

# Children's Law Center of Indiana



## Delinquency

6/14/10

In **C.E.K., II v. State**, 928 N.E.2d 258 (Ind. Ct. App. 2010), the Court affirmed the juvenile court's delinquency order requiring the child to comply with the registration requirements of the Indiana Sex Offender Registration Act. When the child was fourteen years old, he committed two acts of child molesting, one of which would have been a Class B felony if committed by an adult, the other of which would have been a Class C felony. The child was adjudicated a delinquent, and given a suspended commitment at a sex offender residential treatment program, with supervised probation until the age of eighteen. The child was placed in the Southwest Regional SAFE program, from which he was eventually released and placed on home detention. About two months later, the State filed a motion to determine the child's placement on the sex offender registry. At the evidentiary hearings on the motion, the court heard expert testimony that the child "was a high risk to re-offend." The court concluded that "there is clear and convincing evidence that the child is likely to repeat an act that would be an offense described in IC 11-8-8-5(a) if committed by an adult", and the court ordered the child to register as a "sex or violent offender." The child appealed, asserting that the juvenile court lacked subject matter jurisdiction to order him to register as a sex offender.

**The Court found that the juvenile court had subject matter jurisdiction to order the child to comply with the requirements of the Indiana Sex Offender Registration Act.** *Id.* at 260. The Court noted that juvenile courts are courts of limited jurisdiction and their jurisdiction must be invoked by establishing statutory jurisdictional prerequisites. *Id.* at 259. The Court quoted IC 31-10-2-1(5), which states, "[i]t is the policy of this state and the purposes of this title to...ensure that children within the juvenile system are treated as persons in need of care, protection, treatment, and rehabilitation...." *Id.* The Court found that the juvenile court's jurisdiction was invoked under IC 11-8-8-5(b)(2). This statute includes as a "sex or violent offender" a delinquent child who: (1) is at least fourteen years old; (2) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility, or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act described at IC 11-8-8-5(a) [which includes child molesting]; and (3) is found by a court by clear and convincing evidence to be likely to repeat an act described at IC 11-8-8-5(a) if committed by an adult. *Id.* at 259-60. The Court quoted **K.J.P. v. State**, 724 N.E.2d 612 (Ind. Ct. App. 2000), trans. denied, where the Court rejected another child's claim that requiring juveniles to register as sex offenders conflicted with the rehabilitative

purposes of the juvenile code. In K.J.P. the Court stated that the burdens that accompany registering do not “rise to the level of punishment,” and do not constitute an additional penalty. K.J.P. at 615. C.E.K. at 260. The Court was not persuaded by the child’s contention that the K.J.P. decision was abrogated by the Indiana Supreme Court’s decision in Wallace v. State, 905 N.E.2d 371 (Ind. 2009). C.E.K. at 260. In Wallace the Indiana Supreme Court only considered whether the Sex Offender Registration Act constituted retroactive punishment forbidden by the Ex Post Facto Clause of the Indiana Constitution. C.E.K. at 260. In holding that the Act was unconstitutional as applied to the defendant Wallace, the Court determined that six of the seven factors relevant to its inquiry pointed to the statute having a retroactive punitive effect. Wallace at 384. C.E.K. at 260. The Court found that the child read too much into the Wallace decision, which did not hold that the Act is facially unconstitutional, and the child does not (and cannot) raise an ex post facto challenge to the juvenile court’s order that he comply with the Act. Id. at 260. The Court also noted the Indiana Supreme Court decision, Jensen v. State, 905 N.E.2d 384 (Ind. 2009), where the Court held that the Act was “non-punitive when applied to” another defendant. C.E.K. at 260. The Court said that, while the Supreme Court “recognized that the Act had punitive elements that forbade its retroactive application under the Ex Post Facto Clause, the [Supreme Court] did not hold the Act is a wholly punitive measure that would violate the juvenile court’s rehabilitative policies.” Id. at 260. The Court opined that K.J.P. is still good law and the child’s argument that the juvenile court lacked subject matter jurisdiction must fail. Id.