



Delinquency

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In **Z.H. v. State**, 850 N.E.2d 933 (Ind. Ct. App. 2006), the Court reversed the juvenile court's order requiring the juvenile to register as a sex offender. The juvenile was born in 1986. The juvenile and his brother molested a twelve-year-old neighbor. On May 14, 2003, true findings were entered against the juvenile as to child molesting, a class B felony if committed by an adult, intimidation, a class C felony if committed by an adult, and attempted child molesting, a class C felony if committed by an adult. On June 26, 2003, the juvenile court placed the juvenile on probation for two years under the special condition that he complete treatment at Resolute Center (Resolute), an inpatient treatment facility that provides treatment for adolescent male sex offenders. In July 1, 2003, the juvenile was admitted to Resolute for diagnosis and evaluation. He was seventeen years old, with an I.Q. of 58 and the general level of cognitive functioning in the Mentally Deficient Range, at that time. Resolute provided the juvenile court with monthly progress reports detailing the juvenile's treatment and improvement or lack thereof. Various reports indicated positive progress which was perhaps slowed by his educational and cognitive abilities. In September 2004, the juvenile court noted that Resolute found that the juvenile had reached the maximum benefit from its program and a transition was made to Success Group Home, a program designed to be a transition to independent living. The juvenile court also noted that Success requested additional time for assessing the juvenile, and that there was a report of an incident that occurred that would be indicative of the juvenile being high risk to return to the community at this time. In December 2004, the juvenile court entered an order that the juvenile was to remain at Success for another two to three months to prepare to transition to his grandmother's home in Terre Haute. In February 2005, a doctor's progress report noted that "since [the juvenile] is felt to be at high risk for sexual offense recidivism, it is recommended that he be evaluated to determine if he meets the criteria for placing an adolescent on the sexual offender registry. If this should be the case, the court should consider placing him on that registry." In April 2005 the State filed a petition to require the juvenile to register as a sex offender. In May 2005 the juvenile court entered an order stating that the juvenile had completed the treatment goals as established through Success; there had been no further acting out behaviors since the last review; the school year had concluded for the juvenile; Success and probation both recommended that the child be discharged from residential placement and complete probation in the home of his grandmother; and that the juvenile be released from Success for placement with his grandmother. In August 2005, the juvenile court held a hearing on the State's petition; and in September 2005, the juvenile court issued an order requiring the juvenile to be

placed on the sex offender registry based on its finding that "there is clear and convincing evidence that the juvenile is likely to repeat an act that would be a sex offense if committed by an adult." The juvenile appealed.

The Court concluded that, given the lapse in time in the progress reports from the juvenile's final treatment facility, the juvenile court's conclusion that the juvenile had met his treatment goals, and the lack of testimonial evidence supporting the State's position, the State had not met its burden of proving with clear and convincing evidence that the juvenile was likely to repeat an act that would be a sex offense if committed by an adult, as is required by I.C. 5-2-12-5(a)(1) before a juvenile can be ordered to register as a sex offender. *Id.* at 939. The Court noted that when judging the sufficiency of the evidence supporting the decision to place a juvenile on a sex offender registry, it looks to the evidence and the reasonable inferences that can be drawn therefrom that support the juvenile court's decision, and will affirm the juvenile court's decision to place the juvenile on a sex offender registry unless it may be concluded that no reasonable factfinder could find the elements of I.C. 5-2-12-4 to have been proven by clear and convincing evidence. The Court opined that the only issue here was whether the State met its burden of proving by clear and convincing evidence that the juvenile was likely to repeat an act that would be a sex offense if committed by an adult; the focus of this inquiry was whether the juvenile had been rehabilitated as a result of treatment received in the facility from which he was discharged; and if the juvenile had, in fact, been rehabilitated, then there could not be clear and convincing evidence that the juvenile was likely to reoffend and the juvenile could not be placed on the sex offender registry. The Court noted that because it had to focus on whether the juvenile was rehabilitated as a result of his treatment at Success, it was compelled to examine the juvenile's condition at the time of his discharge; and that at that time, the only evidence in the record established that the juvenile had "completed the treatment goals," had exhibited "no further acting out behaviors since the last review," and that Success and the juvenile's probation officer both recommended that the juvenile should be discharged from Success. The doctor who originally raised the issue of the juvenile's possible placement on the sex offender registry did not testify at the hearing on the State's petition.

The Indiana Rules of Evidence must apply to the full evidentiary hearing afforded a juvenile facing a State petition to place the juvenile on the sex offender registry. *Id.* at 940 n.2. In a footnote, the Court noted that the juvenile had also argued that the trial court erred in refusing to apply the Indiana Rules of Evidence to the hearing on the State's petition. The Court noted that, in view of its finding in the case, it need not address this issue, but then discussed the issue and stated: "Under these circumstances, we conclude that the Indiana Rules of Evidence must apply to the full evidentiary hearing afforded a juvenile facing a State petition to place the juvenile on the sex offender registry."