

This Case Law Update Provided by:
**Children's Law Center
of Indiana**



"In pursuit of a consistent, efficient, and effective Juvenile Justice System"

Delinquency

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In **T. H. v. State**, 810 N.E.2d 348 (Ind. Ct. App. 2004), the Court held that the juvenile was required to file an affidavit showing cause for her motion for change of judge and affirmed the trial court's denial of that motion. The juvenile was charged with committing a delinquent act that would be conversion if committed by an adult. At her initial hearing, the juvenile admitted the allegation, but withdrew the admission at the dispositional hearing. The trial court allowed the withdrawal, appointed counsel to represent the juvenile, and set the matter for a fact-finding hearing. Subsequently, the juvenile filed a motion for a change of judge pursuant to Ind. Trial Rule 76(B). Consistent with T.R. 76, the juvenile did not file an affidavit showing cause for the change. The trial court denied the motion, held the fact-finding hearing, and found the juvenile to be a delinquent. The juvenile appealed, claiming that the trial court erred when it denied her motion for change of judge.

IC 31-32-1-1 provides that if a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by the juvenile law. Both the juvenile statute at IC 31-32-8-1 and Ind. Crim. Rule 12(B) require the filing of an affidavit showing cause with a motion for change of judge. Id. at 350. Consequently, the juvenile was required to file an affidavit showing cause for her motion for change of judge, whether proceeding under IC 31-32-8-1, or under Crim. R. 12(B). Id.

The juvenile's reliance on Gosnell v. Cass Circuit Court, 577 N.E.2d 957 (Ind. 1991), in filing her motion pursuant to T.R. 76(B), was misplaced. In Gosnell, the supreme court found that a previous version of the change of judge section in the juvenile code was in conflict with T.R. 76, because the statute required that cause be shown for the granting of a change of judge. Id. at 958. The supreme court held that that provision of the statute therefore was void and of no effect and the provisions of T.R. 76 prevailed. Gosnell involved a change of judge motion in a CHINS proceeding, rather than, as here, in a juvenile delinquency proceeding, however. IC 31-32-1-3 provides that in cases not subject to section 1 or 2 of that chapter, the Indiana Rules of Trial procedure apply in all matters not covered by the juvenile law. CHINS proceedings are not subject to IC 31-32-1-1 or -2, but juvenile delinquency proceedings are. Id.