

# Children's Law Center of Indiana



## CHINS

11/20/2006

In **In Re T.H.**, 856 N.E.2d 1247 (Ind. Ct. App. 2006), the Court reversed the trial court's determination that the children who lived with Father were CHINS. Based on a report that Father was selling drugs and guns out of his residence where the children lived with him, on April 28, 2005, the Marion County Department of Child Services (MCDCS) caseworker and sheriff's deputies went to Father's residence. The residence overall appeared clean and appropriate for children, but a deputy found an unsecured gun on top of the refrigerator in the kitchen. Father was not arrested and the children were not aware of the gun's presence, but the caseworker, concerned that the lack of proper storage for the gun posed a safety threat to the children, asked Father to sign a Service Referral Agreement (SRA). The Father voluntarily executed the SRA which required, among other things, that Father submit to random drug and alcohol screenings and submit to a parenting assessment and follow through with recommendations made by the evaluator; but it did not include programs designed to address gun safety issues. The caseworker testified that she completed a "safety plan" and its safety interventions resolved the unsafe gun situation "for the present time." On September 28, 2005, however, MCDCS removed the children from the home. Two days later, MCDCS filed a petition alleging the children to be CHINS based on Father's failure to comply with the SRA. The trial court found the children were CHINS. Father appealed

**The trial court's findings and conclusions do not support any determination that Father neglected, abused, or abandoned his children, or that the children's physical or mental conditions were seriously endangered by Father's acts or inaction.** *Id.* at 1251. As to the issue of the Father's improper storage of the gun, the Court noted (1) it might have endangered the children at one time, but there was no evidence that the gun still endangered the children at the time of the hearing; and (2) there was no finding or evidence to indicate that the "coercive intervention of the court" was necessary to correct the gun safety issue. *Id.*

**The Court held: "We decline to say that failing to complete services necessarily means a child is a CHINS unless there is some evidence of substantial parental shortcomings endangering the child that needed to be addressed by those services."** *Id.* The Court observed that (1) other than the gun safety issue, the only possible basis for finding the children CHINS was Father's refusal to do everything that was required of him under the SRA; (2) parents are not perfect, and imperfect conduct can and should be addressed outside a CHINS proceeding; (3) it appears to be a waste of valuable resources to pursue a CHINS matter where it is not warranted; (4) refusal to cooperate with the government is not, by itself, a basis for the government to interfere with parental rights and the integrity of the family unit; and (5) Father might have neglected to participate in services, but there was insufficient evidence that he neglected his children so as to support a CHINS finding. *Id.* at 1251-52.