

IN THE
SUPREME COURT OF OHIO

IN RE R.B.,

A Minor Child, Appellant.

Case No. 2019-1325

Appellate Case No.: C-170622, C-170623

ON APPEAL FROM THE HAMILTON COUNTY COURT OF APPEALS,
FIRST APPELLATE DISTRICT COURT OF APPEALS

**AMENDED
APPELLEE, R.B.'S, MEMORANDUM IN RESPONSE TO STATE'S
APPEAL AND CROSS-APPELLANT, R.B.'S, MEMORANDUM IN
SUPPORT OF JURISDICTION FOR CROSS-APPEAL**

JOSEPH T. DETERS (0012084P)
Hamilton County Prosecutor

RAYMOND T. FALLER (0013328)
Hamilton County Public Defender

PAULA E. ADAMS (0069036P)
ASSISTANT PROSECUTING ATTORNEY
(*Counsel of Record*)

JULIE KAHRN NESSLER (0085189)
Assistant Public Defender
(*Counsel of Record*)

Office of the Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3119
Facsimile: (513) 946-3021

Office of the Hamilton County Public Defender
125 East Court Street, Ninth Floor
Cincinnati, Ohio 45202
Phone: (513) 946-8256
Facsimile: (513) 946-8242
JKNessler@cms.hamilton-co.org

Counsel for the State of Ohio

Counsel for R.B.

DANIEL T. VAN (0084614)
SENIOR APPELLATE ATTORNEY
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-7865
dvan@prosecutor.cuyahogacounty.us

**Counsel for Amicus Curiae,
The Ohio Prosecuting Attorney's Association**

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE DOES NOT RAISE AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST..... 1

STATEMENT OF THE CASE AND PROCEDURAL POSTURE.....2

ARGUMENT AS TO APPELLANT’S PROPOSITIONS OF LAW..... 6

Appellee's Response to Appellant's Proposition of Law No. I: A juvenile court is only vested with jurisdiction to impose juvenile sex offender classifications where it has been granted authority to do so by statute. Where a juvenile court imposes a classification under R.C. 2152.83, that classification remains valid up to the child's completion of the disposition. For jurisdiction and the classification to continue, the court must hold a hearing upon the completion of child's disposition as required by R.C. 2152.84.6

A. State’s arguments with regards to the juvenile court’s jurisdiction were waived and are barred by res judicata.....7

B. A juvenile court’s jurisdiction is limited and R.C. 2152.83 does not vest the Court with “permanent” jurisdiction.....8

ARGUMENT AS TO APPELLEE/CROSS-APPELLANT'S PROPOSITIONS OF LAW15

Cross-Appellant Proposition of Law No. 1: To impose additional and new dispositional orders on a child adjudicated delinquent, the juvenile court must comply with Juv.R. 35, the child must be present, and notice of the modification must be given. Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section 16 of Ohio Constitution; Article I, Section 10 of the Ohio Constitution.....16

Cross-Appellant Proposition of Law No. 2: Where the juvenile court fails to impose an initial classification at a time permitted under R.C. 2152.83(B), the classification is void and the court lacks jurisdiction to conduct a completion of disposition hearing as there is no valid classification to complete.....23

Cross-Appellant Proposition of Law 3: To comply with fundamental fairness and a youth’s due process rights in conducting a completion of disposition hearing, the juvenile court must conduct the hearing at the time the child completes his treatment. See *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027; Fourteenth Amendment to the U.S. Constitution; Section 16, Article I of Ohio Constitution.....24

CONCLUSION 27

CERTIFICATE OF SERVICE 27

**EXPLANATION OF WHY THIS CASE DOES NOT RAISE AN ISSUE OF
GREAT GENERAL OR PUBLIC INTEREST**

Like a shout into a bottomless pit, the State’s request for this Court to find that a juvenile court has permanent jurisdiction to review a juvenile sex offender classification following a valid initial classification continues to reverberate. The parties’ last foray into this Court on precisely the same proposition of law in an unrelated case ended with dismissal as being improvidently accepted after full briefing and oral argument. *See State v. Amos*, 156 Ohio St.3d 237, 2019-Ohio-168, 125 N.E.3d 832, ¶ 1. In that case, just as in the present case, the State failed to preserve the issue it now asks this Court to review. There is no reason for the parties to revisit the issue at this time and squander this Court’s time and resources.

Discontentment with the First District Court of Appeals’ resolution of R.B.’s case does not provide adequate grounds for discretionary review in this Court. Yet that is what brings this case before this Court once again. In an attempt to alter the outcome of the case, the state resurrects a jurisdictional issue only tenuously raised at the trial court level, and entirely omitted from consideration before the Court of Appeals. While there may be an issue of great public importance implicated by the procedural morass that underlies juvenile sex offender classifications, this is not the case that best presents said issue. It is time to silence the echo and lay R.B.’s case to rest.

The State’s proposition of law was not argued before the Court of Appeals. The idea that juvenile courts retain permanent jurisdiction over sex offender classifications was first expounded in a dissenting opinion by Judge Miller in *State v. Amos*, 87 N.E.3d 1305, 2017-Ohio-8448 (1st Dist.) (“*Amos I*”). There, the dissent postulated that the juvenile court had “permanent jurisdiction” to impose classifications once an initial classification was imposed. Prior to Judge Miller’s dissent, this position was never asserted or briefed by the State in the appeal of this case.

This issue was simply not raised or preserved by the State. As this Court has astutely recognized, “justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.” *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, ¶ 15. Accordingly, if the State wishes for this Court to consider its request to find permanent jurisdiction in the context of juvenile sex offender classifications, it must take the necessary steps to preserve and advance the issue in the lower courts.

Furthermore, the position outlined by State would require this Court to ignore and omit the plain language of the juvenile sex offender registration statutes. As well as disregard the purpose of those statutes as outlined in *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184.

This case is also not the appropriate case for this Court to weigh in on the issues implicated by the juvenile sex offender registration scheme. Here, there were a number of factual and procedural issues which would limit the utility and general application of this case to other children who find themselves on the juvenile sex offender registry.

Because this case raises no question of great general and public interest, R.B. respectfully requests this Court to decline to accept jurisdiction over this matter.

STATEMENT OF THE CASE AND FACTS

On January 13, 2012, the juvenile court classified R.B. as a Tier I juvenile sex offender based on his commission of two counts of what would be gross sexual imposition if committed by an adult. This classification did not occur at disposition, nor upon R.B.’s release from a secured facility. R.B. was only 14 years old at the time of the offenses.

A month before R.B. was classified, the juvenile court imposed the disposition for these offenses. R.B. was “ordered to attend and complete the residential program at Altercrest as a condition of probation and to follow all rules and regulations of the placement facility and to

adhere to all aftercare requirements.” The court also committed R.B. to the Department of Youth Services, but suspended that commitment.

On February 6, 2013, R.B.’s placement at Altercrest was terminated and he was placed on electronic monitoring.¹ The court noted the following day that he had “successfully completed placement requirements.” The court also terminated its “prior care, custody, and control” of R.B.; yet he remained on probation. On March 7, 2013, R.B. was successfully released from electronic monitoring. Approximately five months later, on July 29, 2013, the juvenile court released R.B. from probation finding he had “cooperated and abided by the terms of official probation.”

On July 29, 2013, by entry, the court placed R.B. on non-reporting probation with monitored time. There was no hearing or notice to R.B. as to this modified disposition. The juvenile court did not set a completion of disposition hearing at this time.

Approximately one year later, on July 11, 2014, R.B. filed an application to seal his record. On September 3, 2014, the application was denied because R.B. was ineligible as an active juvenile sex offender registrant. A month later, in October 2014, the juvenile court set these matters for a “completion of disposition hearing pursuant to ORC 2152.84.” The matter was continued multiple times; however, the mandatory completion of disposition hearing never took place.

Approximately 18 months later, and over three years after R.B. had been released from probation, on October 24, 2016, the State filed a motion requesting the juvenile court to hold a completion of disposition hearing pursuant to R.C. 2152.84. R.B. objected to the State’s request asserting the court lacked jurisdiction to hold a completion of disposition hearing. On January 10, 2017, the magistrate heard arguments on the issue, and ultimately ordered the completion of

¹ Some of the actions by the juvenile court as to R.B.’s case are only seen on one case number, 11-9085 (C-170623).

disposition hearing to be held. R.B. timely objected. In each of these hearings, the State did not assert, as it does now, that the Court had “permanent” jurisdiction to review R.B.’s classification. At best, the State argued the juvenile court maintained jurisdiction as a result of R.B.’s suspended commitment and placement on non-reporting probation.² The juvenile court overruled R.B.’s objections, found it had jurisdiction to hold a completion of disposition hearing based on R.B.’s placement on non-reporting probation, and continued the matter for a hearing in front of a magistrate.

On May 8, 2017, approximately four years after R.B. completed all treatment ordered by the juvenile court, the court held a purported completion of disposition hearing. At the hearing, R.B. provided the juvenile court with testimony from probation supervisor Cari Laws as well as testimony from Jessica Ismond, an extern with the Hamilton County Public Defender’s Office who investigated R.B.’s treatment. R.B. also provided numerous documents which detailed his treatment and his success in treatment. On July 13 and 14, 2017, the magistrate issued a decision continuing R.B.’s classification as a Tier I sex offender. R.B. timely objected. The juvenile court took no action to adopt the magistrate’s decision, nor did it issue an interim order continuing R.B.’s classification.³

On July 20, 2017, R.B. turned age 21. Any dispositional orders, if valid, terminated at that time. Approximately three months after R.B. turned 21, the juvenile court overruled R.B.’s objections and entered the order continuing his classification as a Tier I juvenile sex offender.

² Before both the juvenile court and the court of appeals, R.B. asserted these were not valid dispositions and therefore did not extend the juvenile court’s jurisdiction to hold a completion of disposition hearing.

³ The brief filed by Amicus Curiae, Ohio Prosecuting Attorneys Association, asserts that it is “undisputed that the hearing under R.C. 2152.83 was completed and an order was issued prior to R.B.’s 21st birthday.” (Amicus Brief p. 8). That is simply not true. Assuming, arguendo, that a hearing was held before a magistrate prior to R.B. reaching age 21, there was no order from the juvenile court continuing R.B.’s Tier I juvenile sex offender classification until after he turned 21. It is beyond cavil that a magistrate’s decision is not an effective order of the court unless and until adopted by the juvenile court. *See* Juv.R. 40. The juvenile court did not enter an order continuing R.B.’s classification until well after R.B. turned 21.

R.B. timely sought review by the First District Court of Appeals, challenging a multitude of issues related to his classification, including: (1) whether a juvenile court can continue a juvenile sex offender classification under R.C. 2152.4 when there was no valid classification order issued under R.C. 2152.83; (2) whether the juvenile court had jurisdiction to conduct a completion of disposition hearing and continue R.B.'s classification; (3) whether a juvenile's due process rights are violated where the court waits 46 months after treatment before it holds an completion of disposition hearing; and (4) if the juvenile court did have jurisdiction to conduct the hearing under R.C. 2152.84, whether it abused its discretion in continuing R.B.'s classification.

While the issue of permanent jurisdiction was, at best, tenuously raised before the juvenile court, this argument was abandoned in the Court of Appeals. At no point in the State's brief did it assert that the juvenile court retains "permanent" jurisdiction to review classifications in accordance with R.C. 2152.84 and .85.

Upon review of R.B.'s appeal, the Court of Appeals noted that the juvenile court judge did not act to continue R.B.'s Tier I classification until after he turned age 21. Accordingly, on July 3, 2019, the First District advised the parties to be prepared to address the following issue at oral argument: "Did the juvenile court have jurisdiction to enter an order continuing R.B.'s Tier I classification after he turned 21 and his disposition, by its own terms, had ended? Be prepared to discuss the impact, if any, of *State v. Amos*, 2017-Ohio-8448, 87 N.E.3d 1305 (1st Dist.)."

On August 16, 2019, the First District Court of Appeals vacated the juvenile court's judgments continuing R.B.'s classification as a Tier I juvenile-offender registrant. *In re R.B.*, 1st Dist. Hamilton No. C-170622, 170623, 2019-Ohio-3298, ¶ 16. In reaching this decision, the First District held that the juvenile court's disposition, by its own terms, was completed as of R.B.'s

21st birthday. *Id.* at ¶ 14. The First District further noted that the juvenile court did not enter orders continuing R.B.'s classification until October 30, 2017, well after R.B. had turned 21 and his disposition had ended. "Because the trial court did not complete the statutorily-required process for classifying R.B. prior to the completion of his disposition upon turning 21, it had no jurisdiction to classify him as a Tier I offender." *Id.* at ¶ 14.

On September 30, 2019, the State filed a notice of appeal to this Court. The State seeks to have this Court review an issue that was never raised or briefed before the Court of Appeals. This Court should not accept jurisdiction over this matter.

R.B. filed a cross-appeal in this matter on October 10, 2019. Therein, he asserts that the First District correctly reversed the judgment of the juvenile court and vacated his Tier I juvenile sex offender classification. Yet, R.B. filed the cross-appeal only in an abundance of caution to preserve the number of other, additional reasons the juvenile court's decision was in error. While R.B. continues to maintain that this case is not one of great public interest and should not be accepted because this Court would not have the benefit of a full record, R.B. sets forth the following additional reasons the Court of Appeals' decision vacating his classification should be affirmed. R.B.'s combined response to the State's appeal and his own memorandum in support of the cross-appeal follows.

ARGUMENT IN RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW

Appellee's Response to Appellant's Proposition of Law:

A juvenile court is only vested with jurisdiction to impose juvenile sex offender classifications where it has been granted authority to do so by statute. Where a juvenile court imposes a classification under R.C. 2152.83, that classification remains valid up to the child's completion of the disposition. For jurisdiction and the classification to continue, the court must hold a hearing upon the completion of child's disposition as required by R.C. 2152.84.

The State's Proposition of Law states: "Once a juvenile court makes an appropriate classification under R.C. 2152.83, it is permanently vested with jurisdiction to review the classification in accordance with R.C. 2152.84 and R.C. 2152.85." (Appellant Memo p. 5). This proposition was never argued below. While this may be an important issue within juvenile courts, this is simply not the case in which the issue should be decided. Further, the State's proposition of law is not supported by the plain language of the statute as well as prior precedent from this Court. Finally, the State's proposition of law would violate multiple constitutional protections built into the statutory scheme by the legislature.

A. State's arguments with regards to the juvenile court's jurisdiction were waived and are barred by res judicata.

The instant case is reminiscent of the case in *State v. Amos*, 156 Ohio St.3d 237, 2019-Ohio-168. Once again, the State requests this Court to accept jurisdiction over an argument that it did not advance below. This Court properly recognized the State's waiver of the issue and dismissed the *Amos* case as being improvidently accepted. *State v. Amos*, 156 Ohio St.3d 237, 2019-Ohio-168. To conserve judicial resources, this Court should deny jurisdiction at the outset.

It is a well-established rule that "'an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.'" *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, quoting *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986). The reason for this is simple: issues not raised in the trial court may not be raised for the first time on appeal because such issues are waived. *See e.g. State v. Barrett*, 10th Dist. Franklin No. 11AP-375, 2011-Ohio-4986, 2011 WL 4489169, ¶ 13. Accordingly, the issue now raised by appellant was waived.

Further, policy considerations dictate that the request for jurisdiction should be declined. As this Court noted in *Quarterman*, “justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.” *Quarterman* at ¶ 15. Here, like in *Quarterman*, all three are lacking in this case. This Court is an “arbiter[] of legal questions presented and argued by the parties before them.” *Id.* at ¶ 19, quoting *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 78.

This Court has previously overruled a proposition of law where the issue was waived below. In *State v. Eley*, this Court overruled a proposition of law because the issue “was neither raised in the trial court nor was it assigned as error in the Court of Appeals.” *State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132, 10 O.O.3d 340 (1978), *overruled* on other grounds. Additionally, this Court will not ordinarily consider a claim of error that was not raised in any way in the Court of Appeals. *See e.g. Eley* at 170; *State v. Walker*, 55 Ohio St.2d 208, 217, 378 N.E.2d 1049 (1978); *State v. Williams*, 51 Ohio St.2d 112, 364 N.E.2d 1364 (1977). There is simply no reason for this Court to circumvent this well-settled law and accept jurisdiction over a case where the argument now set forth as the proposition of law was never advanced by the appellant in the Court of Appeals.

In this matter, it was clear that R.B. was challenging the juvenile court’s jurisdiction to conduct the R.C. 2152.84 hearing and impose a classification. Had the State wanted to assert, as it does before this Court, that the juvenile court’s decision should be affirmed because the juvenile court maintains permanent jurisdiction over these classification orders, it could have done so. But it did not. The State has waived the argument set forth in its proposition of law. Accordingly, this Court should decline jurisdiction over this matter.

B. A juvenile court’s jurisdiction is limited and R.C. 2152.83 does not vest the Court with “permanent” jurisdiction.

The State asks this Court to hold that a juvenile court is vested with permanent jurisdiction to impose and review juvenile sex offender classifications simply because the court enters an initial order pursuant to R.C. 2152.83. Under the State's proposition, a juvenile court may conduct this mandatory second hearing under R.C. 2152.84 at any time it pleases during the period of registration set forth in R.C. Chapter 2950. To the State, the time frame set forth in R.C. 2152.84 is meaningless and "simply provide[s] the juvenile court with an opportunity to consider how the juvenile responded to his or her treatment." (State's Memo p. 6). Yet, R.C. 2152.84, is more than that. The State's proposition ignores the plain language of the statute. Moreover, although this Court has yet to address this second hearing, this Court's precedent regarding the initial hearing is instructive and has made clear that those timing requirements set forth by the legislature in R.C. 2152.84 are indeed jurisdictional. As the State's proposition is unsupported by the plain language of the statute or this Court's case law, this Court should decline jurisdiction.

1. Plain language supports that the completion of disposition hearing is mandatory

Juvenile court as a creature of statute only has the authority, and thus the jurisdiction, to act when permitted to do so by statute. *In re Agler*, 19 Ohio St.2d 70, 72-74, 249 N.E.2d 808 (1969). R.C. 2152.82 – R.C. 2152.85 provides the procedure in which the juvenile court may order a juvenile to register on the basis of an adjudication for a sexually-oriented offense. These provisions make clear that juvenile classifications are a two-step process as set forth in R.C. 2152.83 and R.C. 2152.84. This two-step process involves an individual assessment of the youth's need for the sanction, first, at the time of disposition or upon release from a secured facility, and second, once the child completes the full disposition ordered by the juvenile court. *See* R.C. 2152.83, R.C. 2152.84, *In re I.A.*, 140 Ohio St.3d 203, 16 N.E.3d 653, 2014-Ohio-3155.

This second classification under R.C. 2152.84 is required in order to impose a valid classification order.

R.C. 2152.84 requires the court that entered the initial classification, “upon the completion of the disposition” ordered for the sexually oriented offense, “shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated.” Where words in the statute are plain and unambiguous, there is nothing for the court to construe. *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706, 848 N.E.2d 496. Moreover, terms that are undefined by the legislature are accorded their common, everyday meaning. *Morgan* at ¶ 21; R.C. 1.42.

Here, R.C. 2152.84 is clear and unambiguous. This hearing is mandatory as denoted by the use of the word “shall.” *State v. Golphin*, 81 Ohio St.3d 543, 1998-Ohio-336, 692 N.E.2d 608 (1998)(explaining the term shall in a statute connotes a mandatory obligation unless other language evidences a clear and unequivocal intent to the contrary). This mandatory hearing is to occur “upon the completion of disposition.” R.C. 2152.84. There is no ambiguity in the legislature’s choice of words. This phrase has only one meaning. “Upon” means on. Merriam-Webster Dictionary, “Upon” <https://www.merriam-webster.com/dictionary/upon> (Last accessed October 30, 2019). The ordinary meaning of completion is the state of being complete, or to be brought to an end. See Merriam-Webster Dictionary, “Complete” <https://www.merriamwebster.com/dictionary/complete> (Last accessed October 30, 2019); *Id.*, “Completion” <https://www.merriam-webster.com/dictionary/completion> (Last accessed October 30, 2019).

Finally, disposition is a term of art used in juvenile court which is essentially the action or consequence ordered by the juvenile court as result of the child's adjudication. *See* Juv.R. 2(M).⁴ While in application, disposition might mean something different to different children, this fact alone does not render the statute ambiguous.

The disposition is the tether that allows the juvenile court to maintain some connection with the juvenile. *In re Cross* at ¶ 27. Once disposition is complete, that tether is gone, and the juvenile court no longer has jurisdiction to make further dispositions of that child. *Id.* at ¶ 28. Because the juvenile court's authority over the youth terminates with the termination of the disposition, it is logical that the court's review of whether the classification is necessary should take place at that time. If the classification is continued either at its original or a modified tier level, the court's ability to review the classification is then dictated by R.C. 2152.85.

2. Timing of R.C. 2152.84 hearing is jurisdictional

“[A]s a statutory court, the juvenile court has limited jurisdiction, and it can exercise only the authority conferred upon it by the General Assembly.” *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, ¶ 14 (2015). While R.C. 2151.23(A)(15) grants the juvenile court the authority to conduct juvenile sex offender classification hearings, it is clear that such authority only extends as “authorized” and “required” under R.C. 2152.82 to R.C. 2152.86. The juvenile court's jurisdiction to conduct sex offender hearings is therefore limited and subject to the requirements set forth in R.C. 2152.82 to R.C. 2152.86. It is only within the constraints outlined in these statutes that the juvenile court has the authority granted to it by the General Assembly to

⁴ The State points to the fact that because the cases that have considered the issue as to the timing of this second hearing involved juveniles with differing dispositions, this somehow creates a conflict that must be resolved by this Court. (State's Memo p. 8). Of course the children that come before juvenile court have different dispositions. Dispositions are meant to be individualized and to meet the needs of the specific youth. This fact does not somehow create an issue to be resolved by this Court. What is clear from R.C. 2152.84 is that the juvenile court must hold a hearing and issue a classification order “upon the completion of the disposition.” While disposition may mean something different for different children, the completion of those dispositions remains the same. And, as the First District found in this case, dispositions of delinquent child terminate, at the very latest at age 21. *See* R.C. 2152.02

impose and continue a juvenile sex offender classification and the corresponding duty to register. If the court fails to follow the mandates set forth in R.C. 2152.82 – R.C. 2152.85, then the juvenile court is without jurisdiction. Additionally, the fact that the legislature referred to this hearing as mandatory also provides further support that holding the hearing at the required time provided in R.C. 2152.84 is indeed jurisdictional. Where a statute contains the word “shall,” the provision will generally be construed as mandatory. *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 56 O.O.2d 58, 271 N.E.2d 834, (1971) paragraph one of the syllabus.

When R.C. 2152.83 and R.C. 2152.84 are read together, it becomes clear, contrary to the State’s position, the initial classification order under R.C. 2152.83 is only valid during the dispositional period. For the classification to continue post-disposition, the Court must take an action to continue or to modify that classification. If no action is taken within the statutorily authorized period, then the classification is rendered void.

3. R.C. 2152.83(E) does not save and cure all jurisdictional errors.

The State points to R.C. 2152.83(E), R.C. 2152.84(D) and R.C. 2152.85(F) to support its argument that the juvenile court maintains jurisdiction to periodically review the classification during the duration of the juvenile’s registration period. (State’s Memo p. 5). Amicus, similarly assert that the juvenile court has continuing jurisdiction to review registration after a child’s 21st birthday. (Amicus Memo p. 8). R.B. agrees that in some situations, the juvenile court does indeed maintain jurisdiction to review these classification orders after a child’s 21st birthday under R.C. 2152.85. However, R.C. 2152.83(E) does not save and cure all procedural errors.

In order for R.C. 2152.83(E) to apply and for the juvenile court to have continuing jurisdiction, there *must* be a *valid* classification order, including an initial classification and a classification after the completion of disposition hearing. Courts have made clear that imposing

a classification and corresponding registration duty on a juvenile is a two step-process. *See e.g. State v. Schulze*, 59 N.E.3d 673, 2016-Ohio-470 (1st.Dist.); *In re I.A.*, 140 Ohio St.3d 203, 16 N.E.3d 653, 2014-Ohio-3155. Where the juvenile court fails to conduct the necessary hearing under R.C. 2152.84 at the time it was required and when it had jurisdiction, the court fails to complete the process for imposing a classification. R.C. 2152.83(E), R.C. 2152.84(D) and R.C. 2152.85(F) set forth the exception that a juvenile's attainment of 18 or 21 years of age does not terminate the *order* and the order remains in effect for the period of time described in R.C. 2950.07(B).⁵ R.C. 2152.83(E) *only* applies to the juvenile court's *orders*. R.C. 2152.83(E) in no way speaks to the juvenile court's *jurisdiction*. Under these circumstances, there was simply no proper *order* of the juvenile court to which R.C. 2152.83(E) or the other similar provisions apply. Finally, although R.C. 2152.85 permits the *juvenile* to submit himself to the jurisdiction of the Court to petition for removal from the registry; this has no bearing on the Court's ability to enter a valid classification order. Again, to have a valid classification order, the court must have both an initial hearing and completion of disposition hearing. *See Schulze; In re I.A.*

4. Adopting the State's position would violate numerous constitutional rights.

It is well-established that registration is a penalty. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 11, citing *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16. As it relates to juveniles, the legislature intentionally put limits on this penalty extending into adulthood for actions that arose during youth to foster the rehabilitative purpose of the juvenile courts. With this in mind, the legislature chose to balance this penalty with rehabilitation by putting into place mandatory checks on classification and the resulting duty to register. The statutory scheme enacted under 2152.83 and 2152.84 reflect this intention

⁵ Typically, dispositions and other sanctions set forth by the juvenile court terminate, at the very latest, upon the child's attainment of age 21. *See e.g.* R.C. 2152.22(A). However, in R.C. 2152.83(E), the legislature set forth an exception to that rule in the case of juveniles properly classified and required to register as sex offenders.

and work in tandem. R.C. 2152.83 allows the juvenile court, in its discretion, after notice and a hearing, to initially impose the penalty of classification. R.C. 2152.84 provides mandatory review of this penalty after completion of the disposition to determine whether the rehabilitative efforts of the juvenile court were effective so as not to extend this penalty into adulthood where it is unnecessary. In other words, this check created by R.C. 2152.83 and R.C. 2152.84 is constitutionally mandated under procedural and substantive due process and prevents this penalty from being cruel and unusual.

C. First District's Decision was correct

R.B. asserts in his cross-appeal that his disposition ended earlier than the First District's finding that it was completed on his 21st birthday. However, it is clear that the juvenile court lacked jurisdiction to continue the classification on October 30, 2017. Accordingly, the First District's decision should be affirmed.

Here, although the magistrate held hearings in May 2017 and June 2017, the resultant decisions were not adopted as orders of the juvenile court until October 30, 2017, well after R.B. had turned 21 and completed his disposition. Juv.R. 40 makes clear that a magistrate's decision is not effective unless adopted by the juvenile court. *See* Juv.R. 40(D)(4)(a). Further, Juv.R. 40(D)(3)(a)(iii), requires the juvenile court to enter its own judgment. The juvenile court judge was permitted to enter an interim order or even enter an order during the 14-day objection period and that judgment would be stayed pending resolution of the objections. *See* Juv.R. 40(D). Such action would have potentially cured the jurisdiction issues identified.⁶ Yet, the juvenile court did not avail itself of these options. Rather, it waited to review and adopt the magistrate's decision at

⁶ Assuming for argument sake that the disposition terminated when R.B. turned 21 and not earlier.

a time when it no longer had jurisdiction over the child or the issue of sex offender registration. The First District was correct in finding the juvenile court erred.⁷

Based on the foregoing, the First District reached the correct result and vacated R.B.'s classification. This Court should decline to accept jurisdiction in this matter.

ARGUMENT IN SUPPORT OF CROSS APPEAL

Introduction

In vacating the juvenile court's judgment continuing R.B.'s classification as a Tier I juvenile offender registrant, the First District correctly noted, "[t]he juvenile court loses its jurisdiction over a juvenile who has completed his parole or community control and has been discharged by the court." *In re R.B.* at ¶ 12. In such a circumstance, when the child completes his or her disposition, the juvenile court loses jurisdiction over the child. *See e.g. In re R.B.* at ¶ 13; *see also In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258, ¶ 28. The juvenile court also loses jurisdiction to impose a sex offender classification unless it acts within the authority granted to it under the statute. In order to act within its statutory authority and thus have jurisdiction under R.C. 2152.84, the court must have the completion of disposition hearing when the child completes his disposition; not afterward. *In re R.B.* at ¶ 12; *State v. Amos*, 2017-Ohio-8448, 87 N.E.3d 1305 (1st Dist.). If the juvenile court attempts to hold that hearing after the time in which the child completes the disposition, then the court has failed to complete the statutory process for imposing a juvenile sex offender classification and the court has no authority to classify. As a result, the child has no duty to register. *Id.*

⁷ The First District was also well within its province to employ the rationale that it did to vacate the juvenile court's judgments. It is clear that the basis of R.B.'s direct appeal was the juvenile court's lack of jurisdiction to continue his sex offender classification. Indeed, the appellate court notified the parties of its intent to explore the issue at oral argument. App. R. 12 permits the court of appeals to exercise its discretion when deciding what arguments to address. Further, Section 3 of Article IV, Ohio Constitution sets forth that courts of appeals have jurisdiction to affirm, modify, set aside or reverse a judgment based on the commission of prejudicial error.

In *Amos*, the juvenile was committed to the Department of Youth Services (DYS) in disposition. *Amos* at ¶ 9. When Amos was released from DHS and later discharged from parole, he completed all aspects of his disposition and the court should have held the completion of disposition hearing at that time. Yet, the juvenile court did not hold the completion of disposition hearing and continue the classification until more than a year after Amos had completed his disposition. *Amos* at ¶ 9. R.B.'s case represents the First District's application of the proper rule announced by this Court in *State ex rel Jean Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, and then extended by the First District in *State v. Amos*, 2017-Ohio-8448.

Again, R.B. submits that the judgment of the First District should be affirmed. R.B. of course agrees that it was necessary for his classification to be vacated as the juvenile court lacked jurisdiction to impose the classification. Yet, in applying the *Amos* rule to R.B.'s case, the First District found R.B.'s disposition did not terminate until age 21. R.B. maintains that his disposition ended well before that time. He therefore presents proposition of law 1 in support of this contention that his disposition ended prior to his 21st birthday.

Moreover, as set forth above, R.B. challenged his classification on a number of other bases. The First District Court of Appeals failed to address any of these arguments, finding them to be rendered moot by its resolution of the appeal. *In re R.B.* at ¶ 16. R.B. presents propositions of law 2 and 3 in support of these arguments.

Cross-Appellant Proposition of Law No. 1: To impose additional and new dispositional orders on a child adjudicated delinquent, the juvenile court must comply with Juv.R. 35, the child must be present, and notice of the modification must be given. Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section 16 of Ohio Constitution; Article I, Section 10 of the Ohio Constitution.

R.C. 2152.84 requires the court to conduct a hearing “*upon completion* of the disposition of that child made for the sexually oriented offense * * * on which the juvenile offender

registrant order was based.” As R.B. set forth above and as found by the First District, the juvenile court’s jurisdiction is limited and is not permanent as argued by the State. *See supra*.

R.B.’s concern with the First District’s decision is that it assumed the validity of the juvenile court’s disposition of monitored time, non-reporting probation. It further assumed, without deciding that the suspended commitment remained valid even in light of the termination of probation. The issue of precisely what compromised R.B.’s disposition is important because it is the completion of that disposition which triggers the R.C. 2152.84 hearing, and signals the the loss of the juvenile court’s jurisdiction over the child.

R.B. submits that the controlling order is the December 2, 2011 dispositional order. R.B.’s orders of community control included completing: (1) the residential program at Altercrest; (2) all aftercare requirements of the Altercrest program; and (3) probation supervision. R.B. was also committed to the Department of Youth Services (DYS), which was suspended.

a. R.B.’s disposition terminated on July 29, 2013.

R.B.’s placement at Altercrest, and the court’s care custody and control over R.B., was terminated on February 6, 2013. On February 7, 2013, it was noted that R.B. had successfully completed the placement requirements. As set forth in probation’s termination report, R.B. had successfully completed all orders of the court and had not violated any laws, as he “had no other charges.” On July 29, 2013 R.B.’s probation was terminated. Accordingly, R.B. submits that as of July 29, 2013, each of the community control sanctions were complete and thus terminated.

Because R.B.’s probation/community control was terminated on July 29, 2013, R.B.’s suspended commitment was also terminated at that time. This Court has made clear that “[t]here is no . . . statutory authority that allows a juvenile court to suspend a DYS commitment outside

of probation.” *In re Cross*, 96 Ohio St.3d 328, ¶ 27 (2002). Although community control has replaced “probation,” this Court explained in *In re J.F.*, that a court only maintains authority over the suspended commitment where there are unexpired terms of community control. *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, ¶ 9, 11, 13-14. Once community control terminates, so does jurisdiction and the court’s ability to impose the suspended commitment. *Id.* Unlike in *In re J.F.*, monitored time was not originally imposed at the time of disposition. Here, each of the terms of community control had terminated once probation was terminated. There were no unexpired terms of community control.

Accordingly, as of July 29, 2013, R.B. completed each element of his disposition for the sexually-oriented offense. A completion of disposition hearing was triggered and should have been held. Upon receiving probation’s recommendation for termination from probation, the juvenile court could have and was statutorily required to set R.B.’s case for a completion of disposition hearing and to hold a hearing to determine whether R.B.’s prior classification should continue. The juvenile court did not do that. Rather, it was not until 46 months later, on May 8, 2017 that the juvenile court held the completion of disposition hearing.⁸ This is simply not permitted under R.C. 2152.84. That statute clearly provides that the hearing must occur “upon completion of disposition” not afterwards and certainly not *years* after disposition is complete. *See Jean-Baptise* at ¶ 30 (finding that R.C. 2152.83’s requirement that the classification hearing be held at the time of release is a clear expression of the legislature’s intent that juvenile courts lose their ability to hold classification hearings after that time).

b. Monitored time and the suspended commitment were not valid dispositions.

⁸ Even if the October 2016 date on which the State requested the hearing controlled, given the challenges to the juvenile court’s jurisdiction, it still had been over 39 months since R.B. had completed treatment and probation.

In finding the juvenile court lacked jurisdiction, the First District held that R.B.'s disposition terminated when he turned 21 as a result of the suspended commitment to DYS until age 21. *In re R.B.* at ¶ 14. While R.B. agrees the juvenile court lacked jurisdiction when the disposition was complete, R.B. asserts that his disposition, as well as the juvenile court's jurisdiction, ended much earlier than his 21st birthday.

The July 29, 2013 entry terminated probation, which was a valid action of the court. Yet, on that same day, the juvenile court imposed a new or additional disposition in the form of the non-reporting probation with monitored time. The juvenile court's action in imposing this disposition was invalid as: (1) the court lacked jurisdiction to impose the additional disposition of monitored time and the suspended commitment terminated upon the termination of R.B.'s probation; (2) the imposition of non-reporting probation with monitored time violated R.B.'s due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section 16 of Ohio Constitution; and (3) the imposition of monitored time violated R.B.'s rights under the double jeopardy clauses of both the Ohio and U.S. Constitutions.

1. Juvenile court lacked jurisdiction to impose monitored time.

The juvenile court lacked jurisdiction to impose monitored time as it had already released R.B. from all community control sanctions and failed to follow the procedural requirements to invoke its jurisdiction and impose an additional term of R.B.'s disposition.

“When a court issues an order of community control, the jurisdiction of the court exists only so long as the order itself remains in effect.” *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, ¶ 13, *citing In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258, ¶ 27. When the court terminated R.B. from probation, the court's community control orders also extinguished.

Accordingly, when the court ended R.B.'s probation, it ended its ability to make further dispositions as to R.B. The court thus lacked the jurisdiction to impose monitored time.

Furthermore, a delinquency finding becomes final and appealable once the juvenile court enters a dispositional order. *In re Sekulich*, 65 Ohio St.2d 13, 14, 417 N.E.2d 1014 (1981). The juvenile court's jurisdiction is limited in scope and any attempt to reopen the case must comply with the juvenile rules. To invoke the court's continuing jurisdiction over a case, the court must comply with Juv.R. 35. Juv.R. 35 states: "the continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the matter provided for service of process." Moreover, pursuant to Juv.R. 27(A) and Juv.R. 34(J), youth have a right to be present at disposition. And 2151.352 requires the presence of counsel.

Here, R.B.'s delinquency finding and disposition became final when the court entered disposition on December 2, 2011. Accordingly, to invoke jurisdiction and make any changes, the juvenile court was required to follow Juv.R. 35. Juv.R. 35 was not complied with when the juvenile court entered this disposition on July 29, 2013 placing R.B. on "non-reporting probation with monitored time." This was done by judicial entry. Monitored time is a nonresidential community control sanction. R.C. 2152.19(A)(4)(i). It is a disposition. Prior to the juvenile court putting on this entry, there was no motion or request to invoke the jurisdiction of the court to consider R.B.'s disposition and there certainly was no notice provided to R.B. that the juvenile court was going to impose additional dispositions in this case. Moreover, under Juv.R. 27(A) and Juv.R. 34(J), R.B. had the right to be present at the time this disposition was entered. Finally, the imposition of non-reporting probation with monitored time violated R.C. 2151.352 as R.B. was not represented by counsel, as there was no hearing. *See e.g. In re S.J.*, 9th Dist. Summit No.23058, 2006-Ohio-4467, ¶ 4. Accordingly, had the court wanted to impose this

additional disposition and extend its jurisdiction over R.B., it had to follow these procedural requirements. The failure to follow these procedure rules resulted in the court taking an action in which it lacked jurisdiction. The imposition of non-reporting probation with monitored time did not extend the court's jurisdiction for purposes of the completion of disposition hearing.

In the context of a completion of disposition hearing, the completion or end of the disposition is crucial. It is the completion of the disposition which triggers the hearing and the court's mandatory duty and the authority and jurisdiction to consider the issue of continuing a sex offender classification beyond that of juvenile court. Juvenile courts should not be permitted to extend a disposition without the child's notice or knowledge.

2. The imposition of the additional disposition violated R.B.'s due process rights.

The United States Supreme Court has held that juvenile proceedings must comply with the requirements of due process. Due process in a juvenile court proceeding must include adequate written notice, advice as to the right to counsel, retained or appointed, confirmation and cross-examination of witnesses and the privilege against self-incrimination. . *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). *See also In re Jason R.*, 77 Ohio Misc.2d 37, 40-41, 666 N.E.2d 666 (C.P.1995). Here, R.B.'s right to due process was violated where the court imposed non-reporting probation with monitored time without a hearing. Because there was no hearing, R.B. was neither present, nor represented by counsel. Further, the testimony from Ms. Laws of probation illuminated the deficiencies in the proceeding. As she stated, a defendant is not present at the hearing, and the state is not notified. Because there was no hearing, R.B. was not provided with any notice that he was under any new requirements by the juvenile court when he was placed

on “non-reporting probation with monitored time.” Further, R.B. submits that the juvenile court’s use of monitored time to attempt to create jurisdiction, if not invalid for other reasons, violates the notions of fundamental fairness and due process. *See In re Gault*.

3. The imposition of the additional disposition violated R.B.’s right to be free from double jeopardy.

The Double Jeopardy Clause of the Fifth Amendment applies to juvenile delinquency proceedings. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 26. One of the primary purposes of the Double Jeopardy Clause is to preserve the finality and integrity of judgments. *United States v. DiFrancesco*, 449 U.S. 117, 128, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980). Therefore, any “[a]pplication of the Double Jeopardy Clause depends upon the legitimacy of a defendant’s expectation of finality in the judgment.” *In re C.B.*, 2d Dist. Montgomery No.23615, 2010-Ohio-2129, ¶ 33. “If a defendant has a legitimate expectation of finality, then an increase in that sentence is prohibited by the double jeopardy clause.” *United States v. Fogel*, 829 F.2d 77, 87 (D.C.Cir.1987).

In the instant case, R.B. had an expectation of finality as to his disposition. When the court ordered his disposition on December 2, 2011, R.B. was “ordered to attend and complete the residential program at Altercrest as a condition of probation and to follow all rules and regulations of the placement facility and to adhere to all aftercare requirements.” T.d.-622 20; T.d.-623 30. There is no indication in this entry that R.B. was placed on any other conditions of community control. There was also no indication that the Court was considering registration. Additionally, at the time he was classified, R.B. was informed that once he completed the orders of the court, a “completion of disposition” hearing would be held. Monitored time was not originally ordered as a condition of community control when the court entered disposition for R.B.’s sexually oriented offense. Further, there was simply no indication to R.B. that he could or

would be placed on some other type of probation once these requirements were completed. The court did not even address R.B. at the dispositional hearing.

R.B. had an expectation of finality as to the disposition for the sexually oriented offense. Yet, the juvenile court entered a new and additional disposition of monitored time after R.B. completed all that he was initially ordered to do. This additional disposition violated R.B.'s freedom from double jeopardy and could not be the basis for the juvenile court's extension of jurisdiction to hold a completion of disposition hearing.

Cross-Appellant Proposition of Law No. 2: Where the juvenile court fails to impose an initial classification at a time permitted under R.C. 2152.83(B), the classification is void and the court lacks jurisdiction to conduct a completion of disposition hearing as there is no valid classification to complete.

In *In re I.A.*, this Court made clear that as to discretionary registrants and pursuant to R.C. 2152.83(B)(1), the juvenile court has two options as to when it may impose a classification: either at disposition or at time of release from a secured facility. *In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, ¶ 14, 18. R.B. was not classified at either of these times. As a result, there was no valid initial classification, and thus no classification status to be completed under R.C. 2152.84.

Here, R.B. was committed to Altercrest which could potentially be considered a secured facility. *See In re T.W.* 1st Dist. Hamilton No. C-150327, 2016-Ohio-3131. R.B. was released from Altercrest on February 6, 2013. However, he was not classified at that time.

Moreover, R.B. was not classified at the time of disposition. Disposition occurred on December 2, 2011. The entry ordered R.B. to attend and complete Altercrest and adhere to all aftercare requirements. There was no mention of a sex offender classification hearing or the disposition being continued for an additional hearing. A court only speaks through its entry.

Villa v. Village of Elmore, 6th Dist. Lucas No. L-05-1058, 2005-Ohio-6649, ¶ 21 (6th Dist.). The sex offender classification was simply not part of R.B.’s disposition.

The court could have imposed the classification *at* disposition or at the time of the release from the secured facility—the juvenile court did neither. *See In re I.A.* at ¶ 14, 17. Rather, it classified R.B. *after* disposition and *prior* to his release from Altercrest. Accordingly, because the juvenile court failed to comply with R.C. 2152.83(B)(1), it exceeded its statutory authority, and thus the initial classification was entered without jurisdiction to do so. *See State ex rel. Jean-Baptiste*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶ 32.

This Court has made clear that the power to prescribe punishment vests in the legislative branch and thus, a court may only impose such punishments as provided by statute. *State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 22. Where a lower court ignores statutory mandates and imposes a penalty or punishment outside of what is provided within the statute, the punishment is a nullity and results in a void judgment. *Williams* at ¶ 22; *see also In re D.M.*, 9th Dist. Medina No. 16CA0019-M, 2017-Ohio-232, ¶ 8. Sex offender classification imposes a criminal punishment. *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184, ¶ 23.

Here, because the juvenile court lacked statutory authority to impose the initial classification at the time that it did, the classification is void.⁹ *In re H.P.*, 9th Dist. Summit No. 24239, 2008-Ohio-5848. There was simply nothing for the court to complete pursuant to R.C. 2152.84. R.B. requests this Court to hold that as to discretionary registrants, in order to have a valid classification, and hereby trigger the need for a completion of disposition hearing,, the juvenile court must enter the initial classification order at disposition or at the release from a

⁹ R.B. did not file a direct appeal of his initial classification. However, this does not bar his challenge to his initial classification. Void judgments are subject to collateral attack at any time. *Williams* at ¶ 22. Accordingly, R.B.’s challenge to his initial classification was timely.

secured facility. The failure to issue the initial order at one of these times divests the juvenile court of jurisdiction to complete the classification under R.C. 2152.84.

Cross-Appellant Proposition of Law 3: To comply with fundamental fairness and a youth's due process rights in conducting a completion of disposition hearing, the juvenile court must conduct the hearing at the time the child completes his treatment. *See In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027; Fourteenth Amendment to the U.S. Constitution; Section 16, Article I of Ohio Constitution.

Here, the juvenile court waited approximately 46 months from the time in which R.B. attended treatment to the time it conducted his end of disposition. Such a delay violates the child's due process rights. To comply with due process, the court must hold the hearing at the time treatment is completed.

Both the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution guarantee due process of law. The United States Supreme Court has held that juvenile proceedings must comply with the requirements of due process. *In re Gault*, 387 U.S. at 1. The delay in the imposition of a sentence or punishment can violate a defendant's due process rights. *See e.g. State v. Smith*, 196 Ohio App.3d 431, 2011-Ohio-3786, 964 N.E.2d 3, ¶ 15 (10th Dist). The reason for this is simply that in some contexts, an excessive delay is unfair and unconstitutional. *State v. Zucal*, 82 Ohio St.3d 215, 694 N.E.2d 1341 (1998). To determine whether any delay in imposing a penalty violates the defendant's right to due process, one can look to: (1) the reasons for the delay; and (2) the prejudice suffered by the defendant as a result of the delay. *Id.*

Here, the First District did not address this argument. And, the juvenile court did not provide a reason for the delay. Rather, it indicated that the hearing could be held at any time of its choosing and decided to hold the hearing because it gave R.B. an opportunity to be removed

from the registry. However, the problem in this matter is that waiting 46 months after treatment severely prejudiced R.B.¹⁰

R.B. submits that based on the delay in holding the completion of disposition hearing, his ability to present evidence in support of his removal from the registry was compromised. For instance, several service providers were unwilling to come to court to discuss R.B.'s treatment or progress as it had been four years since he was seen. Other service providers were unable to be reached. Had the hearing been held in 2013, these same obstacles would not have been present.

R.B. was also prejudiced by the delay in holding the hearing as it resulted in him losing an opportunity to seek removal from the registry. Between the time R.B. completed his probation/treatment—and the holding of the hearing in 2017, R.B. could have received two separate opportunities to have his classification status reviewed or modified. *See* R.C. 2152.85. For these reasons, because R.C. 2152.84 imposes a punishment, it is thus akin to a sentence. And like any other sentence, the unreasonable delay in its imposition renders the penalty invalid.

Further, “[courts] are to determine only whether the action complained of * * * violates those “fundamental conceptions of justice which lie at the base of our civil and political institutions,” and which define “the community’s sense of fair play and decency.” ’ ’ *United States v. Sanders*, 452 F.3d 572, 580 (6th Cir. 2006). R.B. submits that the manner in which his completion of disposition hearing was conducted violates this notion of due process.

R.C. 2152.84 requires the juvenile court to conduct a mandatory and meaningful review of a youth’s classification upon completion of their disposition. As recognized by the Supreme Court in *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184, the purpose of the statutorily prescribed hearing is to give the juvenile court judge an opportunity to determine

¹⁰ A review of the record indicates that only a handful of the continuances in this matter can be attributed to the defendant; the rest are attributed to the State.

whether the juvenile offender has responded to the court's ordered rehabilitative efforts or whether he remains a threat to society. *Id.* at ¶ 35. This hearing determines whether the penalty-placement on the sex offender registry will remain.

As a result of waiting so long, the hearing was no longer meaningful. For instance, as part of its review, the juvenile court must consider the results of treatment. As demonstrated above, when the completion of disposition hearing is not held until years after treatment has been concluded, it becomes difficult to even present evidence of that factor.

This court should ensure that juveniles due process rights are protected with regards to the completion of disposition hearing.

CONCLUSION

This Court should not accept jurisdiction over this case because it raises no constitutional questions, nor any issues of public or great general interest. The State's argument that a juvenile court retains permanent jurisdiction over juvenile sex offender classification orders has been waived and is barred by the doctrine of res judicata as it was not argued to the Court of Appeals. Finally, the Court of Appeals followed the plain language of R.C. 2152.84 to vacate R.B.'s duty to register. For these reasons, this Court should decline jurisdiction in this case.

Respectfully Submitted,

RAYMOND T. FALLER
Hamilton County Public Defender

/s/ Julie Kahrs Nessler
JULIE KAHRS NESSLER (0085189)
Counsel for R.B.
Office of the Hamilton County Public Defender
125 East Court Street, Ninth Floor
Phone: (513) 946-8256
Facsimile: (513) 946-8242
JKNessler@cms.hamilton-co.org

