

# Children's Law Center of Indiana



## Delinquency

11/29/2006

In **J.H. v. State**, 857 N.E.2d 429 (Ind. Ct. App. 2006), the Court reversed the juvenile court's revocation of the juvenile's probation. On March 28, 2003, in Cause No. 655, the juvenile admitted that he committed an act that would be Class C felony child molesting if committed by an adult, was adjudicated a delinquent child, and was placed on probation. After several violations of probation for which the juvenile was left on probation with additional conditions, on December 5, 2005, the State filed a Violation of Probation/Suspended Commitment in Cause No. 655 alleging that the juvenile violated his probation/suspended commitment by committing an act that would be Class D felony theft if committed by an adult. On December 6, the juvenile court entered an Order to File Delinquency Petition under Cause No 5216 alleging that the juvenile was a delinquent child for committing that same theft. The juvenile was released in Cause No. 5216 to informal home detention with conditions including that the juvenile "have no contact with any computers." On January 31, 2006, following a visit to the juvenile's home, the probation department filed a Violation of Probation/Suspended Commitment under Cause No. 655, requesting that the juvenile's probation be revoked and alleging that the juvenile "was found to have his computer on with internet access actively running," and that "there was pornographic material located on the computer." After a hearing on the delinquency petition for theft in Cause No. 5216 and for violation of probation/suspended commitment under Cause No. 655, the juvenile court (1) found the theft allegation not true, but the allegation that the juvenile violated his release conditions under Cause No. 5216 true; (2) found the December 5, 2005, Violation of Probation/Suspended Commitment under Cause No. 655 for committing the theft not true, but the January 31, 2006, Violation of Probation/Suspended Commitment under Cause 655 for accessing the internet and pornographic material true; and (3) awarded wardship of the juvenile to the DOC with the recommendation that, among other things, he be committed to the DOC for a period of six months. The juvenile appealed.

**Basing a probation revocation upon claimed violations for which the probationer received no notice is error because it violates due process.** *Id.* at 433. The Court noted that an individual at a probation revocation hearing does not possess the same rights with which he was endowed prior to a conviction, however, the Due Process Clause of the Fourteenth Amendment does provide certain protections to an individual at a probation hearing including the right to written notice of the claimed violations that are sufficiently detailed to allow the probationer to prepare an adequate defense. *Bovie v. State*, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002). The Court explained that the conditions of the juvenile's probation/suspended commitment in Cause No. 655 did not include not accessing the internet, and therefore, revocation based on his accessing the internet was not appropriate. On appeal, for the first time, the State argued that the juvenile's actions in accessing the internet and

pornographic material were in indirect contempt of the trial court's release conditions in Cause No. 5216 and therefore was a violation of the condition of the juvenile's probation/suspended commitment in Cause No. 655 that he "obey all City, County, State, and Federal laws." However, the juvenile did not have written notice of this claimed violation of his probation/suspended commitment in Cause No. 655 that was sufficiently detailed to allow him to prepare an adequate defense. Rather, the notice alleged that the juvenile violated his probation/suspended commitment by accessing the internet and pornographic material. The Court found this "especially troublesome" since the State had not argued before the juvenile court, the theory it argued on appeal. J.H. at 432-33.