

**IN THE  
SUPREME COURT OF OHIO**

**CASE NO. 2019-1325**

In Re. R.B.  
A Minor-Child-Appellee/Cross-Appellant

COURT OF APPEALS CASE NO.  
C-170622 & 170623

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

**THIRD MERIT BRIEF OF AMICUS CURIAE OHIO PROSECUTING ATTORNEYS  
ASSOCIATION IN SUPPORT OF THE APPELLANT/CROSS-APPELLEE STATE OF  
OHIO**

JOSEPH T. DETERS (#0064126)  
Hamilton County Prosecutor

MICHAEL C. O'MALLEY (#0059592)  
Cuyahoga County Prosecutor

PAULA E. ADAMS (#0069036)  
Assistant Prosecuting Attorney  
Hamilton County Prosecutor's Office  
230 E. 9<sup>th</sup> Street, Suite 4000  
Cincinnati, Ohio 45202  
513-946-3227  
Paula.Adams@hcpros.org

DANIEL T. VAN (#0084614)  
Assistant Prosecuting Attorney  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113  
216-443-7865  
dvan@prosecutor.cuyahogacounty.us

Counsel for Appellant/Cross-Appellee  
State of Ohio

Counsel for Amicus Curiae-  
Ohio Prosecuting Attorney Association

Raymond T. Faller (#0013328)  
Hamilton County Public Defender

Brooke M. Burns (#0080256)  
Chief Counsel, Juvenile Department

Julie Kahrs Nessler (#0085189)  
Assistant Hamilton County Public Defender  
125 E. Court Street, 9<sup>th</sup> Floor  
Cincinnati, Ohio 45202  
(513) 946-8256  
JKNessler@cms.hamilton-co.org

Office of the Ohio Public Defender  
250 E. Broad Street, Suite 1400  
Columbus, OH 43215  
(614) 466-5394  
brooke.burns@opd.ohio.gov

Counsel for Appellee/Cross-Appellant R.B.

Counsel for Amici Curiae Office of the Ohio  
Public Defender, Children's Law Center,  
Justice for Children, Juvenile Law Center,  
National Juvenile Defender Center and  
Professor Catherine Carpenter

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... ii

**STATEMENT OF INTEREST OF AMICI CURIAE**..... 1

**STATEMENT OF THE CASE**..... 1

**LAW AND ARGUMENT**..... 2

**APPELLANT’S PROPOSITION OF LAW: 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 215[2].85** ..... 2

**CONCLUSION** ..... 6

**CERTIFICATE OF SERVICE**..... 8

**TABLE OF AUTHORITIES**

**Cases**

*In re A.W.*, Slip Opinion No. 2020-Ohio-1457 ..... 2  
*In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729 ..... 5  
*In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258 ..... 2  
*In re J.B.*, 10th Dist. Franklin No. 11AP-243, 2011-Ohio-6134, ..... 6  
*In re R.B.*, 1<sup>st</sup> Dist. Hamilton No. C-170622, C-170623, 2019-Ohio-3298 ..... 6  
*State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302 ..... 2  
*State v. Bellman*, 86 Ohio St.3d 208, 1999-Ohio-95, 714 N.E.2d 381 ..... 6  
*State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570 ..... 5  
*State v. Echols*, 2d Dist. Greene Nos. 99CA60, 99CA82, 2000 Ohio App. LEXIS 1906 (May 5, 2000) ..... 6  
*State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110 ..... 5  
*State v. Webb*, 9th Dist. Lorain No. 06CA008875, 2006-Ohio-5476 ..... 6  
*State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 ..... 5

**Statutes**

R.C. 2152.83 ..... passim  
R.C. 2152.84 ..... passim  
R.C. 2152.85 ..... passim  
R.C. 2950.13 ..... 5

## **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 policies 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. So too are the issues raised by Amici for Appellee/Cross-Appellant worth address.

## **STATEMENT OF THE CASE**

The OPAA adopts the statement of the case, as outlined in the State of Ohio in its merit briefs.

## LAW AND ARGUMENT

### APPELLANT’S PROPOSITION OF LAW: 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 215[2].85.

- A. THE JURISDICTIONAL LIMITS OF THE JUVENILE COURT ARE NOT WELL ESTABLISHED. A JUVENILE COURT SHOULD HAVE THE JURISDICTION TO IMPOSE, CONTINUE, MODIFY OR TERMINATE REGISTRATION OBLIGATIONS BEYOND A CHILD’S 21<sup>ST</sup> BIRTHDAY.

Contrary to the assertions made by the Amici Curiae, the jurisdictional limits of this Court, concerning juvenile sex offender registration is worth re-evaluating since the analysis supporting the State’s proposition of law does support a conclusion that jurisdiction to conduct a hearing under R.C. 2152.83(E) extends beyond a juvenile’s twenty-first birthday.

Amici Curiae is somewhat correct that a juvenile court’s jurisdiction generally terminates one the child turns 21. Amici curiae advance their argument that *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302 remains good law because it was cited by this Court in *In re A.W.*, Slip Opinion No. 2020-Ohio-1457, ¶7. However, neither *Jean-Baptiste* nor *A.W.* deprives a juvenile court of jurisdiction to conduct a hearing under R.C. 2152.84 after a juvenile turn 21.

In *Jean-Baptiste* this Court applied R.C. 2152.02(C)(6) to the imposition hearing under R.C. 2152.83 and rejected the position that R.C. 2152.02(C)(6) is limited to the “hearing on the complaint”, i.e. adjudication and disposition. *Id.* at ¶19. The majority opinion also deemed its decision in accord with *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258. *Id.* at ¶29. The majority also referenced R.C. 2152.83(E), to the extent that Jean-Baptiste conceded in the complaint that had the judge validly classified Jean-Baptiste before his 21 birthday than jurisdiction would continue. *Id.* at ¶26. Again R.C. 2152.83(E) states:

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 of the Revised Code, and section 2152.851 of the Revised Code applies regarding the order and the determinations. 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.

The statute provides that the child's attainment of eighteen or twenty-one does not affect the order and that it remains in effect subject to modification or termination under R.C. 2152.84. While R.B. and his amici might suggest that R.C. 2152.83(E) is only triggered if an order is imposed before a child's 21<sup>st</sup> birthday, similar language is used in other provisions. See R.C. 2152.84(D), R.C. 2152.85(F).

The type of hearing involved in this case is provided for under R.C. 2152.84 which requires a juvenile court to review the order under R.C. 2152.83 and determine whether the prior classification should be continued or terminated. R.C. 2152.84(A) provides that the hearing is conducted upon completion of the disposition and does not specify that such hearing must be conducted before the juvenile attains 21 years of age. As indicated in the State's first merit brief, the completion of disposition hearing was continued numerous times at R.B.'s request. See State's first merit brief, pgs. 2-3.

When evaluating other provisions of the Revised Code, there is no statutory bar against conducting hearings related to juvenile sex offender classifications after the juvenile attains 21 years of age. For instance, the type of hearing envisioned by R.C. 2152.85 is likely one that would occur after the juvenile attains twenty-one years of age. Yet, the plain language of R.C. 2152.85(F) allows such a hearing to occur beyond the juvenile's attainment of twenty-one years of age. Again, there is nothing in R.C. 2152.84 that indicates that the failure to conduct the completion of the end of disposition by the juvenile's 21<sup>st</sup> birthday renders the classification order under R.C. 2152.83(A)

void, especially where R.C. 2152.83(E) makes clear that the child's attainment of twenty-one years of age does not affect or terminate the order. The word "attainment" (a noun) can include a condition that has been attained. See <https://www.merriam-webster.com/dictionary/attainment>. Accordingly, the application of R.C. 2152.83(E) does not require that the initial classification order be issued before the juvenile attains the age of 21 as the plain meaning of the word "attainment" can refer to something that has already been attained. Likewise, R.C. 2152.84(D) does not require that the order be issued before the time a juvenile attains the age of 21. The statute like R.C. 2152.83(E) provides that the juvenile's attainment of age 21 does not affect or terminate the order.

*A.W.* should not influence the outcome in this case either because *A.W.* was about a serious youthful offender disposition. The serious youthful offender statutes are different from those involving juvenile sex offender registration.

Adoption of the Appellant's proposition of law necessarily leads to the conclusion that a juvenile court retains jurisdiction over a juvenile's sex offender registration obligations, even after the juvenile turns twenty-one years old. This is because the analysis supporting the contention that a hearing under R.C. 2152.84 after the juvenile's attainment of 21 years of age also supports the contention that a hearing under R.C. 2152.83 can be held after the juvenile's attainment of 21 years of age. This rule of law is supported by the common language various sections of the Revised Code. R.C. 2152.82, 2152.83, R.C. 2152.84 and R.C. 2152.85 which all provide that the "child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and that the order remains in effect for the period of time described in this division."

## **B. THE JUVENILE SEX OFFENDER REGISTRATION STATUTES ARE DESIGNED FOR MULTIP**

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. Amici for Appellee/Cross-Appellant extensively cites to studies and makes public policy arguments that juvenile sex offender registration does not increase public safety and harms system-involved youths.

Any concerns about including juveniles on public registries, under R.C. 2950.13, was resolved by this Court in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, when it found the public registry qualified juvenile offender registrant classification unconstitutional. Furthermore, the records held by the Sheriff about a delinquent child are not subject to public inspection under R.C. 2950.081. Also, features of the JSORN statutes distinguish them from the SORN statutes that are applied to convicted sexually oriented offenders. For instance, the duration of registration for Tier I and Tier II offenders who are delinquent children are shorter. See R.C. 2950.07. There are more opportunities for a juvenile sex offender registrant to have their classification reviewed under R.C. 2152.84 and R.C. 2152.85, compared to convicted Tier I sex offenders who can only apply to have their registration obligations removed after ten years under R.C. 2950.15.



Amici's policy arguments do not compel a conclusion as to the jurisdictional question answered by the First District in *In re R.B.*, 1<sup>st</sup> Dist. Hamilton No. C-170622, C-170623, 2019-Ohio-3298. Nor does it compel adoption of Cross-Appellant's proposition of law. In considering Cross-Appellant's proposition of law, this Court should keep in mind any continuance or delay that was occasioned by R.B. and consider that a juvenile court should have the flexibility as to the timing of the hearing under R.C. 2152.84. The failure to conduct the hearing under R.C. 2152.84 upon the immediate completion of disposition is not jurisdictional. In the context of adult offenders, the timing requirements to conduct classification hearings have not been deemed jurisdictional and can be subject to waiver. See e.g., *State v. Bellman*, 86 Ohio St.3d 208, 1999-Ohio-95, 714 N.E.2d 381, *State v. Webb*, 9th Dist. Lorain No. 06CA008875, 2006-Ohio-5476, *State v. Echols*, 2d Dist. Greene Nos. 99CA60, 99CA82, 2000 Ohio App. LEXIS 1906 (May 5, 2000). The reasoning in these cases has been applied to juvenile registration statutes. In *In re J.B.*, 10th Dist. Franklin No. 11AP-243, 2011-Ohio-6134, the Tenth District concluded the timing requirements of R.C. 2152.83(A) were not jurisdictional. It also follows that the timing requirements of R.C. 2152.84 are not jurisdictional as Appellee/Cross-Appellant suggests.

The position of the Cross-Appellee/Appellant should be rejected.

### **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 a 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 juvenile's 21<sup>st</sup> birthday. Moreover, any timing requirements of R.C. 2152.84 are not jurisdictional.

Accordingly, the OPAA asks this Court to adopt the State of Ohio's proposition of law and to reverse the decision of the First District.

Respectfully Submitted,  
MICHAEL C. O'MALLEY (#0059592)  
Cuyahoga County Prosecutor

/s/ Daniel T. Van  
Daniel T. Van (#0084614)  
Assistant Prosecuting Attorney  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7865  
dvan@prosecutor.cuyahogacounty.us

**CERTIFICATE OF SERVICE**

A copy of the foregoing Third Merit Brief of Amicus Curiae Ohio Prosecuting Attorneys Association in support of the State of Ohio has been sent via electronic mail to Paula Adams, Assistant Prosecuting Attorney at Paula.Adams@hcpros.org and Julie Kahs Nessler, Assistant Public Defender at JKNessler@cms.hamilton-co.org, and counsel for amici curiae Brooke Burns at brooke.burns@opd.ohio.gov on this 11<sup>th</sup> day of June 2020.

/s/ Daniel T. Van \_\_\_\_\_  
Daniel T. Van (#0084614)