

# Children's Law Center of Indiana



## Delinquency

09/28/2009

In **In Re M.W.**, 913 N.E.2d 784 (Ind. Ct. App. 2009), the Court reversed the trial court's Order mandating the Indiana Department of Child Services (DCS) to pay the costs of the juvenile's secure detention and weekly child support while the juvenile is incarcerated at Department of Correction (DOC). While the fifteen-year-old juvenile was a ward of DCS and residing in a foster home because her parents' parental rights had been terminated five years earlier, she was charged with possession of a stolen vehicle and operating a vehicle never licensed, a Class D felony and a Class C misdemeanor, respectively, if committed by an adult. The juvenile admitted to the charges and the trial court awarded wardship of the child to DOC. The trial court also ordered that DCS was to reimburse Hendricks County for all costs of detention and to pay DOC weekly guideline child support. DCS appealed the order's provisions regarding DCS.

**The Court held that, based on unambiguous statutory provisions, DCS is not responsible to carry the costs of the juvenile's secure detention unless there is a written agreement, and , here, no such written agreement ever existed. Therefore, DCS cannot be held liable to pay the juvenile's costs of secure detention to Hendricks County.** *Id.* at 787. The Court reviewed the provisions of the following statutes as modified in 2008: IC 31-34-4-7, IC 31-34-19-6.1, IC 31-40-1-2, and IC 31-40-1-2.5. Specifically, IC 31-40-1-2 provides "Except as provided under section 2.5, of this chapter, [DCS] is not responsible for payment of any costs of secure detention;" and IC 31-40-1-2.5 allows for DCS and the probation office to agree to payment of these costs but requires that the agreement contain specific provisions and be signed by the director of DCS and the judge of the juvenile court involved. *Id.* Additionally, the Court held that DCS' case manager did not invite the error as alleged by Hendricks County in that the record failed to establish that the case manager clearly intended DCS to shoulder the costs for secure placement, especially after the trial court was put on notice by the Hendricks County probation director that DCS could not be held responsible for the costs. *Id.* at 788.

**The trial court erred in finding that DCS was required to pay weekly child support for the juvenile although DCS' case manager admitted that the juvenile's biological parents' parental rights had been terminated and DCS was responsible for the juvenile, because that fact alone is an insufficient basis for imposing a child support obligation.** *Id.* at 789. The Court quoted from **In Re the Marriage of Snow v. England**, 862 N.E.2d 663, 667 (Ind. 2007) in which the supreme court noted a number of public policies that militate against imposing a child support obligation on stand-in parents, such as custodians and guardians. As a result, the supreme court held that "when a relationship of *in loco parentis* exists, that status alone is an insufficient basis for imposing a child support obligation on the stand-in parent." Further, the **Snow** court emphasized that it would be difficult to envision burdening DCS, as an institution, with a "parallel obligation" of child support. **M.W.** at 789.