

# Children's Law Center of Indiana



## CHINS

3/06/2007

In **Perrine v. Office of Child Services**, 866 N.E.2d 269 (Ind. Ct. App. 2007), the Court reversed the juvenile court's judgment determining the child to be a CHINS as to Mother. On November 11, 2005, Mother's Marion County residence which she shared with her husband and her fourteen-year-old disabled daughter, was included in a routine probation sweep by Johnson County authorities. In the search of the house Johnson County authorities found paraphernalia commonly used for methamphetamine consumption in a bag in the bedroom of a temporary adult houseguest. Consequently, Marion County law enforcement arrested Mother and her husband for reckless possession of paraphernalia, child neglect, and child endangerment. When she was arrested, Mother explained that her daughter was disabled and she asked that she be allowed to call someone to care for the child. Mother's son, parents, brother, and landlord were trained in how to care for the child's special needs. The landlord lived downstairs and the Mother's parents and brother lived three and ten minutes away. The Johnson County authorities denied the request and, instead, sent the child to Wishard Hospital for evaluation. After the evaluation, Wishard employees reported to the Marion County Department of Child Services (DCS) that there was no one legally responsible to pick up the child upon her discharge. DCS investigated the circumstances and placed the child in a group facility after her discharge. Mother was released at about 9:00 a.m. the morning after her late night arrest and spoke to the DCS investigator. Mother told the investigator the charges for which she had been arrested and admitted that she had used methamphetamine on the Wednesday or Thursday before her arrest. The investigator filed a petition alleging that the child was a CHINS. The juvenile court held an initial hearing on November 15 and December 1, 2005, a pretrial hearing on February 15, 2006, and a fact-finding hearing on April 20, 2006. The juvenile court found, in essence, that the child was a CHINS because Mother, the sole legal custodian of the child, used methamphetamine, and was arrested for reckless possession of paraphernalia, neglect of a dependent, and child endangerment, leaving no one legally responsible to care for the child. Mother appealed.

**A single admitted use of methamphetamine, outside the presence of the child, without more, is insufficient to support a CHINS determination.** *Id.* at 276, 277. The Court noted that, contrary to DCS' contention on appeal, the juvenile court did not find, and the evidence did not show, that Mother used methamphetamine in the presence of the child. The Court distinguished White v. State, 547 N.E.2d 831, 836 (Ind. 1989), a criminal neglect case relied on by DCS, which found the evidence sufficient to support a conviction for Neglect of a Dependant, as a Class D felony, where the parent repeatedly exposed his minor child and her friend to marijuana smoking and invited his child to try the drug. In this regard, the Court pointed out that in White the parent repeatedly exposed his child and her friend to drug use

and even invited the child to smoke marijuana, whereas, here, the CHINS petition was based, in relevant part, on Mother's admission to a single recent use of methamphetamine and to a home not free of drug use. Perrine at 276. Further the Court stated that it found no Indiana CHINS cases in which a single occurrence of drug use, outside the child's presence, had been found sufficient to support a CHINS determination. Id.

**The juvenile court erred when it concluded that the unavailability of someone “legally responsible” to care for the disabled, fourteen-year-old at the time of Mother’s arrest and incarceration supported its CHINS determination, where Mother was prevented from arranging for trained child care for the child at the time of Mother’s arrest.** Id. at 277. Mother does not contest that she had sole custody of the child, but points out that she was only unavailable to take care of the child during the about six to nine hours she was incarcerated. The Court concluded that, while Mother was indeed unavailable during her incarceration; she was unreasonably prevented from providing a caretaker for her child. The Court noted that: (1) Mother does not contest that she was not available to receive the child upon her discharge from Wishard, but the record does not indicate when this discharge took place; (2) Mother's attempt to arrange for a caretaker for the child was thwarted when law enforcement refused to allow her to make a phone call to someone trained to care for the child such as Mother's parents or brother who lived three to ten minutes from her residence; (3) the charges against Mother were dropped shortly after she was released; and (4) neither the CHINS statutes nor the case law interpreting them require a child's caretaker to be one who is “legally responsible for the child.” The Court held that, on these facts, it could not say that coercive intervention of the court was necessary to assure that the child would receive the care, treatment, or rehabilitation that she needs. Id. at 276-77. The Court also pointed out, “The mere presence of drug paraphernalia in a bag in the residence is insufficient to support a finding of neglect under [I.C.] 31-34-1-1.” Id. at 277.