

# Children's Law Center of Indiana



## Delinquency

07/21/2009

In **J.D. v. State**, 909 N.E.2d 1035 (Ind. Ct. App. 2009), the Court affirmed the trial court's adjudication of the juvenile as delinquent for committing acts that would be Class D felony theft and Class B misdemeanor criminal mischief if committed by an adult. The juvenile stole a neighbor's go-cart and later threw it over a bridge into a creek. The State filed a petition on August 11, 2008, alleging the acts for which he was later found delinquent. On August 25, 2008, the juvenile was released to his parents "under the supervision of Probation/Community Adjustment on Supervised Release Home Confinement." On September 4, 2008, a denial hearing that had been set for September 8 was vacated and instead a pre-trial conference was scheduled for that day. At the conference, the denial hearing was set to be held December 2, 2008. The juvenile did not object until November 12, 2008, when he filed a motion to dismiss which the trial court denied. The trial court subsequently found the allegations to be true, adjudicated the juvenile to be delinquent, and ordered him to serve probation and pay restitution. The juvenile appealed.

**The juvenile waived his rights under IC 31-37-11-2 (Section 2) to a hearing to be held within 60 days of the filing of the petition by failing to timely object to the setting of the hearing to occur outside the time limit; and waiver notwithstanding, it is not clear that violation of Section 2 would require dismissal of the allegations against the delinquent.** *Id.* at 1037-38. The Court applied the case law interpreting Criminal Rule 4(C), regarding speedy trial rights of adults, to Section 2 for juveniles, in arriving at the conclusion that the juvenile had waived this right. Further the Court observed that although Criminal Rule 4(C) specifically requires discharge of the defendant if the time limits of that rule are not met, (1) the only section of IC 31-37-11 which calls for discharge is Section 9, which neither party claims is applicable here; (2) IC 31-37-11-7 (Section 7) states the consequences of failing to meet the applicable time limits of Section 2 if the child is in detention to be that "the child shall be released on the child's own recognizance or to the child's parents, guardian, or custodian," but is silent as to the consequences if the juvenile is not in detention, as is the case here; (3) Section 7's silence does not mean that a violation of Section 2 requires outright dismissal of the allegations; and (4) to the contrary, the Court failed to see why dismissal would be inappropriate for a child who is in detention, but somehow appropriate for a child who is not. The Court concluded that, waiver notwithstanding, without clear statutory authorization, it could not say that a violation of the sixty-day limit of Section 2(b) required the trial court to dismiss the allegations that the juvenile was a delinquent child.