

**IN THE
SUPREME COURT OF OHIO**

CASE NO. 2019-1325

In Re. R.B.
A Minor-Child-Appellee

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

COURT OF APPEALS CASE NO.
C-170622 & 170623

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE OHIO
PROSECUTING ATTORNEYS ASSOCIATION IN SUPPORT OF THE STATE OF
OHIO'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE INVOLVES AN ISSUE OF GREAT GENERAL OR PUBLIC INTEREST 1

STATEMENT OF INTEREST OF AMICI CURIAE..... 3

STATEMENT OF THE CASE..... 4

LAW AND ARGUMENT..... 5

AMICUS CURIAE’S PROPOSITION OF LAW: A JUVENILE COURT RETAINS JURISDICTION OVER A CHILD’S SEX OFFENDER REGISTRATION OBLIGATIONS AFTER THE CHILD TURNS 21. 5

CONCLUSION 11

CERTIFICATE OF SERVICE 12

**EXPLANATION OF WHY THIS CASE INVOLVES AN ISSUE OF GREAT GENERAL
OR PUBLIC INTEREST**

The juvenile sex offender registration statutes should not be construed to provide procedural loopholes for a juvenile sex offender to avoid registration requirements. Registration requirements stemming from juvenile adjudications are unlike the requirements that attach to criminal convictions. The juvenile sex offender registration system is designed to allow periodic reviews of a juvenile sex offender's registration obligations. Such periodic reviews only benefit the delinquent child. If the juvenile sex offender is to avoid registration obligations, it should be because he or she has been effectively rehabilitated through the juvenile justice system.

The First District's decision in *In re R.B.*, 1st Dist. Hamilton Nos. C-170622 & C-170623, 2019-Ohio-3298 implicates an important public policy concern for Ohio's citizens. The avowed goals of providing sex offender registration laws for certain delinquent children is to protect the safety and general welfare of the people of the state and that the exchange of certain relevant information among public agencies is a means of assuring public protection. See generally, R.C. 2950.02(B). Juvenile sex offender registration does not share the same process for those convicted as adults. As an overview, the juvenile sex offender registration process balances the avowed public purpose with a process that allows a juvenile court to periodically review a child's classification and determine whether it should remain in place. Hearings will occur at disposition or release from secured confinement (See generally R.C. 2152.82 and R.C. 2152.83), at the completion of disposition (see generally R.C. 2152.84), and periodically thereafter (see generally R.C. 2152.85). Because the minimum length of registration is ten years for a child that is adjudicated delinquent (R.C. 2950.07(B)(3)), it seems natural that registration will extend beyond

the child's 21st birthday. A natural extension of this observation is that a juvenile court will retain jurisdiction beyond the child's 21st birthday.

The First District; however, has interpreted certain provisions of R.C. 2152.82, et seq., to require certain hearings to occur before a child's 21st birthday, in order for a delinquent child sex offender to be subjected to the registration scheme. It is the Ohio Prosecuting Attorneys Association's position that, if a juvenile sex offender is to avoid registration it is because the offender has demonstrated to the juvenile court that registration is no longer required. The juvenile sex offender should not avoid registration because of erroneous procedural requirements. When reading provisions of R.C. 2152.82, et seq. in context with each other, the juvenile sex offender registration provisions should be construed to allow hearings to occur before and after the child's 21st birthday as opposed to rigid time periods.

The Ohio Prosecuting Attorneys Association shares the concern of the State of Ohio that if R.C. 2152.92, et. seq. is construed to require certain hearings to occur prior to a child's twenty-first birthday, then it will not have an opportunity to conduct a meaningful review. For instance, if a child is released from ODYS just prior to his 21st birthday, then the hearing under R.C. 2152.83 might be less than meaningful if the juvenile court has only days to complete said hearing. The same could be said of the "completion of disposition" hearing held pursuant to R.C. 2152.84 where the completion of disposition occurs only days prior to a child's 21st birthday. A juvenile court should have the flexibility to conduct these types of hearings, with adequate time to gather necessary information to conduct a meaningful hearing. Further highlighting the need for jurisdiction in this case is R.B.'s own uncertainty as to the timing of the R.C. 2152.84 hearing, as the court of appeals indicated that R.B. argued to the juvenile court that the hearing was both too late and too early. *In re R.B.*, at ¶5.

Acceptance of this case will provide this Court a vehicle to construe the timing of hearing under R.C. 2152.84 where clarity of law is needed. The Ohio Prosecuting Attorneys Association urges the Court to accept jurisdiction.

STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Prosecuting Attorneys Association (OPAA) is a private non-profit membership organization that was founded for the benefit of the 88 county prosecutors. Each county prosecutor is charged under R.C. 309.08(A) with inquiring into the commission of the crime and prosecuting on behalf of the state, all complaints, suits, and controversies in which the state is a party. The founding attorneys developed the original mission statement, which is still adhered to. It reads: “to increase the efficiency of its members in the pursuit of their interest; to broaden their interest in government; to provide cooperation and concerted actions on the polices which affect the office of the Prosecuting Attorney, and to aid in the furtherance of justice. Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members.”

And it is in furtherance of justice to guarantee that the laws of the State of Ohio are faithfully executed, and that the public’s safety is ensured. Prosecutors across Ohio have an interest in ensuring that the public is protected. The Ohio Prosecuting Attorneys Association has deemed the issues raised by the State of Ohio important due to its potential impact across Ohio.

STATEMENT OF THE CASE

The Ohio Prosecuting Attorneys Association adopts the statement of the case, as set forth in the State of Ohio's memorandum in support of jurisdiction, with emphasis on the following facts:

- A complaint was filed on September 21, 2011, alleging that R.B. committed ODYS. He admitted to two counts of fourth-degree gross sexual imposition on October 14, 2011. *In re R.B.*, 1st Dist. Hamilton Nos. C-170622, C-170623, 2019-Ohio-3298, ¶2
- On November 17, 2011, the State and R.B. agreed to a Tier I classification. On December 2, 2011, R.B. was committed to ODYS until age 21; however, the commitment was suspended at R.B. was placed on probation. *Id.*
- A classification order was entered on January 13, 2012. *Id.* at ¶3. The Ohio Prosecuting Attorneys Association construes this as the initial classification order.
- Official Probation was terminated on July 29, 2013. R.B. was placed on nonmonitored probation. *Id.* at ¶4
- R.B. turned 18 on July 20, 2014. *Id.* at ¶6.
- The State filed its motion for end-of-disposition hearing on October 24, 2016, roughly six months prior to R.B.'s 21st birthday. *Id.* at ¶5-6.
- On May 8, 2017, the magistrate conducted the requisite hearing pursuant to R.C. 2152.84. An order was issued July 13 and 14, 2017 continuing the prior registration order. *Id.* at ¶5. R.B. filed objections.
- R.B. turned 21 on July 20, 2017. *Id.* at ¶6.
- The judge held a hearing on the objections on September 19, 2017 and on October 30, 2017 adopted the magistrate's decision. *Id.* at ¶6.

The court of appeals held that the juvenile court was without jurisdiction to enter an order under R.C. 2152.84 because R.B. had turned 21. *Id.* at ¶14. The court of appeals primarily relied upon *State v. Amos*, 2017-Ohio-8448, 87 N.E.3d 1305 (1st Dist.), *State v. Schulze*, 2016-Ohio-470, 59 N.E.3d 673 (1st Dist.), and *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302.

In the view of the Ohio Prosecuting Attorneys Association, the court of appeals decision does not fully consider the effect of R.C. 2152.84(D), which the Ohio Prosecuting Attorneys Association construes as providing a juvenile court with continuing jurisdiction over a child sex offender’s registration obligation. Similar provisions exist for every stage of the juvenile sex offender registration process. See also R.C. 2152.82(C), R.C. 2152.83(E), and R.C. 2152.85(F). The interplay of these statutes is central to the issue of jurisdiction in this case.

LAW AND ARGUMENT

AMICUS CURIAE’S PROPOSITION OF LAW: A JUVENILE COURT RETAINS JURISDICTION OVER A CHILD’S SEX OFFENDER REGISTRATION OBLIGATIONS AFTER THE CHILD TURNS 21.

The amicus curiae’s proposed proposition of law is consistent with the proposition of law framed by the State of Ohio. The State’s proposition of law is that, “Once a juvenile court makes an appropriate initial 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.” The Ohio Prosecuting Attorneys Association believes that adoption of the State’s proposition of law could also lead to a conclusion that a juvenile court retains jurisdiction over a child’s sex offender registration obligations, after the child turns 21, and has the ability to conduct any of the requisite hearings any time after the child turns 21.

A. STATUTORY FRAMEWORK OF JUVENILE SEX OFFENDER REGISTRATION

This case involves the interplay of R.C. 2152.02, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85. In addition to the provision of Revised Code Chapter 2950, Sections 2151.82 through 2151.85 of the Revised Code provide the framework for imposing, continuing, modifying and terminating juvenile sex offender registration. These provisions can be reconciled with the general definition of a child contained under R.C. 2152.02(C).

First, R.C. 2152.02(C)(6) provides a general rule that a juvenile court has jurisdiction over a child, adjudicated delinquent prior to attaining eighteen years of age, until the child turns 21. This statute does not purport to suggest that all jurisdiction ends at age 21, as the division contains the language, “except as otherwise provided in this division,” and the statute’s final sentence contains language indicating that dispositions could be made after age 21.

Second, several statutes govern juvenile sex offender registration:

- **R.C. 2152.82(A):** Juvenile sex offender registration can be made a part of the dispositional order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least fourteen when committing the offense, (3) and the juvenile was previously adjudicated delinquent for committing a sexually oriented offense.
- **R.C. 2152.83(A):** The juvenile court shall issue as part of the dispositional order or if the court commits the child to a secured facility a registration order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least sixteen or seventeen when committing the offense, (3) R.C. 2152.82(A) does not apply.
- **R.C. 2152.83(B)(2):** The juvenile court may conduct a hearing as part of the dispositional order or if the court commits the child to a secured facility a registration

order if: (1) the offense was committed on or after January 1, 2002, (2) the child was at least fourteen or fifteen when committing the offense, (3) R.C. 2152.82(A) does not apply.

- **R.C. 2152.82(C) and R.C. 2152.83(E):** Registration orders issued under these sections remain in effect for the time specified in R.C. 2950.07 *subject to modification*. Both divisions have language indicating that, “if an order [issued under this section], the child’s attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.”
- **R.C. 2152.84(A):** Registration orders issued under either R.C. 2152.82 or R.C. 2152.83 are subject to a completion of the disposition hearing to review the effectiveness of the disposition and any treatment to determine whether the child might re-offend and whether registration should be continued.
- **R.C. 2152.84(D):** As with R.C. 2152.82(C) and R.C. 2152.85(F), indicates that **it** an order issued under the section, “the child’s attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.”
- **R.C. 2152.85:** Petitions for reclassification or declassification can be filed three years after the mandatory hearing conducted under section 2152.84.
- **R.C. 2152.85(F):** Contains similar language indicating that, “an order issued under [this section] shall remain in effect for the time specified in section 2950.07, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child’s attainment of eighteen or twenty-

one years of age does not affect or terminate the order, and the order remains in effect for the period described...”

The commonality between R.C. 2152.82, R.C. 2152.83, R.C. 2152.84 and R.C. 2152.85 is that each section contains language indicating that if orders are issued under the respective sections then, “the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order.”

B. R.C. 2152.82 THROUGH R.C. 2152.85 PROVIDES CONTINUING JURISDICTION FOR A JUVENILE COURT TO REVIEW WHETHER SEX OFFENDER REGISTRATION SHOULD BE CONTINUED OR DISCONTINUED, EVEN AFTER THE CHILD’S 21ST BIRTHDAY.

Unambiguous statutes must be applied as written. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 545, 1996-Ohio-291, 660 N.E.2d 463 (1996). Legislative intent, with respect to ambiguous statutes, might be determined based upon the factors listed under R.C. 1.49.

The State of Ohio’s proposition of law is consistent with R.C. 2152.83(E). From a procedural standpoint it appears undisputed that the hearing under R.C. 2152.83 was completed and an order was issued prior to R.B.’s 21st birthday. What R.C. 2152.83(E) indicates is that R.B.’s registration classification order remains valid for ten years under R.C. 2950.07, subject to modification and termination under R.C. 2152.84 and that R.B.’s subsequent attainment of age 21 does not terminate the order, and that order remains in effect for the ten year time period. At this pointed R.B.’s registration requirements were vested subject to subsequent modification under R.C. 2152.84. The court of appeals conclusion that because the hearing under R.C. 2152.84 was not timely held somehow terminates R.B.’s registration duties ignores the validity of the original registration order under R.C. 2152.83.

The phrase, “the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order” contained within each juvenile registration statute plainly indicates that a juvenile court retains jurisdiction beyond the child’s 21st birthday. One might argue that the continuing jurisdiction provisions of R.C. 2152.84(D) only apply if the hearing was timely conducted and completed prior to the child’s 21st birthday; however, that construction must be rejected. The hearing under R.C. 2152.85 which allows subsequent modification to a child’s sex offender registration requirements, will undoubtedly occur at times, after a child’s 21st birthday, and the language under R.C. 2152.85(F) are similarly phrased as R.C. 2152.84(D). No other provision in R.C. 2152.85 speaks of a child’s 21st birthday other than R.C. 2152.85(F). This must lead to a conclusion that R.C. 2152.85(F) provides the extension of jurisdiction. As a consequence, so too should R.C. 2152.84(D) provide an extension of jurisdiction beyond a child’s 21st birthday.

The statutory construction advocated by the Ohio Prosecuting Attorneys Association might require the Court to revisit *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302. In *Jean-Baptiste*, this Court held that a juvenile court was patently and unambiguously without jurisdiction to classify Jean-Baptiste as this Court appeared to have agreed that there is no statute extending jurisdiction beyond age 21. *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, at ¶¶26-27. The language of R.C. 2152.83(E) is similarly phrased as R.C. 2152.84(D) and R.C. 2152.85(F). However, the Court did not appear to look beyond R.C. 2152.83(E) and the fact that several statutes contain identical provisions about the order’s validity despite the fact that the child has attained 21 years of age. The Ohio Prosecuting Attorneys Association submits that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) all provide an extension of a juvenile court’s jurisdiction over a child, beyond the

child's 21st birthday as it relates to sex offender registration obligations and an exception to R.C. 2152.02(C)(6).

Even if the Court were to take the approach that that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) were ambiguous, the object sought to be attained, the circumstances under which the statute was enacted, the legislative history also lead to a conclusion that R.C. 2152.82(C), R.C. 2152.83(E), R.C. 2152.84(D), and R.C. 2152.85(F) providing jurisdiction beyond a child's 21st birthday. Historically, sex offender registration has been viewed as remedial and civil in nature. See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570 and *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110. That changed, at least for adult sex offenders, in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 (holding that the Adam Walsh Act was punitive). The current Adam Walsh Act statutes for juvenile sex offenders share similar aspects as those under Megan's Law for juvenile sex offenders. At the time of the enactment of the Adam Walsh Act, the statutes were still deemed civil-in-nature and supportive of the goals enumerated under R.C. 2950.02. A conclusion can be reached that the legislative history of the juvenile sex offender registration statutes support a statutory construction in favor of extension of jurisdiction as opposed to a rigid procedural framework in which a hearing must be held, since the avowed goal is public safety as opposed to further punishment of the child.

While the Ohio Prosecuting Attorneys Association suggests a broader extension of jurisdiction for a juvenile court to decide issues related to a child's sex offender registration obligations, the same statutory provisions relied upon by the Ohio Prosecuting Attorneys Association supports the State's proposition of law. Jurisdiction in this case should be accepted to provide clarity in the law.

CONCLUSION

The juvenile court's ability to have continuing jurisdiction over a child's registration obligation is an important feature of juvenile sex offender registration that distinguishes itself from those obligations imposed upon convicted sex offenders. R.C. 2152.82 through R.C. 2152.85 should be construed to encourage thorough review of each child's situation before determining whether to impose, continue, modify or terminate an adjudicated delinquent child's duty to register. Such a thorough review is accomplished through an interpretation of R.C. 2152.82 through R.C. 2152.85 that provides a juvenile court with continuing jurisdiction over an adjudicated delinquent child's registration obligations that extend beyond the 21st birthday. Given the public policy implications of this case, the Ohio Prosecuting Attorneys Association asks this Court to grant review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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