ind. Ct. App. 2021)

SUBJECT: Voluntary relinquishment of parental rights reversed and remanded when form mother signed did not include statutorily required language

HOLDING: Mother signed a form voluntarily relinquishing her parental rights. In a belated appeal, the Court of Appeals reversed the voluntary relinquishment of parental rights and remanded for further fact-finding to determine whether she received an advisement required under Indiana Code Section 31-35-1-12(9). Indiana Code 31-35-1-6 states that before a parent may consent to voluntary termination of their parental rights, they must give their consent in writing and be advised in accordance with Indiana Code section 31-35-1-12. However, in this case the voluntary termination of parental rights form lacked the required advisement of Indiana Code Section 31-35-1-12(9). Where a statutory requirement protecting the fundamental right of parents is absent, it takes on particular importance requiring reversal and remand in this case. In a footnote, the Court of Appeals cited *In Re O.R.*, 16 N.E.3d 965, 971 (Ind. 2014), finding that the Fourteenth Amendment right to establish a home and raise children is an extraordinary compelling reason to find that a forfeited appeal right should be restored. (There appears to be a six-month delay between the final appealable Order and the filing of the Notice of Appeal in this case.)

TITLE: Koehlinger v. K.H.

INDEX NO: U.14.

CITE: (08/09/2019), 127 N.E.3d 1168 (Ind. Ct. App. 2019)

SUBJECT: DCS failed to clearly and convincingly show that termination was in the child's best interest and was not contrary to law.

HOLDING: Guardian ad Litem, who had never met with or spoken to the children, appealed trial court's decision that DCS had not met burden to terminate mother's parental rights. Court of Appeals reversed the trial court, but on transfer the Indiana Supreme affirmed trial court's decision that DCS failed to clearly and convincingly show that termination was in the child's best interest and was not contrary to law despite Mother's ongoing inability to secure suitable housing. Mother made progress, including finding employment, attending AA meetings, participating in counseling, completing a parenting program, submitting to random drug screens, and attending supervised visits with her children. Mother lacked personal transportation and sometimes walked two hours each way to counseling and 40 minutes each way to supervised visits. Trial court found that DCS did not meet their burden to terminate parental rights, finding that some of the children would be difficult to place and that mother and children had a strong loving bond and that mother still struggled, including to find appropriate housing, but that mother had made progress or complied with most of not all of DCS's parent-participation plan. Held, transfer granted, Court of Appeals memorandum opinion vacated, judgment affirmed.

TITLE: K.T. v. DCS
INDEX NO.: U.14.
CITE: 159 N.E.3d 36 (Ind. Ct. App. 2020) (10/21/2020)
SUBJECT: Termination of parental rights - failure to prove statutory waiting-period requirements
HOLDING: This case began in May 2011, when the child was removed from the parents' home and later found to be a child in need of services due to their drug use and domestic violence issues. DCS later moved to terminate the parent-child relationship in May 2015, which was granted in April 2016. But both parents successfully appealed, with Court of Appeals finding that DCS had exhibited an "extraordinarily troubling pattern of behavior." However, the trial court again terminated their parental rights in January 2020 after finding the relationships were not in the child's best interests, among other things. The Court of Appeals affirmed the termination of father's parental rights, concluding that he failed to complete DCS services, cannot provide a safe environment for the child, has not communicated with the child since 2013 and is consistently incarcerated for violent crimes. But the Court of Appeals reversed the termination of mother's parental rights, finding her to be a fit and available parent. Instead of finding mother unfit, the trial court erroneously focused on the behavioral problems the child experienced throughout the proceeding. The emotional and behavioral problems of the child were not a result of Mother's actions or inactions but were instead compounded by DCS's lackluster attempts at reunification. The Court also found as erroneous that DCS had made reasonable efforts toward reunification, stating "We acknowledge the importance of permanency and stability in a child's life. But this alone cannot trump the fundamental and constitutional right parents have to the care and custody of their children. Essentially, the trial court terminated Mother's parental rights because — in the four non-consecutive months she was allowed to attempt parenting time — she was 'unable to build a bond with [Child.]' "However, Mother and Child previously had a strong bond, a bond DCS wrongly severed years ago and made no true attempt to repair. Allowing DCS to remove a child from its fit parent, stall reunification until there is no relationship left, and then claim reunification cannot occur because of the lack of relationship would set a terrifying precedent." Acknowledging that "reunification could have serious psychological and emotional ramifications for Child," the Court concluded that the alternative is worse. "DCS cannot be allowed to wrongly withhold a child from a fit, loving, and available parent for years and then ask this Court to affirm that injustice in the name of the child's happiness. This is a painful decision, and there is no happy outcome. We cannot give Mother and Child back the relationship they once had or the years they have lost together. We cannot give Child the future he wants with his foster family. We can only follow the law which requires us to reinstate the parental rights of Mother, a willing and able natural parent."

TITLE: Matter of BI.B.
INDEX NO.: U.14.
CITE: (2/17/2017), 69 N.E.3d 464 (Ind. 2017)
SUBJECT: Termination of parental rights - failure to prove statutory waiting-period requirements
HOLDING: An involuntary termination of parental rights petition must allege, and the State must prove, that at least one of the requirements of Ind. Code § 31-35-2-4(b)(2)(A) is true at time the termination petition is filed. Subsection (iii) plainly requires that the child has been removed from the parent for at least 15 of the most recent 22 months when the petition is filed, not by the date of the evidentiary hearing. See, e.g., In re Q.M., 974 N.E.2d 1021 (Ind. Ct. App. 2012).

Here, DCS alleged that the juvenile court had entered a no-reasonable-efforts finding and that the child had been removed from the parent for 15 of the last 22 months, neither of which were true. The DCS could have proved the child had been removed from the parent under a dispositional decree for six months, but it did not allege this subsection of the statute. The statute's requirement to allege an applicable waiting period is absolute and demands "strict compliance." The DCS “neither proved the two statutory waiting periods it alleged, nor alleged the one it could have proved.” Thus, terminating Father’s parental rights despite DCS’s failure to prove the waiting period required reversal. Held, transfer granted, Court of Appeals' opinion at 61 N.E.3d 364 vacated, judgment reversed.

TITLE: Matter of B.L.P.
INDEX NO.: U.14.
CITE: (1/3/2018), 91 N.E.3d 625 (Ind. Ct. App. 2018)
SUBJECT: TPR reversed; evidence insufficient and Interstate Compact on Placement of Children does not apply to out-of-state parents
HOLDING: The State failed to present sufficient evidence to terminate Father's parental rights. In 2005, Child was born out of wedlock to Father and Mother. Child later moved in with Grandmother because both Father and Mother were incarcerated. Father was later released, and in 2008, he moved to Atlanta, Georgia for "a change of scenery." In 2012, he was convicted of dealing cocaine in Georgia and was incarcerated. In 2013, the Tr. Ct. found Child was a CHINS based on Grandmother's inability to care for Child, Mother's drug abuse and instability, and Father's incarceration. Father was released in 2014 and completed probation and parole in 2016. Sometime in 2016, DCS asked Father to be evaluated under the Interstate Compact on the Placement of Children (ICPC). Father was told that only one session was necessary to complete the evaluation. Eventually, he was told seven or eight sessions were necessary to complete the evaluation; because Father could not afford the $300 fee per session, he failed to complete the assessment. In July of 2016, DCS asked the Tr. Ct. to terminate Father's parental rights. The Tr. Ct. granted the request, concluding: 1) there were reasonable possibilities that the conditions that resulted in removal would not be remedied and that continuing the parent-child relationship would pose a threat to Child's well-being; and 2) termination was in Child's best interest. See Ind. Code 31-35-2-4(b)(2). The Tr. Ct. cited, among other things, 1) Father's failure to complete the assessment and 2) Father's failure to consistently pursue the Father-Child relationship since Father had visited Child only twice in the previous three years.

The evidence was insufficient to terminate Father's parental rights. First, to the extent the termination was based on Father's failure to complete the assessment ordered pursuant to the ICPC, the Tr. Ct. committed legal error. "Just two years ago, this Court squarely held that 'the ICPC does not apply to placement with an out-of-state parent.' D.B. v. Ind. Dep't of Child Servs., 43 N.E.3d 599, 604 (Ind. Ct. App. 2015) (emphasis added), *trans. denied*. Notwithstanding this unambiguous holding, apparently DCS is still requesting and Tr. Ct.s are still granting ICPC evaluations for out-of-state parents."

Further, the evidence does not clearly and convincingly support the judgment. Father, in fact, "has done everything within his power to remedy the mistakes of the past and forge a bond with Child," and there is no evidence that continuing the relationship would threaten Child's well-being. For instance, even though he has visited Child only twice in the previous three years, Father regularly participated in telephone and Skype calls with Child. The failure to visit Child more often is explained by the expense of flights from Atlanta and that absence from work could cause Father to lose his job. Also, terminating the relationship is not in the best interests of the Child. Since his release from incarceration in 2014, Father has made every effort to better himself and become a suitable caregiver of Child. All of his interactions with Child have been positive, and Child is eager for those to continue. The family case manager testified that Father and Child have a good relationship. Held, judgment reversed.

TITLE: Matter of D.H.
INDEX NO.: U.14.
CITE: (2/1/2019), 119 N.E.3d 578 (Ind. Ct. App. 2019)
SUBJECT: Termination of parental rights reversed - failure to provide services
HOLDING: Significant procedural irregularities in underlying CHINS case created a risk of the erroneous filing of a petition to terminate parental rights, in violation of Mother's due process rights. Family case manager who took over Mother's case did not maintain contact with service providers and knew little to nothing about Mother's service needs and compliance or non-compliance, yet moved to terminate parental rights in violation of Mother's rights to due process. DCS's failure to provide services that were substantial and material in relation to the reunification plan involving Mother, who was a victim of domestic battery, was a denial of due process. Held, termination of parental rights reversed.

TITLE: Matter of G.M.
INDEX NO.: U.14.
CITE: (3/13/2017), 71 N.E.3d 898 (Ind. Ct. App. 2017)
SUBJECT: Fundamental error in terminating Father's parental rights
HOLDING: The juvenile court erred when it terminated Father's parental rights because Child had not been removed from Father under a dispositional decree for at least six months, as required by Indiana Code § 31-35-2-4(b)(2)(A)(i). In its September 4, 2015 dispositional decree, the juvenile court ordered Mother to complete certain services, and, regarding Father, said, "Father may participate in services as he is able while incarcerated. Father's dispositional hearing will not occur until his release from incarceration." In a December 3, 2015 order that changed Child's permanency plan from reunification to adoption, the juvenile court noted, "Father is incarcerated and is not under disposition."

The Court preliminarily observed that Father failed to argue to the trial court that he had not been under a dispositional decree for at least six months. However, the constitutionally protected rights of parents to establish a home and raise their children requires a reviewing court to treat as fundamental error the failure of a juvenile court to require compliance with any condition precedent to terminating parental rights. Parent-Child Relationship of L.B. and S.B. v. Morgan Cnty. Dept. of Public Welfare, 616 N.E.2d 406, 407 (Ind. Ct. App. 1993), *trans. denied*.

Reviewing the merits of Father's claim, the Court observed, "An involuntary termination petition must allege, and the State must prove by clear and convincing evidence, that the child was removed from the parents for at least six months under a dispositional decree at the time the involuntary termination petition was filed." In re D.D., 962 N.E.2d 70, 74 (Ind. Ct. App. 2011). As stated in the court's order, Father was not "under disposition" on December 3, 2015, and, thus, when DCS filed the petition to terminate his parental rights three months later, Child had not been removed as to Father for at least six months. Held, judgment reversed.

TITLE: Matter of J.R.O.
INDEX NO.: U.14.
CITE: (11/16/2017), 87 N.E.3d 37 (2017)
SUBJECT: Motion to contest adoption need not be in writing
HOLDING: J.R.O. was the subject of a CHINS proceeding and a guardianship proceeding. His maternal great-aunt and her wife petitioned to adopt him. J.R.O.'s father was incarcerated and unrepresented by counsel in the adoption proceeding when trial court held a hearing on the adoption petition. During that hearing, the CHINS, guardianship and adoption proceedings were consolidated. An attorney who represented Father in the CHINS proceeding orally objected to the filing of the adoption petition becaues adoption would terminate Father's parental rights.

Ind. Code § 31-19-9-18 provides that "[t]he consent of a person who is served with notice...to adoption is irrevocably implied without further court action if the person...fails to file a motion to contest the adoption...not later than thirty (30) days after service of notice..." Addressing a matter of first impression, Court held that a motion to contest an adoption need not be in writing. Motions may be either written or oral and oral motions may be filed. Father's counsel's oral motion at the hearing was a valid motion to contest Appellee's adoption of J.R.O. Held, judgment reversed and remanded for further proceedings.

NOTE: Chief Justice Rush, joined by Justice David, issued an op;inion dissenting from the denial of transfer expressing her belief that after an oral motion contesting an adoption, the trial court should ensure on the record that: 1) the motion is on the record, 2) the parties are present or promptly notified of the motion, and 3) the motion – including whose it is – is clearly reflected on the chronological case summary. See In re Adoption of J.R.O, 95 N.E.3d 73 (Ind. 2018).

TITLE: Matter of M.B.
INDEX NO.: U.14.
CITE: (3rd Dist., 8/8/94), Ind. App., 638 N.E.2d 804
SUBJECT: Child's out of court statement admissible where testifying at hearing would harm child
HOLDING: In termination of parental rights case, Tr. Ct. did not err in admitting out-of-court statements of children to DPW counselor where children were deemed "unavailable" to testify. Child's out-of-court statement is admissible in Child in Need of Services (CHINS) case or case involving termination of parental rights if Tr. Ct. finds that statement is sufficiently reliable and child is unavailable as witness because psychiatrist, physician, or psychologist certifies that child's participation in proceeding creates substantial likelihood of emotional or mental harm to child. Ind. Code 31-6-15-3. Here, parents asserted that failure of Department of Public Welfare (DPW) to have children present at termination proceeding should have resulted in statements being excluded. Child psychologist submitted affidavit stating that children would be traumatized if forced to recount their abuse or listen to events recounted by counselors and foster parents. Parents argued that affidavit was insufficient to satisfy the statutory requirement of certification that testifying would harm children because affidavit was based on hearsay. Ct. noted that psychologist examined children, and his opinion was, therefore, based in part on personal observation. Further, expert witness may utilize hearsay information in forming opinion. Cox v. American Aggregates Corp., App., 580 N.E.2d 679. Ct. concluded that Tr. Ct. properly admitted psychologist's affidavit and children's' statements into evidence. Held, termination of parental rights affirmed.

RELATED CASES: C.S., 190 N.E.3d 434 (Ind. Ct. App. 2022) (no denial of due process where an unsworn CASA report was admitted into evidence without objection, where Mother had the opportunity to call the CASA as a witness and cross-examine her but did not do so); H.B., 20 N.E.3d 174 (Ind. Ct. App. 2014) (allowing hearsay was harmless error becausetestimony was cumulative of other properly admitted testimony, which provided sufficient basis to terminate Father's parental rights).

TITLE: Matter of MA.H.
INDEX NO.: U.14.
CITE: (2/18/2019), 119 N.E.3d 1076 (Ind. Ct. App. 2019)
SUBJECT: Requirement that Father participate in a sex offender treatment program violated Fifth Amendment right against self-incrimination
HOLDING: In termination of parental rights case, requirement that Father admit to sexually abusing his stepdaughter to complete sex offender treatment violated Father's Fifth Amendment right against self-incrimination. Seven minor children were adjudicated CHINS after stepdaughter (R.W.) accused him of molesting her. As part of reunification of family, Tr. Ct. issued an order that required Father to complete a sex offender treatment course. Father refused to participate in the treatment program because he would have to take a polygraph and admit the truth of R.W.'s allegations, which ran counter to his Fifth Amendment right to remain silent. DCS argued that the law-of-the-case doctrine applies and can be used to make Father admit to sexual abuse because the Court of Appeals affirmed that conclusion in the underlying CHINS case. But the law-of-the-case doctrine cannot prohibit Father from invoking the Fifth Amendment.

In addition, the Tr. Ct.'s reliance on Father's silence and refusal to so admit to child molest as proof that his parental rights should be terminated violated his Fourteenth Amendment right to due process. Based on the totality of circumstances, the violation of Father's Fifth Amendment right unfairly influenced his participation and completion of other required services. Held, judgment reversed and remanded for reinstatement of the CHINS proceedings, a re-examination of the requirements for reunification and the entry of a revised dispositional order. Robb, J., dissenting, believes the majority opinion is written with too broad a brush and "encourag[es] refusal to participate in treatment." In addition, while Father can invoke his Fifth Amendment right, that does not prevent the consequences from asserting that right, i.e., the possibility of termination of Father's parental rights for failing to participate in meaningful therapy.

TITLE: Matter of N.C.
INDEX NO.: U.14.
CITE: (10/2/2017), 83 N.E.3d 1265 (Ind. Ct. App. 2017)
SUBJECT: Belated fact-finding hearing in termination case did not require dismissal
HOLDING: Ind. Code § 31-35-2-6(a) contemplates a fact-finding hearing in termination of parental rights proceedings not more than 90 days of a hearing request or within 180 days after the filing of the petition. Subsection (b) provides that, "upon filing a motion with the court by a party, the court shall dismiss the petition." Court declined DCS's invitation to construe the word "shall" as "directory," as opposed to "mandatory," language as in CHINS context. See Parmeter v. Cass Cty. Dep't of Child Servs., 878 N.E.2d 444 (Ind. Ct. App 2007).

Here, the fact-finding hearing was conducted 222 days after the filing of petition to terminate parental rights, and Father orally moved for dismissal at the outset of the fact-finding hearing. He did not file a written motion. Moreover, Father had earlier acquiesced to the fact-finding hearing date, so he waived his right to challenge the setting of that date even though it fell outside the statutory deadline. Held, denial of motion to dismiss termination petition affirmed.

TITLE: Matter of N.G.
INDEX NO.: U.14.
CITE: (10/6/2016), 61 N.E.3d 1263 (Ind. Ct. App. 2016)
SUBJECT: Deficient findings of fact insufficient to support termination of parental rights
HOLDING: Tr. Ct.'s findings of fact and conclusions of law are crucial to appellate review in parental termination cases, and required by Ind. Code § 31-35-2-8(c). However, where the findings and conclusions are sparse or improperly stated and do not adquately address each of the requirements of the termination statute, Court cannot conduct an adequate review. Parks v. Delaware Cnty. Dep't of Child Servs., 862 N.E.2d 1275 (Ind. Ct. App 2007). Here, Tr. Ct.'s sparse findings of fact were insufficient to satisfy the statutory mandate, as Court could not discern whether it based its termination order on proper statutory considerations. Held, judgment reversed and remanded for proper findings that support the judgment terminating Mother's parental rights.

TITLE: M.S. v. Ind. Dept. of Child Services
INDEX NO.: U.14.
CITE: (12/27/2013), 999 N.E.2d 1036 (Ind. Ct. App 2013)
SUBJECT: CHINS - out-of-state placement with Father affirmed
HOLDING: Tr. Ct. did not err by placing M.S. with Father, who lives in State of Washington, after M.S. was adjudicated a CHINS. Mother had substance abuse problems and lacked a permanent residence, vehicle or phone. Moreover, DCS found her missing on a visit to her home where the children had been left alone. As Father's service in the military unwound, he eventually took M.S. with him to live in San Diego, and DCS requested to dismiss the CHINS proceeding. On appeal, Mother argued DCS neglected its duty under Ind. Code 31-34-21-5.5 to make reasonable efforts to reunify or preserve a family. Court disagreed, concluding that the evidence in this case supported the continued out-of-state placement with M.S.'s natural father, which the Tr. Ct. found to be in the child's best interest. "Moreover, the placement of M.S. with Father was a familial reunification of sorts, albeit not of the kind Mother would have preferred." In light of the circumstances, DCS's reunification efforts were reasonable.Held, judgment affirmed; Brown, J., concurring, believed Father's home should have been inspected before the M.S. was placed with his Father and that DCS was too quick to terminate the CHINS proceeding, which took place one week after Father's home had been inspected.

"I believe that M.S. would have been better served had the court denied the motion and ordered that DCS continue with services for a period of time to monitor Father's parenting and compliance with the terms of the decree."

TITLE: R.L.P. v. Ind. Dept. of Child Services
INDEX NO.: U.14.
CITE: (2/19/2019), 119 N.E.3d 1098 (Ind. Ct. App. 2019)
SUBJECT: No statutory authority for parent to file motion to dismiss termination petition
HOLDING: Reading the unambiguous language of Ind. Code § 31-35-2-4(a) together with Ind. Code § 31-35-2-4.5, Court held that only a DCS attorney, a child's court appointed special advocate, or a child's guardian ad litem may file a motion to dismiss a termination of parental rights petition. Thus, Father was not authorized to file his motion to dismiss and Court likewise found no statutory basis for Tr. Ct. to have *sua sponte* dismissed the termination proceedings despite the fact that parents were willing to consent to the Child's adoption by Grandfather.

Court also upheld Tr. Ct.'s finding that the termination of Father's parental rights was in Child's best interests, despite Father's contention that she should have been placed with her paternal grandfather during the CHINS proceedings. The permanency plan for Child-- adoption-- was a suitable and adequate plan to support termination. Held, judgment affirmed.

TITLE: Santosky v. Kramer
INDEX NO.: U.14.
CITE: 455 U.S. 745 (1982)
SUBJECT: Parental rights termination proceedings -- clear & convincing evidence standard
HOLDING: Neglect proceedings were brought in family Ct. to terminate petitioners' rights as natural parents in their three children. Rejecting petitioners' challenge to constitutionality of New York Family Ct. Act Section 622's fair preponderance of evidence standard, Family Ct. weighed evidence under standard & found permanent neglect. After subsequent dispositional hearing, Family Ct. held that best interests of children required permanent termination of petitioners' custody. Appellate Division of New York Supreme Ct. affirmed, & New York Ct. of Appeals dismissed petitioners' appeal to that Ct. U.S. Supreme Ct. held that fundamental liberty interest of natural parents in care, custody, management of their child is protected by Fourteenth Amendment, & does not evaporate simply because they have not been model parents or have lost temporary custody of their child to State. Parental rights termination proceeding interferes with that fundamental liberty interest. When State moves to destroy weakened familial bonds, it must provide parents with fundamentally fair procedures. Before State may sever completely & irrevocably rights of parents in their natural child, due process requires that State support its allegations by at least clear & convincing evidence. Clear & convincing evidence standard adequately conveys to fact finder level of subjective certainty about his factual conclusions necessary to satisfy due process. Determination of precise burden equal to or greater than that standard is matter of state law properly left to state legislatures & state courts. Held, judgment vacated & remanded; Rehnquist, J., dissenting.

RELATED CASES: In re Adoption of C.B.M., 992 N.E.2d 687 (Ind. Ct. App. 2013) (parents have fundamental liberty interest in the care, custody, and management of children, even if parents are not model parents and have temporarily lost custody of children to State).

TITLE: S.E. v. DCS
INDEX NO: U.14.
CITE: (7/30/2014), 15 N.E.3d 37 (Ind. Ct. App. 2014)
SUBJECT: Requiring deaf mother to testify by signing to interpreter did not violate due process
HOLDING: At the hearing on DCS's petition to terminate deaf mother's parental rights, requiring mother to testify by signing to an interpreter did not violate her due process rights. Tr. Ct. had initially granted mother's request to testify orally, but soon ordered her to testify through the interpreter because her oral testimony was incomprehensible.

Evidence Rule 611(a) gives Tr. Ct.'s discretion to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." See Castro v. State Office of Family & Children, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*; Sowders v. Murray, 280 N.E.2d 630, 635 (1972). In exercising this discretion, the Tr. Ct. did not deny Mother's due process rights. Held, judgment affirmed.

TITLE: S.E. v. Indiana Dept. of Child Services
INDEX NO: U.14.
CITE: (7/30/2014), 15 N.E.3d 37 (Ind. Ct. App. 2014)
SUBJECT: Sufficient evidence to terminate parental rights
HOLDING: There was sufficient evidence to support termination of Mother's parental rights because the evidence showed a reasonable probability that the conditions causing the removal of S.E. from Mother's home would not be remedied. See Ind. Code 31-35-2-4(b)(2)(B)(i). During the 27 months that S.E. had been removed, Mother's serious mental health problems did not improve. Mother had been suffering these problems for more than twenty years. Many providers testified they could not help Mother because she was confrontational, accusatory, or noncompliant. Terminating Mother's parental rights was also in the best interests of S.E. because she was thriving with her foster family, which she had come to know as her own. Held, judgment affirmed.

TITLE: T.B. v. Indiana Department of Child Services
INDEX NO.: U.14.
CITE: (06-29-12), 971 N.E.2d 104 (Ind. Ct. App. 2012)
SUBJECT: No policy prohibiting termination of parental rights for mentally retarded parents
HOLDING: It is well-settled that mental retardation, standing alone, is not a proper ground for automatically prohibiting the termination of parental rights. Egly v. Blackford Cnty. Dep't of Public Welfare, 592 N.E.2d 1232 (Ind. 1992). It therefore stands to reason that the converse should also be true, i.e., that mental retardation, standing alone, is not a proper ground for automatically *prohibiting* the termination of parental rights. It is not a proper function of this court to ignore the clear language of a statute and, in effect, rewrite the statute in order to render it consistent with a particular view of sound public policy. Thus, Court declined Mother's invitation to depart from clear and unambiguous language of Indiana's termination statute in order to judicially legislate an exception whereby mentally handicapped parents are immune from involuntary termination proceedings. Tr. Ct's unchallenged findings clearly and convincingly support its ultimate decision to terminate Mother's parental rights. Held, judgment affirmed.

TITLE: T.J. and D.C. v. DCS
INDEX NO.: U.14.
CITE: (06/10/2020), 149 N.E.3d 1222 (Ind. Ct. App. 2020)
SUBJECT: Inadequate consent advisement required reversal of termination of parental rights
HOLDING: Mother was not at the termination of parental rights hearing. Her attorney was present and advised the court that mother had been advised of her rights and after being advised she signed a consent to termination of her parental rights. Termination of parental rights was granted based upon mother's signed consent. It was clear Mother received eight of nine statutory advisements before signing the consent. However, there was inadequate evidence that mother received the ninth statutory advisement and TPR was reversed for further factfinding into whether mother received the ninth advisement.

TITLE: T.K. v. DCS

INDEX NO.: U.14.

CITE: (10-31-19), 135 N.E.3d 607 (Ind. Ct. App. 2019)

SUBJECT: Failure of DCS to make reasonable efforts to reunify Father with child violated Due Process - termination of parental rights reversed

HOLDING: Father, recently released from 16 years in prison, met with DCS and made efforts to establish paternity, obtain a parent aid, and initiate visits with his child. Instead of assisting father and providing services, the DCS family case manager early on decided the child would be better off in foster care. Court of Appeals *sua sponte* finds a denial of Due Process, finding that Father should have been provided with assistance from DCS but instead DCS's actions set Father up to fail. Court acknowledges that Father has struggles and is not perfect and that permanency for a child is a worthy goal. However, the Court of Appeals finds DCS wholly failed to make reasonable efforts to preserve the sacrosanct legal relationship between parent and child. Held, termination of parental rights reversed.

TITLE: T.L. v. DCS
INDEX NO.: U.14.
CITE: 158 N.E.3d 432 (Ind. Ct. App. 2020) (10/20/2020)
SUBJECT: TPR affirmed, no violation of due process to deny Father's motion to continue
HOLDING: When Father failed to appear for the fact-finding hearing regarding the termination of his parental rights, his counsel requested a continuance. The trial court denied his request, and during the hearing the parties and the trial court used language that resulted in significant confusion as to whether Father was defaulted for failure to appear or whether the trial court issued a judgment on the merits. After DCS presented family case manager's testimony, Father's drug screen and criminal court records, the trial court ultimately terminated Father's parental rights. The trial court did not change the date of the hearing, there was no emergency motion for a continuance, and Father's counsel was present at the hearing and cross-examined the DCS witnesses. The Court of Appeals held that the trial court's judgment was a judgment on the merits with sufficient evidence to support it and that the trial court did not violate Father's due process rights when it denied his motion for a continuance.

TITLE: Termination of K.T. and D.T. v. Child Services

INDEX NO.: U.14.

CITE: (12-19-2019), 137 N.E.3d 317 (Ind. Ct. App. 2019)

SUBJECT: TPR reversed where there was insufficient evidence to support the trial court's conclusions Father was unlikely to remedy the reasons for Child's removal and he was a threat to the well-being of Child.

HOLDING: Child was removed from Mother's home after sustaining injuries and later adjudicated as CHINS. Father had established paternity of Child, but Child lived with Mother as her sole custodian. When Child was removed from Mother, DCS ruled out placement with Father due to concerns over stability, criminal history, and alcohol consumption. However, the Court of Appeals noted there was no evidence Father was ever convicted of a crime, no evidence he was ever diagnosed with an anger-related mental health issue or expressed anger in Child's presence, and no evidence he abused alcohol or ever consumed alcohol in Child's presence, thus no evidence supporting the Child's initial or continued placement away from Father. The Court held that although there was evidence to support the trial court's conclusion Father did not participate fully in services, that alone cannot sustain the termination order. The State may not remove a child from a biological parent without proof of the reason for removal (or, here, proof of the reason for failure to place Child with Father after removal from Mother), order the parent to participate in services to remedy some unsubstantiated reason for removal, and then terminate the parent's rights solely because they did not comply with those services. The visitation supervisor stated she found Father's parenting style too permissive, insufficiently structured, and unrealistic regarding expectations of Child and Father missed some supervised visits due to his work schedule and his commitment to take his other child to his baseball games. The Court of Appeals noted that the state may not forever terminate a parent/child relationship because it disagrees with a particular parenting style and that there was no evidence that if Father had custody of child he would fail to provide adequate childcare for her while he was at work or his other child's sporting events. The Court held there was insufficient evidence to support the order terminating Father's parental rights and reversed the trial court's order.

TITLE: Termination of N.C. & A.C. v. DCS
INDEX NO.: U.14.
CITE: (6/21/2016), 56 N.E.3d 65 (Ind. Ct. App. 2016)
SUBJECT: ADA doesn't apply in termination proceedings
HOLDING: The Americans with Disabilities Act (ADA) does not apply in termination of parental rights proceedings. Stone v. Daviess Cnty. Div. of Children and Family Servs., 656 N.E.2d 824 (Ind. Ct. App. 1995). Father is deaf and has cognitive and mental health problems. He contended DCS was required to provide accommodations under the ADA and that DCS's failure to do so gave him a defense in the termination proceeding. However, even though the ADA does not apply here, DCS did provide services to Father that would have sufficiently complied with the ADA. Held, judgment affirmed.

Note: Justice David, joined by Justice Rucker, dissented from denial of transfer, disagreeing with Stone and arguing that DCS should always be required to comply with the ADA, not just when providing mandatory services, and that any non-compliance should be grounds for a defense.

TITLE: Tre.S. v. Ind. Dept. of Child Servs.
INDEX NO: U.14.a.
CITE: (05/27/2020), 149 N.E.3d 310 (Ind. Ct. App. 2020)
SUBJECT: Due Process violation for holding termination of parental rights proceeding without parent or counsel present
HOLDING: Since at least July of 2018, trial courts and DCS have been on notice that the Court of Appeals had concerns about Due Process violations in the trial courts involving termination of parental rights. In this case, DCS concedes Due Process was violated when trial court proceeded to termination without the parent or attorney present. Court noted that because DCS continues to move to dismiss and remand cases to the trial court after an appellant's brief has been filed, "this unfortunately means that throughout this state, there continues to be significant violation of parent's due process rights." "This case is just one example." "This must stop." Termination of parental rights reversed.

TITLE: Z.B. v. Indiana Dept. of Child Services
INDEX NO.: U.14.
CITE: (7/31/2018), 108 N.E.3d 895 (Ind. Ct. App. 2018)
SUBJECT: CASAs may seek termination of parental rights without DCS
HOLDING: Addressing a matter of first impression, Court held that court-appointed special advocates (CASAS) have the statutory authority to prosecute a petition to terminate parental rights, even when the Department of Child Services (DCS) opposes the termination. In this case, DCS petitioned to terminate Mother's parental rights to four of her children. DCS did not believe termination was necessary for Ma.B., because the child was living with Father and his wife. However, the CASAs petitioned to terminate Mother's parental rights to Ma.B., over the objections of DCS and Mother, and trial court terminated Mother's rights to all the children, including Ma.B. On appeal, DCS argued that letting a "CASA prosecute a termination petition is tantamount to letting a child prosecute a termination case against his or her parents." Court held that because Ind. Code § 31-35-2-4(a) specifically authorizes CASA workers to independently initiate termination proceedings, they can also independently prosecute these matters. "[O]ur legislature specifically created a mechanism for DCS - or a guardian ad litem or a CASA - to express opposition to a petition to terminate parental rights...That motion may be successful, but when it is not, we discern no impediment to proceeding with the petition to terminate parental rights." Court found sufficient evidence supporting termination of Mother's parental rights as to the Children. Held, judgment affirmed and remanded to correct scrivener's errors.

U. JUVENILE

U.15. Rights of parents in juvenile proceedings (IC 31-6-3-2)

TITLE: G.E. v. Ind. Dept. of Child Services
INDEX NO.: U.15.
CITE: (4/15/2015), 29 N.E.3d 769 (Ind. Ct. App 2015)
SUBJECT: Denial of expungement of child abuse report affirmed
HOLDING: Ind. Code § 31-33-27-5 (effective 2012) allows a person to ask for expungement of child abuse or neglect reports. The court "may" grant the petition if it finds by clear and convincing evidence that there is "little likelihood that the petitioner will be a future perpetrator of child abuse or neglect" and "the information has insufficient current probative value to justify its retention in records of the department for future reference."

Here, in a case of first impression, Court held that a woman seeking to expunge a substantiated report of child neglect in order to keep her job as a cook at a day care center did not meet the necessary statutory requirements to grant the expungement. Even if G.E.'s testimony alone established that she no longer posed a threat to children, she did not show that her substantiated report of neglect or abuse from 2000 no longer has current probative value to keep in DCS' records. Because G.E.works at a child care center, child care centers are prohibited from employing or using the services of someone known to have abused children, and employment of such people could be grounds to revoke a license, it is clear that G.E.'s records have probative value. Held, denial of expungement petition affirmed.

TITLE: In re A.M-K.
INDEX NO.: U.15.
CITE: (2/20/2013), 983 N.E.2d 210 (Ind. Ct. App 2013)
SUBJECT: Rights of parents in CHINS - forced medication
HOLDING: DCS failed to present sufficient evidence to overcome Mother's liberty interest in deciding her own treatment when Mother objected to the order requiring her to take her medication and presented evidence of her concerns. A juvenile court has broad discretion to order a parent to participate in programs and services that relate to some behavior or circumstance that was revealed by the evidence. However, where a parent objects to an order directing the parent to take all medications as prescribed and presents evidence of side effects and religious beliefs supporting that objection, additional evidence is necessary to overcome the parent's constitutionally protected liberty interest in remaining free of unwarranted intrusions in the mind and body. Here, there was ample evidence that Mother suffered from a mental disorder with psychotic features. Finding Mother's child A.M-K a CHINS due to Mother's mental illness, the juvenile court ordered Mother to take all medications prescribed. Mother objected and offered uncontradicted evidence that the anti-psychotic medications she was prescribed had serious side effects that interfered with her heart condition, and she also raised religious objection to the medications. The DCS presented no testimony from a psychiatrist that suggested, let alone proved, that an order directing Mother to take any particular medication was necessary in order for Mother to be stable enough to adequately parent A.M.-K. Although DCS presented insufficient evidence to support the order requiring Mother to take any prescribed medication, they did support the order requiring Mother to participate in a psychiatric evaluation. And once such an evaluation takes place, the DCS may well have sufficient information to move for a modification to require Mother to take specifically recommended medications deened necessary at that time for her reunification with A.M.-K. Held, judgment affirmed, in part, and reversed, in part, and remanded for additional proceedings consistent with this opinion.

TITLE: In re D.T. v. Ind. Dept. Of Child Services
INDEX NO.: U.15.
CITE: (1/25/2013), 981 N.E.2d 1221 (Ind. Ct. App 2013)
SUBJECT: Refusal to appoint guardian ad litem for father in termination proceeding
HOLDING: 15 year-old father's due process rights were not violated when juvenile court did not appoint Guardian ad Litem (GAL) for him during proceedings in which his parental rights were terminated. GALs were appointed for mother because of her lower cognitive abilities, and for child because of developmental disabilities. Father was given multiple chances to participate in services and learn to parent the Child, but declined to do so and continued to disregard conditions set by court. Thus, any risk of error created by not providing Father with a GAL was low.

Court expressed disappointment with allowing a hearing to proceed while Father was without counsel, and with a participation decree that was not tailored to a minor parent. However, juvenile court emphasized Father's failure to meet obligations that were appropriate for a minor. He was given multiple referrals to multiple different services throughout the eighteen months leading up to termination, in large part out of respect for his age. It was the sum total of Father's lack of participation that largely informed trial court's opinion, and not the choices that were made at any one hearing. Held, termination of Father's parental rights affirmed.

TITLE: In re E.M.
INDEX NO.: U.15.
CITE: (3/7/2014), 4 N.E.3d 636 (Ind. 2014)
SUBJECT: Deferential standard of review for termination of parental rights cases
HOLDING: Divided Court of Appeals reversed termination order by unpublished opinion. On transfer, Supreme Court stressed "great deference" given to Tr. Ct.s, "[b]ecause a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the Tr. Ct. when reviewing the sufficiency of the evidence."

Here, Supreme Court affirmed termination, saying Court of Appeals reweighed the evidence to reverse. Father's eventual efforts to establish a relationship with his children were commendable, and DCS's family preservation efforts with him could have been stronger. Yet the standard of review requires Court to consider only the evidence favorable to the judgment - and in turn, to respect Tr. Ct.'s reasonable conclusion that Father's efforts were both too little in view of his violence and earlier pattern of hostility toward services, and too late in view of children's urgent need for permanency after 3.5 years in out-of-home placement. The similarities between this case and Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006) may have permitted Tr. Ct. to find in Father's favor - but unlike Rowlett, the evidence was not compelling enough to require it. After hearing extensive testimony and reviewing voluminous exhibits, Tr. Ct. was within it discretion to find the children's needs for permanency to be weightier than Father's belated efforts. Held, transfer granted, Court of Appeals' opinion vacated, judgment affirmed. Rucker, J., dissenting, notes that Tr. Ct. "relied on several findings that were unsupported by any evidence whatsoever" in terminating Father's parental rights, and that State has failed to show by clear and convincing evidence that the conditions that led to children's removal will not be remedied.

TITLE: In Re Gault

INDEX NO.: U.15.

CITE: 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)

SUBJECT: Rights of parents in juvenile proceedings

HOLDING: Parents of child in juvenile delinquency proceeding are entitled to notice of delinquency petition and initial hearing. Notice must be given sufficiently in advance of Ct. proceedings to provide reasonable preparation time and must set forth alleged misconduct with particularity. Police officer filed petition alleging delinquency for lewd phone call on day following alleged act, which was day initial hearing (also serving as fact-finding hearing) was scheduled. Child's parents were not given written notice of petition or initial hearing. Notice of subsequent hearing was note written by police officer containing date and time of further hearing. Notice did not describe alleged misconduct. Delinquency hearing was improperly held where notice requirements were not met. Due process also requires that Ct. advise child and parents of right to representation by counsel or, if family unable to afford counsel, that one will be appointed. Probation officer cannot be relied upon to protect child's rights as counsel because such officers initiate actions against child and testify for prosecution. Judge cannot be said to represent child in juvenile proceeding. Juvenile Ct. did not advise child and parents of their right to counsel and proceeded with hearing, adjudication, and order of commitment in absence of counsel for child and parents or express waiver of rights. Mother's statement at habeas corpus proceeding that she knew she could have retained counsel did not operate as valid waiver of right. Held, reversed and remanded.

TITLE: L.B. v. State
INDEX NO.: U.15.
CITE: (3rd Dist., 12-23-96), Ind. App., 675 N.E.2d 1104
SUBJECT: Erroneous exclusion of parents from delinquency hearing
HOLDING: Parents of juvenile D are parties to delinquency action involving their child & may not be prohibited from attending Juvenile Ct. proceedings. Here, Tr. Ct. excluded parents from substantial portion of fact-finding hearing pursuant to separation of witness order. Ct. found that child's & parents' interests are indistinguishable in delinquency actions, & exclusion of parents must be accompanied by knowing & voluntary waiver of right to be present. Further, child has standing to assert parents' right to be present in Courtroom because parental presence may assist in protection of child's due process rights. Held, delinquency adjudication reversed & remanded. Chezem, J., concurring, noted that child's & parents' rights are not coextensive in all Ct. actions involving children & suggesting that Juvenile Ct. should have power to exclude parent if parental presence is not in best interests of child.

RELATED CASES: C.T.S., App., 781 N.E.2d 1193 (where D's mother was present during each hearing Tr. Ct. did not err in excluding D's stepfather due to witness separation order).

TITLE: Lehr v. Robertson
INDEX NO.: U.15.
CITE: 463 U.S. 248 (1983)
SUBJECT: Rights of parents in adoption proceedings
HOLDING: Appellant was putative father of child born out of wedlock. Appellee mother of child married another man (also appellee) after child was born. When child was two, appellees filed adoption petition in Ulster County, N.Y., Family Ct. which entered order of adoption. Appellant never supported child or offered to marry appellee mother, did not enter his name in putative father registry, which would have entitled him to notice of adoption proceedings, & was not in any of classes of putative fathers who are entitled under New York law to receive notice of adoption proceedings. After adoption proceeding was commenced, appellant filed paternity petition in Westchester County, N.Y., Family Ct. Appellant learned of pending adoption proceedings several months later. His attorney sought stay of adoption proceedings pending determination of paternity action, but adoption order had already been entered. Appellant filed petition to vacate adoption order on ground that it was obtained in violation of his rights under Due Process & Equal Protection Clauses of Fourteenth Amendment. Ulster County Family Ct. denied petition, & both Appellate Division of New York Supreme Ct. & New York Ct. of Appeals affirmed. Ct. held that where unwed father demonstrates full commitment to responsibilities of parenthood by coming forward to participate in rearing of his child, his interest in personal contact with his child acquires substantial protection under Due Process Clause. However, mere existence of biological link does not merit equivalent protection. If natural father fails to grasp opportunity to develop relationship with his child, Constitution will not automatically develop relationship with his child, nor will it automatically compel State to listen to his opinion of where child' s best interests lie. In addition, Appellant's rights under Equal Protection Clause were not violated. Because he had never established substantial relationship with his child, New York statute at issue did not operate to deny him equal protection. Appellee mother had continuous custodial responsibility for child, whereas Appellant never established any custodial personal, or financial relationship with child. In such circumstances, Equal Protection Clause does not prevent State from according two parents' different legal rights. Held, denial of petition to vacate adoption affirmed; White, J., dissenting.

TITLE: Matter of E.P.
INDEX NO.: U.15.
CITE: (5th Dist., 7-20-95), Ind. App., 653 N.E.2d 1026
SUBJECT: Right to counsel - indigent parents in CHINS proceedings
HOLDING: Indigent parent in CHINS proceeding may qualify for Ct.- appointed counsel under Ind. Code 34-1-1-3, which provides for appointment of counsel to persons who do not have "sufficient means to prosecute of defend action." Statute is not in irreconcilable conflict with Ind. Code 31-6-7-2(b), which provides discretionary right to appointment of counsel in juvenile Ct. proceeding regardless of financial status. In holding that statutes can be harmonized, Ct. noted that indigent parent may qualify for Ct.-appointed counsel under one statute but not the other. Here, record did not indicate that inquiry was made to determine parent's financial resources. On remand, if Tr. Ct. determines that parent does not have resources to hire private counsel, then counsel must be appointed for her & paid at public expense. Held, judgment affirmed & cause remanded.

RELATED CASES: G.P., 985 N.E.2d 786 (Ind. Ct. App 2013) (any error in Tr. Ct.'s failure to appoint counsel in underlying CHINS case was harmless; Ct. could not say that it changed the balance of risk of error in the termination proceedings).

U. JUVENILE

U.16. Paternity (IC 31-30-1-10)

TITLE: Clark v. Kenley

INDEX NO.: U.16.

CITE: (4th Dist., 1/30/95), Ind. App., 646 N.E.2d 76

SUBJECT: Prosecutor must file paternity action for child when requested by alleged father

HOLDING: Tr. Ct. did not err in refusing to dismiss paternity action brought by county prosecutor on behalf of child at request of alleged father, whose own paternity action was barred by two-year statute of limitations. Ind. Code 31-6-6.1-6(a) provides that man alleging to be father of child born out-of-wedlock has two years to file petition to establish paternity, but Ind. Code 31-6-6.1- 6(b) provides that child may file petition establishing paternity at any time before child reaches age twenty. Ind. Code 31-6-6.1-3 provides that upon request, prosecutor shall file paternity action and represent child in that action. Here, mother argued that prosecutor's filing of paternity action at father's request was attempted to circumvent statute of limitations applicable to father, and that prosecutor was not appropriate person to represent child as "next friend" in paternity action. Ct. found that language of Ind. Code 31-6-6.1-3 decisively mandates filing of petition by prosecutor if requested to do so. Prosecutor exclusively represents interests of child, which differ substantially from those of alleged father. Matter of Paternity of H.J.F., App., 634 N.E.2d 551. Child's paternity interests may include inheritance rights, social security survivor benefits, employee death benefits, life insurance benefits, establishment of familial bonds, cultural heritage, and family medical history. Further, prosecutor may represent child because there is no statutory limitation on who may act as child's "next friend" in paternity actions. Hood v. G.D.H. by Elliot, App., 599 N.E.2d 237. Held, judgment affirmed.

TITLE: K.S. v. R.S.
INDEX NO.: U.16.
CITE: (7/29/97), Ind., 669 N.E.2d 399
SUBJECT: Biological father may bring paternity action regardless of mother's marital status
HOLDING: Tr. Ct. did not err in denying mother's motion to set aside judgment establishing paternity of alleged biological father despite fact that mother was married to another man at time child was born and marriage remained intact throughout paternity proceedings. Ind. Code 31-6-6.1-2 authorizes man alleging that he is child's biological father to file paternity action. Alleged biological father is allowed to establish paternity without regard to mother's marital status at child's birth. In Re Paternity of S.R.I., 602 N.E.2d 1014. Child born to married woman but fathered by man other than her husband is "child born out of wedlock" for purpose of paternity statute. R.D.S. v. S.L.S., App., 402 N.E.2d 30. Here, mother and alleged father signed Agreed Entry establishing paternity of child, providing for joint custody of child and stating that no child support would be paid as long as joint custody arrangement remained in place. After Tr. Ct. approved agreement, mother filed motion to set aside judgment on grounds that Agreed Entry was void. Tr. Ct. denied motion and Ct. App. reversed, holding that Tr. Ct. had no jurisdiction to hear case where third person attempts to establish paternity of child born during marriage of mother and husband while marriage remains intact. On transfer, Ct. found that States have power to regulate alleged father's interest in establishing and maintaining relationships with their biological children. Michael H. v. Gerald D., 109 S. Ct. 2333 (1989). Indiana law does not preclude man from filing paternity action regardless of mother's marital status, and settlement agreement between parties constituted sufficient evidence to rebut presumption that mother's husband was child's biological father. Held, transfer granted, decision of Ct. App. vacated, judgment of Tr. Ct. affirmed.

TITLE: K.S. v. R.S.
INDEX NO.: U.16.
CITE: (7/29/96), Ind., 669 N.E.2d 399
SUBJECT: Paternity - failure to name child as party does not render paternity judgment void
HOLDING: Tr. Ct. did not err in denying mother's motion to set aside judgment establishing paternity of alleged biological father where child was neither named as party nor represented in paternity action. Ind. Code 31-6-6.1-2(c) provides that in every paternity case, child, child's mother, and any person alleged to be biological father are necessary parties. Guardian ad litem should be appointed to protect interests of child in paternity action. In Re Paternity of S.R.I., 602 N.E.2d 1014. Here, mother and alleged father signed Agreed Entry establishing paternity of child, providing for joint custody of child and stating that no child support would be paid as long as joint custody arrangement remained in place. After Tr. Ct. approved agreement, mother filed motion to set aside judgment on grounds that Agreed Entry was void, in part because child was not named as party nor represented by guardian ad litem. Ct. App. reversed Tr. Ct., and Ct. granted transfer, finding that failure to join necessary party rendered judgment voidable, but not void. Judgment is not res judicata and child is not negatively affected because child is not barred from later litigating any issue concerning his/her interests. Kieler v. C.A.T. by Trammel, App., 616 N.E.2d 34; J.E. v. N.W.S. by S.L.S., App., 582 N.E.2d 829. Held, transfer granted, decision of Ct. App. vacated, judgment of Tr. Ct. affirmed.

U. JUVENILE

U.16. Records

U.16.e Confidentiality of juvenile court records (IC 31-37-23)

TITLE: Edelen v. State
INDEX NO.: U.17.e.
CITE: (05-06-11), 947 N.E.2d1024 (Ind. Ct. App 2011)
SUBJECT: Confidentiality of juvenile court records - exception when related to adult charged with crime
HOLDING: D's testimony during a juvenile proceeding was admissible into evidence during D=s criminal trial. Records of juvenile proceedings, pursuant to Ind. Code 31-39-1-2, except those specifically open under statute, are excluded from public access and are confidential. Ind. Administrative Rule 9(G)(1). Ind. Code 31-39-1-2, upon which Administrative Rule 9(G)(1) is based, provides that "all juvenile court records subject to this chapter are confidential." But Ind. Code 31-39-1-1(a) limits the scope of the chapter, in part, by exempting "records involving an adult charged with a crime or criminal contempt of court." The statutory exception is intended to ensure that the confidentiality provisions do not impede the State's investigation and prosecution of the adult charged with a crime.

Here, D, who worked as a caseworker for DCS, was charged with perjury and official misconduct for lying during a court hearing. The judge held the hearing in order to determine why one of D=s clients, a juvenile, had been held in secure detention for thirty days when the most she was supposed to be there is forty-eight hours. The judge wanted to know who dropped the ball on notifying him of the child=s placement and requesting a hearing. If the transcript of the juvenile hearing were suppressed under the confidentiality provisions, it would defeat the legislature=s intent for the statutory exception because it would preclude the prosecution of an adult charged with a crime. Moreover, the transcript not only related to both the adult and the charged crime but is the crime for which D is charged. Thus, the transcript was not a confidential juvenile record and was admissible. Court also noted that whether or not a transcript is considered a record covered by the juvenile confidentiality statutes in the first place is unclear, but unnecessary to the determination of the appeal. Held, judgment affirmed.

U. JUVENILE

U.17. Records

U.17.c Records – Fingerprinting and photographing child (see also U.4.c)

TITLE: J.B. v. State
INDEX NO.: U.17.c.
CITE: (2nd Dist., 07-06-07), Ind. App., 868 N.E.2d 1197
SUBJECT: Storage of confidential juvenile fingerprint & photograph records
HOLDING: Addressing matter of first impression, Ct. held that juvenile fingerprint & photograph records must be stored such that persons authorized to access adult records, but not juvenile records will not be able to access the latter while accessing the former. Here, State failed to present evidence that computerized database containing all the fingerprints taken from persons arrested in county complied with statutory confidentiality requirements regarding juvenile fingerprints, as State presented no evidence that computer database could be selectively "locked" to prevent access to juvenile records. See Ind. Code 31-39-5-2. However, any improper storage did not warrant suppression of juvenile's fingerprints, because individual who matched fingerprint from crime scene to fingerprint in database was authorized, as a latent print operator, to view confidential files pursuant to Ind. Code 31-39-4-8(a)(1) & would have discovered the fingerprints in any event. Juvenile challenged the admissibility of fingerprints on grounds of improper storage, & thus waived argument on appeal that fingerprints were illegally or improperly obtained. Held, denial of motion to suppress affirmed.

TITLE: K.K. v. State
INDEX NO.: U.17.c.
CITE: (4/9/2018), 98 N.E.3d 648 (Ind. Ct. App 2018)
SUBJECT: No error in admitting fingerprint evidence in juvenile case
HOLDING: Tr. Ct. did not abuse its discretion in admitting fingerprint evidence tying juvenile (K.K.) to act that would be burglary if committed by an adult. After police recovered fingerprints from the scene, a search of Indiana's statewide fingerprint database identified the prints as belonging to 16-year-old K.K. At his denial hearing, K.K. argued that the Database Fingerprints were illegally obtained and retained "as far as we know" because the State had not demonstrated that they complied with the applicable statutes, and thus any evidence obtained from using the Database Fingerprints was fruit of the poisonous tree. K.K. based his objection on police officer's testimony that its latent print examiner had "absolutely no knowledge" as to why K.K. was originally printed and entered into the fingerprint database. The Database Fingerprints were instrumental in establishing probable cause to charge K.K. But the use of the Database Fingerprints to establish probable cause does not require, as a matter of law, that the State present evidence to prove that they were taken in compliance with the Juvenile Fingerprinting Statutes as a prerequisite for the admissibility of a fingerprint card taken from K.K. on the morning of the denial hearing and testimony based on it. K.K. did not dispute that the prints made after the delinquency petition was filed were made in accordance with the applicable statutes. Nor he did not point to any evidence that the State actually violated the Juvenile Fingerprinting Statutes in some respect and there are no circumstances that call into question the State's compliance with the Statutes. Held, judgment affirmed.

TITLE: In re T.B.
INDEX NO.: U.17.e.
CITE: (2nd Dist.; 10-21-08), Ind. App., 895 N.E.2d 321
SUBJECT: Confidentiality of juvenile records
HOLDING: Juvenile court properly released CHINS and DCS documents to the newspaper but erred in releasing a transcript of a CHINS review hearing and records relating to Bailey's prior juvenile delinquency adjudications. The confidentiality provisions of Ind. Code 31-39-1 et seq. apply to all records of the juvenile court except the following: (1) records involving an adult charged with a crime or criminal contempt of court. . . Ind. Code 31-39-1-1(a). Juvenile court may grant any person having a legitimate interest in the work of the court or in a particular case access to the court's legal records. In exercising its discretion, court shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about: (1) the alleged commission of an act that would be murder or a felony if committed by an adult; or (2) the alleged commission of an act that would be part of pattern of less serious offenses. Ind. Code 31-39-2-10. Court of Appeals held that Ind. Code 31-39-2-10 is not limited to pending cases, but also involves closed cases. It also contemplates the release of court records regarding an adult respondent in a CHINS case. Further, reports concerning child abuse and neglect made to DCS may be released where a child's death may have been the result of abuse, abandonment, or neglect. Ind. Code 31-33-18-1.5.

Here, T.B., Bailey's daughter, died during the pendency of her CHINS proceeding. Bailey and her boyfriend were charged with T.B.'s murder. A newspaper requested the records relating to the pending CHINS, a closed CHINS, a transcript of a review hearing, Baily's prior juvenile adjudication and DCS records. Although Ind. Code 31-39-1-1(a)(1) exempts from confidentiality "records involving an adult charged with a crime," this exemption applies only to those juvenile court records that relate specifically to both the adult and the charged crime. Regardless, T.B's death during the pending CHINS proceeding and her prior involvement in the child welfare system are "legitimate interests" for purposes of Ind. Code 31-39-2-10. Thus, juvenile court properly released the pending and closed CHINS records. Also, because T.B.'s death may have been the result of murder or abuse, the DCS records were properly released.

But there is no statutory provision that allows juvenile court to release a transcript of a proceeding from which the public was excluded. Moreover, Ind. Code 31-39-2-8 only allows the release of juvenile delinquency records when the record relates to the acts that serve as the basis for the delinquency allegation. Although Bailey's alleged neglect and murder of T.B. were crimes that prompted the newspaper's request for access to her delinquency records, those acts were not the basis for the delinquency allegations. Thus, juvenile court erred in releasing Bailey's prior juvenile delinquency records and the transcript of proceedings. Held, judgment affirmed in part and reversed in part.

TITLE: In re James H.
INDEX NO.: U.17.e.
CITE: Cal.App.4th 1078, 65 Cal.Rptr.3d 410; A116315 (Cal. Ct. App. 207)
SUBJECT: Sealed juvenile records may not be disclosed in commitment proceeding
HOLDING: California Court of Appeals held that juvenile court records sealed pursuant to California law may not be disclosed for use in a proceeding instituted to have an adult sex offender committed as a sexually violent predator. By state statute, once a juvenile court has ordered records pertaining to a juvenile offender sealed, "the proceedings in the case shall be deemed never to have occurred." Except as otherwise provided in the statute, "the records shall not be open to inspection." Court found the statutory language, "a record that has been sealed may not be disclosed to a third party", "clear and unequivocal", unless one of the statutory exceptions applies. Court refused to imply an exception for SVP proceedings. State argued that sealed juvenile records should be treated the same as prisoners' confidential hospital psychological records, which may be considered in an SVP proceeding even though they otherwise are protected by the state constitution's privacy guarantee. Court noted that "confidentiality claims based on our state constitutional right to privacy must be weighed against the countervailing interests at stake. . . and are subject to a different analysis than a claim that a record sealed under a valid statute may be disclosed even when the statute expressly forbids disclosure."

TITLE: Matter of K.B. and B.L.
INDEX NO.: U.17.e.
CITE: (3rd Dist., 10-10-08), Ind. App., 894 N.E.2d 1013
SUBJECT: Erroneous disclosure of CHINS records to media
HOLDING: In child in need of services (CHINS) proceeding, Tr. Ct. abused its discretion by allowing the media access to the children's CHINS records. Pursuant to Ind. Code 31-33-18-1(a), investigatory report and any other information obtained during investigation of report of child abuse or neglect is confidential. Ind. Code 31-33-18-2, which lists persons to whom an investigatory report may be made available, does not include media representatives. Even if Ind. Code 31-39-2-10, which describes how "interested persons" may access juvenile court records, applies to CHINS proceedings, Tr. Ct. abused its discretion in disclosing records in this case because there was no specific ongoing threat to the safety or welfare of the community. In its order, Tr. Ct. stated that it was granting access to educate the public, to address the community's interest in the welfare of the children, and to give the public new insight into the workings of the Tr. Ct. and Department of Child Services. Court held that this laudable goal does not warrant disclosure of CHINS records because public awareness can be achieved by a variety of less intrusive measures. Children in this case are entitled to the same privacy and confidentiality that are offered to other children in less notorious CHINS proceedings. Held, judgment reversed.

U. JUVENILE

U.18. Interstate compact on juveniles (IC 31-6-10)

TITLE: Graham v. State
INDEX NO.: U.18.
CITE: (6-12-84), Ind., 464 N.E.2d 1
SUBJECT: Extradition - Juvenile Ct. jurisdiction not affected by improper return of D to Indiana
HOLDING: Jurisdiction of Juvenile Ct. over D is not affected by improper extradition of D from another state, although D may challenge admissibility of evidence obtained as result of illegal arrest and extradition. Massey v. State, 371 N.E.2d 703. Held, affirmed.