

# Children's Law Center of Indiana



## Delinquency

12/27/2007

In **L.H. v. State**, 878 N.E.2d 425 (Ind. Ct. App. 2007) the Court reversed and remanded the juvenile court's judgment adjudicating the twelve-year-old juvenile to be a delinquent child for committing child molesting and battery, a Class C felony and a Class B misdemeanor, respectively, if committed by an adult. In August 2006, eight-year-old A.H. told her mother that for about the past four years, her cousin, the juvenile, had been touching her inappropriately. The mother took A.H. to the Child Advocacy Center where a videotaped interview was conducted with A.H. about the allegations. The State subsequently filed a delinquency petition alleging that the juvenile had committed child molesting and battery on A.H. on or between February 2002 and August 2006. Prior to the fact-finding hearing, scheduled for November 2, 2006, the State filed a Child Hearsay Notice, notifying the juvenile of its intent to introduce certain out-of-court statements made by A.H., including those made in the videotaped interview, and requesting a hearing for determining the admissibility of the statements pursuant to IC 35-37-4-6. The child hearsay hearing was held November 2, 2006, and at its conclusion, the State moved "for the admissibility of the hearsay statements that have been shown before the Court," and "to incorporate all the testimony, as well as the evidence that has been entered into State's case in chief." The juvenile objected to both motions. The juvenile court granted the State's motions to allow the child hearsay testimony to be admitted into the case in chief and "to incorporate by reference testimony from the child hearsay motion, as to the State's case in chief, as well as the accompanying exhibits." The State offered no additional testimony, evidence, or exhibits. The juvenile again stated his objection to incorporation and then rested. The juvenile court invited arguments on the fact-finding portion of the hearing and then made true findings as to both allegations. The juvenile appealed.

**By incorporating the testimony, evidence, and exhibits from the child hearsay hearing into the juvenile's fact-finding hearing, the juvenile court denied the juvenile the fact-finding hearing, at which all procedural safeguards and evidentiary rules are observed, to which the juvenile was entitled.** *Id.* at 431. The Court pointed out that incorporation of testimony from one proceeding into another may be appropriate when agreed to by the parties, or when specifically authorized by statute, but, here, there was no agreement to the incorporation and the language of the child hearsay statute seems to require the opposite of a dual proceeding. Thus, child hearsay is admissible if there is both a hearing on admissibility and a trial at which the child testifies or is found by the court to be unavailable. *Id.* at 429-30. The Court also explained that (1) the purpose of the child hearsay hearing is to determine the admissibility of certain hearsay

statements, considering specific factors that demonstrate the reliability of the statements; (2) it is a preliminary juvenile matter to which the rules of evidence do not apply; (3) a defendant would clearly approach a child hearsay hearing differently than he would a trial as far as the making of objections and the scope of his own questions; and (4) some evidence may be received for purposes of determining the reliability of the hearsay statements that would not be admissible in a fact-finding hearing. Id. at 430. The Court agreed with the juvenile that, although incorporating testimony and evidence from a proceeding with greater procedural protections into a proceeding with lesser protections may be appropriate in certain circumstances, doing the opposite is not. Id.

Kirsch, J., dissented with separate opinion.