

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2013-1591
Plaintiff-Appellee,	:	
vs.	:	On Appeal from the Summit County
	:	Court of Appeals, Ninth Appellate
ALEXANDER QUARTERMAN,	:	District Case No. 26400
Defendant-Appellant.	:	

MERIT BRIEF OF APPELLANT ALEXANDER QUARTERMAN

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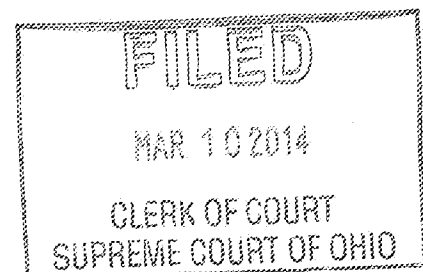


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STATEMENT OF THE CASE AND THE FACTS

Because Alexander Quarterman was 16 at the time he used a gun to rob a group of friends playing cards, the Summit County Juvenile Court was required to transfer the case to adult court. *State v. Quarterman*, 9th Dist. Summit No. 26400, 2013-Ohio-3606, ¶ 2. In adult court, Alexander entered a guilty plea, was convicted of aggravated robbery with a firearm specification, and was sentenced to four years in prison. *Id.* Alexander will be released from prison when he is 20 years of age—within the time the juvenile court would have jurisdiction over him, had his case been eligible to be retained by the juvenile court. R.C. 2152.02(C)(6); see Ohio Dep't of Rehab. & Corr., *Offender Search Detail*, <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A623309> (accessed March 1, 2014).

Alexander appealed his conviction, asserting that Ohio's mandatory transfer scheme is unconstitutional because it prohibits the juvenile court from considering the mitigating factors of youth before transferring the case to adult court, in violation of due process, equal protection, and the prohibition against cruel and unusual punishment. The Ninth District affirmed his conviction, holding that Alexander waived his right to challenge the transfer of his case to adult court by pleading guilty. *Op.* at ¶ 3-8. This Court accepted Alexander's timely appeal. *State v. Quarterman*, 137 Ohio St.3d 1440, 2013-Ohio-5678, 999 N.E.2d 695.

ARGUMENT

PROPOSITION OF LAW I: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

The guarantees of the Due Process Clause apply to juveniles and adults alike. *In re Gault*, 387 U.S. 1, 30-31, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *In re Winship*, 397 U.S. 358, 362, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971); *see also In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 80.

In 2009, this Court recognized the special role of juvenile judges in juvenile courts: “The court’s dispositional role is at the heart of the remaining differences between juvenile and adult courts.” *In re D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 59. In its dispositional role, the “expertise of a juvenile judge is necessary.” *Id.* Three years later, in 2012, this Court recognized that the expert role of the juvenile court judge was required by due process: “The disposition of a child is so different from the sentencing of an adult that fundamental fairness to the child demands the unique expertise of a juvenile judge.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 76, citing *D.H.* at ¶ 59. In *C.P.*, this Court held that R.C. 2152.86’s automatic, mandatory, life-long sex offender classification for juveniles who had been adjudicated of a sex offense as a Serious Youthful

Offender (SYO) violated due process because it divested the juvenile court judge of the ability to “decide the appropriateness of any such penalty.” *C.P.* at ¶ 78.

Revised Code Sections 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require a juvenile court to transfer a child’s case to adult court for prosecution if the child is 16 or 17 and there is probable cause to support that the child has committed a category two offense with a firearm. Like R.C. 2152.86, 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional because they prohibit the court from making any individualized determination of the appropriateness of the transfer of a particular child’s case to adult court.

Over four decades ago, the Supreme Court held that the transfer from juvenile to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the Due Process Clause of the Fourteenth Amendment. *Kent v. United States*, 383 U.S. 541, 546, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966) (finding that transfer is a “critically important’ action determining vitally important statutory rights of the juvenile”). *Kent* made clear that a transfer proceeding must provide due process protections commensurate with the critical nature of the proceedings, because “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.” *Id.* at 554.

Recently, this Court considered *Kent* and its application to Ohio’s discretionary transfer statute set forth in R.C. 2152.12(B)(3). *In re D.W.*, 133 Ohio

St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 20-21. Holding that an amenability hearing could be waived by a child, this Court reasoned that an amenability hearing is a “critical stage of the juvenile proceeding [that] affects whether the juvenile faces a delinquency adjudication, or adult criminal sanctions and the label ‘felon.’” *D.W.* at ¶ 12, citing *Kent* at 560. Further, like a juvenile’s right to counsel, “the juvenile’s right to an amenability hearing before being transferred from juvenile court to adult court” is “another vital safeguard * * *.” *D.W.* at ¶ 17.

The question in this case is whether this “vital safeguard” is required in every child’s case, such that the mandatory transfer provisions contained in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional. In light of *D.W.* and this Court’s consideration of recent Supreme Court of the United States jurisprudence, which recognizes that children are different, this Court must find that Ohio’s mandatory transfer provisions are unconstitutional. See *D.W.* at ¶ 8, citing *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 69, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 569-570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

I. Fundamental fairness requires that every child be given an opportunity to show his capacity to change.

In this case, Alexander had a liberty interest in the individualized treatment available in juvenile court, which cannot be denied without the due process protections required by *Kent*. But, these protections were not provided to Alexander at his transfer hearing, because they are prohibited from consideration for certain juvenile offenders. This is because, in Ohio, decisions about which children’s cases

must be transferred to adult court have been made by the legislature, not juvenile court judges after meaningful review.

At a minimum, due process includes a meaningful opportunity to be heard on the matter at issue at a "hearing appropriate to the nature of the case." *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). The vital nature of the liberty interest at issue in a transfer proceeding calls for heightened procedural protections. Indeed, the Supreme Court of the United States has made clear that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). For a child, there can be no greater loss than his status as a child; therefore, all children charged with an offense must be afforded the opportunity to have the juvenile court judge give the child the meaningful consideration that due process requires.

In *Kent*, the Court held that due process required a juvenile court to consider eight factors:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment * * *.

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime * * *.

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent, 383 U.S. at 566-567, 86 S.Ct. 1045, 16 L.Ed.2d 84. These factors are absent from Ohio's mandatory transfer provisions, even though *Kent* held that to ensure that a youth's interests in juvenile status and freedom from confinement are adequately protected, a "full investigation" is required before transfer to adult court. *Id.* at 553, fn.15. By prohibiting a "full investigation" before transfer, the mandatory transfer provisions at issue here fall woefully short of providing the meaningful consideration that *Kent* requires.

Specifically, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require only that the court determine the age of the child and whether probable cause supports that the child committed a category two offense with a gun. Thus, under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), a juvenile court is prohibited from considering any of the information required in the first, third, and fifth through eighth factors set forth in *Kent*. *Id.* at 566-567. Once a complaint is filed under the

statutes, what remains is nothing more than a probable cause hearing. *See, e.g., State v. Carnes*, 12th Dist. Clermont No. CA2001-02-018, 2002-Ohio-1311, ¶ 11 (“[T]he state only must establish ‘probable cause to believe’ that the juvenile has committed the charged act.”), citing R.C. 2151.26(B); Juv.R. 30(A)-(B). Because R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) forbid the court from conducting a meaningful review of all of the facts and circumstances necessary to making a finding of such tremendous consequence, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) cannot withstand constitutional scrutiny.

II. Youth is always a mitigating factor and can never be used as an aggravating factor.

Without question, youth is a mitigating factor. *Miller*, ___ U.S. ___, 132 S.Ct. at 2467, 183 L.Ed.2d 407; *Graham*, 560 U.S. at 77-78, 130 S.Ct. 2011, 176 L.Ed.2d 825; *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1. But, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) not only forbid the juvenile court from considering the mitigating factors of youth before transferring the case to adult court, they improperly require the court to treat age as an aggravating, rather than a mitigating factor. *See Penry v. Johnson*, 532 U.S. 782, 787, 121 S.Ct. 1910, 150 L.Ed.2d 9 (2001) (reasoning that a mitigating factor cannot be “relevant only as an aggravating factor.”).

Because Alexander was 16, the transfer of his case to adult court was mandatory. R.C. 2152.10(A)(2)(b); 2152.12(A)(1)(b). Once convicted, he was sentenced to a four-year prison term. (March 16, 2012 Sentencing Entry). His

sentence will expire on November 20, 2015, when he is 20 years of age. See Ohio Dep't of Rehab. & Corr., *Offender Search Detail*, <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A623309> (accessed March 1, 2014). Had the juvenile court been permitted to determine whether to retain this matter in juvenile court, the court could have given Alexander a juvenile court disposition lasting until his 21st birthday. R.C. 2152.02(C)(6). But, whether there would be sufficient time and resources available to rehabilitate Alexander in the juvenile system could not be considered, because under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), the fact that he was 16 years of age when he committed his offense required that the court transfer the case upon a finding of probable cause and nothing else.

In requiring a child's age to be considered only as an aggravating factor, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) essentially create an indisputable presumption that a 16- or 17-year-old child is as culpable as an adult who commits an identical crime. But, it is now well-settled that children are not as culpable as adults. See *Miller* at 2464; *Roper* at 569-570. R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate due process, because they prohibit any consideration of the mitigating factors of youth. Accordingly, Alexander asks this Court to hold that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional.

PROPOSITION OF LAW II: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

Children are generally protected by the same constitutional guarantees against governmental deprivations as are adults. *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under like circumstances. Fourteenth Amendment to the U.S. Constitution; Ohio Constitution, Article I, Section 2; *see also Sorrell v. Thevenir*, 69 Ohio St.3d 415, 424, 1994-Ohio-38, 633 N.E.2d 504 (finding that the Equal Protection clause of the Ohio Constitution has been interpreted to be essentially identical in scope to the analogous provision of the U.S. Constitution).

In order to be constitutional, a law must be applicable to all persons under like circumstances and not subject individuals to an arbitrary exercise of power. *Conley v. Shearer*, 64 Ohio St.3d 284, 288-289, 1992-Ohio-133, 595 N.E.2d 862. In other words, the Equal Protection Clause prevents the state from treating differently or arbitrarily, persons who are in all relevant respects alike. *Park Corp. v. Brook Park*, 102 Ohio St.3d 166, 2004-Ohio-2237, 807 N.E.2d 913, ¶ 18. In this case, the question is whether R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile court judges to treat older children like adults and younger children like children, can withstand constitutional scrutiny.

I. Revised Code Sections 2152.10 and 2152.12 create classes of similarly situated children who are treated differently, based solely upon their ages.

Children who were 14 or 15 at the time they committed a category two offense with a firearm are subject to discretionary transfer only if the court finds they are not amenable to rehabilitation in the juvenile system. R.C. 2152.10(B); 2152.12(A)-(B). But, children who were 16 or 17 at the time of the same offense are subject to mandatory transfer and are not entitled to an amenability determination. R.C. 2152.10(A)(2)(b); 2152.12(A)(1)(b). This means that juvenile court judges are prohibited from giving older children any individualized consideration that takes into account the child's age, developmental level, degree of culpability, or capacity for change.

Although the legislature may set more severe penalties for acts that it believes should have greater consequences, the differences in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are not based on acts of greater consequence, but simply on the child's age at the time of the offense. Under the rational basis test, if the age-based classification is not rationally related to the State's objective in making the classification, it will be found to be in violation of the Equal Protection Clause. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 315, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976).

This Court has recognized that the standard for determining if a statute violates equal protection is "essentially the same under state and federal law" and set forth the following standard for equal protection analysis: "class distinctions in

legislation are permissible if they bear some rational relationship to a legitimate governmental objective.” *State v. Thompkins*, 75 Ohio St.3d 558, 561, 1996-Ohio-264, 664 N.E.2d 926, quoting *Fabrey v. McDonald Village Police Dep’t*, 70 Ohio St.3d 351, 353, 1994-Ohio-368, 639 N.E.2d 31. Further, “[u]nder rational-basis scrutiny, legislative distinctions are invalid only if they bear no relation to the state’s goals and no ground can be conceived to justify them.” (Citations omitted.) *Id.*

Under the holdings in *Roper*, *J.D.B.*, *Graham*, and *Miller*, the categorical differences between all children under 18 and adults in the criminal context are well settled; therefore, no ground can be conceived to justify the distinctions drawn between older and younger children under 18.

II. The age-based distinctions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are not rationally related to the purpose of juvenile delinquency proceedings.

“The overriding purposes for [juvenile] dispositions * * * are to provide for the care, protection, and mental and physical development of children subject to this chapter.” R.C. 2152.01(A). Treating all children under 18 differently from adults makes sense. The Supreme Court of the United States has recognized that even children who are prosecuted as adults for very serious crimes are “categorically less culpable than the average criminal.” *Roper v. Simmons*, 543 U.S. 551, 567, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 67-70, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); see *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 2458, 183 L.Ed.2d 407 (2012). Therefore, “juvenile offenders cannot with reliability

be classified among the worst offenders.” *Roper* at 569. These findings apply generally to all children under the age of 18.

The differential treatment of children who are 16 and 17 under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) is not supported by empirical evidence, which recognizes the differences between adults and children, not between older and younger children under the age of 18. *See, e.g.,* Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist no. 12 (Dec. 1, 2003) 8, available at <http://www.youthadvocacydepartment.org/jdn/resourcedocs/less-guilty-by-adolescence.pdf> (accessed March 6, 2014) (“[T]he developmental factors that drive adolescent decision making may predictably contribute to choices reflective of immature judgment and unformed character.”). Notwithstanding this lack of support, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) draw bright-line distinctions between children who were 16 or 17 and those who were 14 or 15 at the time of their offense.

The legislature may impose special burdens on defined classes in order to achieve permissible ends, but equal protection requires that the distinctions drawn be relevant to the purpose for which the classification is made. *Rinaldi v. Yeager*, 384 U.S. 305, 309, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966) (holding that there must be some rationality in the nature of the classes singled out). There is no evidence to support the need for disparate treatment under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b). More importantly, the traditional penological justifications,

including retribution, deterrence, incapacitation, and rehabilitation cannot be used to justify the distinctions drawn between older and younger children under 18. (See Proposition of Law III at pp. 27-28). Therefore, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which allow for similarly-situated children to receive disparate treatment without any rational basis whatsoever cannot withstand constitutional scrutiny. Accordingly, Alexander asks this Court to hold that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional.

PROPOSITION OF LAW III: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.

Given the ever growing body of scientific research and the recent trends in legal precedent, it appears that the juvenile justice system has come full circle. The first juvenile court was established in 1899 to provide treatment and protect children from harsh criminal court sentences. See Illinois Juvenile Court Act of 1899, 1899 Ill. Laws 131; *In re Gault*, 387 U.S. 1, 14, 97 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Due process protections for children were recognized in the 1960s, followed by increased punitive measures starting in the 1970s and continuing through the end of the 20th century. Barry C. Feld, *Legislative Exclusion of Offenses from Juvenile Court Jurisdiction: A History and Critique*, in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* 83, 116 (Jeffrey Fagan & Franklin E. Zimring, eds., 2000).

In the past decade, however, the Supreme Court and some state legislatures have started to reject severe punishments and are moving back toward the original values of the juvenile justice system: protecting and rehabilitating children. See Children's Law Ctr., Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012) 5, available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf> (accessed March 2, 2014); see e.g., R.C. 2152.121, 2011 Am.Sub.H.B No. 86.

The Eighth Amendment to the U.S. Constitution prohibits the infliction of cruel and unusual punishment. *Wilkinson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1878). The provision is applicable to the states through the Fourteenth Amendment. *Furman v. Georgia*, 408 U.S. 238, 239, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (per curiam). This right flows from the basic “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 2458, 183 L.Ed.2d 407 (2012), citing *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). To evaluate a law under the Eighth Amendment, a court must look “beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society.’” *Miller* at 2463.

This Court has recognized that the Supreme Court “has established categorical rules prohibiting certain punishments for juveniles.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 28, citing generally *Roper* and *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). In light of these rules, this Court must engage in a two-step analysis, first considering “whether there is a national consensus against” the practice at issue, and second, determining “whether the punishment in question violates the Constitution.” *C.P.* at 9, citing *Graham* at 60.

I. There is a national consensus against the transfer of children to adult court without an individualized determination by a juvenile judge.

Appalled by the reality of children facing lengthy prison sentences and exposure to “hardened adult criminals,” early juvenile justice reformers were “profoundly convinced that society’s duty to the child could not be confined by the concept of justice alone.” *Gault*, 387 U.S. at 16, 97 S.Ct. 1428, 18 L.Ed.2d 527. Accordingly, state legislatures created juvenile courts to function as “civil” not “criminal” bodies. *Id.* at 17.

Juvenile courts continue to occupy a unique place in the legal system. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919 874 N.E.2d 1177, ¶ 65. In Ohio, juvenile delinquency provisions are to be liberally interpreted to “protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation.” *State ex rel. Plain Dealer Publ’g Co. v. Geauga Cty. Court of Common Pleas, Juvenile Div.*, 90 Ohio St.3d 79, 83, 2000-Ohio-35, 734 N.E.2d 1214, citing R.C. 2151.01(B). Based on the fundamental purposes of juvenile court, “it is the law’s policy ‘to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.’” *Gault* at 24.

But, like most other states, Ohio law also allows for children to be tried as adults under certain circumstances. R.C. 2152.10; 2152.12; Juv.R. 30. This practice became popular in the 1990s, driven by the fear that American children were

becoming “superpredators” who would sharply increase violent crime rates. Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, New York Times (Feb. 9, 2001), <http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html> (accessed March 6, 2014). However, this wave of superpredator children never materialized, and the leading researcher who advanced the theory recanted his original predictions (“If I knew then what I know now, I would have shouted for prevention of crimes[.]”). *Id.* But, based upon the Superpredator myth, state legislatures across the country formalized their fears by eschewing rehabilitation in favor of a punitive approach, which included making it easier for youth to be tried as adults. Richard E. Redding, U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010) 8, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf> (accessed March 6, 2014).

However, in the past decade, in response to current research, many states have turned away from prosecuting children in adult courts. Specifically, since 2005, nearly half of the states have passed or considered legislation moving away from the “adultification” of youth. Neelum Arya, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (Nov. 2007) 23-24, available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed March 6, 2014). Ohio, too, followed this trend, allowing for certain children whose cases must be transferred to the adult system, to return to the

juvenile justice system if they are later convicted of a non-mandatory transfer offense. R.C. 2152.121, amended by 2011 Am.Sub.H.B No. 86.

Public polling also reflects that the national consensus favors keeping more children in juvenile court. For example, in February 2007, Zogby International and the National Council on Crime and Delinquency (NCCD) found that the public supports rehabilitation for juveniles, not prosecution or incarceration in the adult system. Barry Krisberg & Susan Marchionna, *Attitudes of US Voters Toward Youth Crime and the Justice System* (Feb. 2007), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/focus-voters-and-youth.pdf (accessed March 2, 2014). In the survey, likely voters were polled on their views on prosecuting children in adult court and placing children in adult prisons. *Id.* The survey revealed that the public supports rehabilitation, not prosecution or incarceration in the adult system as follows:

- Of those polled, 9 out of 10 agree that youth crime is a major problem in our communities.
- By more than a 15 to 1 margin (92% to 6%), the US voting public believes that decisions to transfer youth to the adult court should be made on a case-by-case basis and not be governed by a blanket policy.
- A majority of 9 to 1 (91%) believes that rehabilitative services and treatment for incarcerated youth can help prevent future crimes.
- More than 80% of respondents think that spending on rehabilitative services and treatment for youth will save tax dollars in the long run.
- Approximately 7 in 10 feel that putting youth under age 18 in adult correctional facilities makes them more likely to commit future crime.

- Of those polled, more than two-thirds (68%) disagree that incarcerating youth in adult facilities teaches them a lesson and deters them from committing future crimes.
- Voters are about twice as likely to agree (60%) than disagree (32%) that non-white youth are more likely than white youth to be prosecuted in the adult criminal justice system.

Id. at 1. These trends reflect that there is a consensus against the adultification of juvenile offenders.

Further, although every state provides for the prosecution of some juvenile offenders as adults, unlike Ohio, most states require some individualized determination by the juvenile court before transfer. Patrick Griffin et al., U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (Sept. 2011) 2, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> (accessed March 2, 2014). Specifically, only “[f]ifteen states require juvenile courts to waive jurisdiction over cases that meet specified age/offense or prior record criteria * * * [; and] the court has no other role than to confirm that the statutory requirements for mandatory waiver are met.” *Id.* at 4.

The commonsense conclusions about children, which underlie recent precedent recognizing that children are different from adults, have been recognized as being “self-evident to anyone who was a child once himself, including any police officer or judge.” *J.D.B. v. North Carolina*, ___ U.S. ___, 131 S.Ct. 2394, 2403, 180 L.Ed.2d 310. These recent decisions have inspired children themselves to weigh in on these important issues. For example, in a recent Amicus Brief in the Michigan

Supreme Court, 450 high school students, aged 14-18, urged that Court to require individualized sentencing for juvenile offenders serving life-without-parole sentences in their state. Brief of Amicus Curiae, Students of Father Gabriel Richard High School, Ann Arbor, Michigan, in Support of Appellants, *Michigan v. Carp, et al.*, Michigan Supreme Court Case No. 146478 (Feb. 14, 2014), available at <http://www.freep.com/assets/freep/pdf/C4218735217.PDF> (accessed March 2, 2014). In their brief, the students noted that “*Miller, Roper, and Graham* tell us that children cannot have the same level of culpability as adults” and that “the Eighth Amendment’s ban on cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions * * *.’” *Id.* at 11. They conclude simply: “It is logical, then, to say that reduced culpability + proportionality of punishment = a sentence that is less than what is given to an adult.” *Id.*

Because R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require that a child be prosecuted as an adult upon a finding of probable cause, that child must receive an adult sanction, just as an adult would. Therefore, in light of the growing national consensus against subjecting children to adult sentences without any individualized determination concerning whether transfer to adult court is appropriate, Alexander asks this Court to hold that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate evolving standards of decency and can no longer withstand constitutional scrutiny.

II. Independent Review

In addition to determining whether there is a national consensus that supports a finding that a statutory provision violates the Eighth Amendment, the “judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question, * * * [and] whether the challenged sentencing practice serves legitimate penological goals.” *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 38, citing *Graham*, 560 U.S. at 67, 130 S.Ct. 2011, 176 L.Ed.2d 825. This review includes the consideration of the following: the culpability of offenders, the nature of the offenses, the severity of punishment, and the penological justification for the provisions in question; as well as the precedent concerning what constitutes cruel and unusual punishment under Ohio law. *C.P.* at ¶ 58-85.

A. Culpability of Offenders

“Ohio has developed a system for juveniles that assumes that children are not as culpable for their acts as adults.” *Id.* at ¶ 39. Further, in *Miller*, the Court recognized that children are different from adults in three ways. First, “children have a ‘lack of maturity and an underdeveloped sense of responsibility’ leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, ___ U.S. ___, 132 S.Ct. at 2464, 183 L.Ed.2d 407, quoting *Roper*, 543 U.S. at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1. Second, children “‘are more vulnerable * * * to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over

their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller* at 2464, quoting *Roper* at 569. And third, the Court recognized that child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity]'" *Miller* at 2464, quoting *Roper* at 570.

The Court based its conclusions on common sense, science, and social science. *Miller* at 2464. The studies cited by the Court reflect that a small proportion of juvenile offenders "develop entrenched patterns of problem behavior[;]" that brain science and psychology "continue to show differences between juvenile and adult minds[;]" that neuroscience shows that children's "transient rashness, proclivity for risk, and inability to assess consequences" not only lessen a child's "moral culpability," but also "enhance[] the prospect that as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464-2465, quoting *Roper* at 570. The Court echoed what it made plain in *Graham*: an offender's age is relevant to the Eighth Amendment; therefore, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 2466.

Importantly, in *Roper*, *Graham*, *J.D.B.* and *Miller*, age is always a mitigating factor. The problem with the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) is that age is an aggravating, not a mitigating factor. Specifically, if a court finds that a child was 16 or 17 when he committed a qualifying charged offense, the case must be transferred to adult court, without any

further consideration of the unique characteristics of the child's age or the circumstances surrounding the offense. *Id.*

The Court's holding in *Miller* turned on the mandatory nature of the sentencing practice at issue. The Court noted that the mandatory scheme prevented the sentencer from considering the unique characteristics of youth. *Id.* The Court recognized that the law provided the court no opportunity to assess whether the mandatory sentencing practice provided proportionate punishment for a specific offender on a case-by-case basis, because the court was required to impose the penalty as though the offender was not a child. *Id.* In a concurring opinion in *Graham*, Chief Justice Roberts observed that the conclusion that children are less culpable "has pertinence beyond capital cases, and rightly informs the case-specific inquiry [he] believe[d] to be appropriate" in that case. *Graham*, 560 U.S. at 90, 130 S.Ct. 2011, 176 L.Ed.2d 825 (Roberts, C.J. concurring). The diminished culpability of children also informs the conclusion sought here.

The problem with the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) is that age is an aggravating, not a mitigating factor. Specifically, if a court finds that a child was 16 or 17 when he committed a qualifying charged offense, the case must be transferred to adult court, without any further consideration of the unique characteristics of the child's age or the circumstances surrounding the offense. *Id.* As a consequence of the transfer, once the child is convicted, he faces the lifelong consequences of an adult conviction, even though it is now well settled that juvenile offenders are less culpable and more

capable of change than adult offenders. *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 40-41.

B. Nature of the Offenses

For Alexander, the mandatory nature of his transfer hinged on his age (R.C. 2152.12(A)(1)(b)) and the fact that he allegedly used a firearm when committing the offense (R.C. 2152.12(A)(1)(b)(ii) and 2152.12(A)(2)(b)). But, under Ohio's mandatory transfer scheme, the juvenile court is precluded from considering the mitigating nature of a child's age and its "hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller* at 2468. This system prevents a court from "taking into account the family and home environment that surrounds [the child]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional." *Id.*

This Court recognized in *C.P.* the "twice diminished culpability" of a child who commits a non-homicide offense. *C.P.* at ¶ 43. Therefore, the presumption of reduced moral culpability applies here, to the category two offenses subject to mandatory transfer under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b).

C. Severity of Punishment

The fundamental differences between adult and juvenile offenders beg for greater protections when it comes to the penalties associated with a child's actions. *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988). The age-based restrictions that control when a child may lawfully vote, drive, sit on a jury, marry without parental consent, and purchase tobacco and alcohol illustrate

the value lawmakers place on taking into consideration the mental capacity of a child to handle these responsibilities. *Id.* The reasons why children are not trusted with the privileges and responsibilities of adults also reinforces the belief that their irresponsible conduct is not as morally reprehensible as that of an adult. *Roper*, 543 U.S. at 561-562, 125 S.Ct. 1183, 161 L.Ed.2d 1, citing *Thompson* at 835.

Because Alexander's case was required to be transferred to adult court, he is serving an adult sentence in adult prison. But, adult prisons are ill-equipped to handle children and the lifelong effects of an adult conviction are onerous. For example, a recent study addressed the conditions children face when sentenced to adult prison, and found that children in adult prisons are at a greater risk of physical and sexual assault, a significantly increased risk of suicide, are often unable to access appropriate education services, and have increased placement in isolation. Children's Law Ctr., Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012) 2, available at http://www.campaignforyouthjustice.org/documents/FR_OH_0512.pdf (accessed March 2, 2014).

Further, under Ohio law, there are 537 collateral consequences associated with an adult conviction for aggravated robbery, which will affect Alexander's ability to live and work as a productive member of society upon his release from prison, for the rest of his life. See Civil Impacts of Criminal Convictions under Ohio Law (CIVICC), *Offense Detail for Aggravated Robbery*, <http://civiccOhio.org/Home.aspx/OffenseDetail/30> (accessed March 7, 2014). Had Alexander been retained in juvenile court after an amenability hearing, however, he would have faced only 15

comparatively minor civil impacts associated with a juvenile adjudication. See Civil Impacts of Criminal Convictions under Ohio Law (CIVICC), *Offense Detail for Delinquency Adjudication*, <http://civiccOhio.org/Home.aspx/DoSearch> (accessed March 7, 2014) (utilizing the search term “delinq”).

And, although Alexander received what may be perceived as a short adult prison term, he will face the consequences of his adult sentence for the rest of his life. Had Alexander been adjudicated delinquent of aggravated robbery with a firearm specification, he could have been incarcerated in DYS longer than the adult sentence he received—until his 21st birthday, but would receive education and age-appropriate treatment services, and would be eligible to have his delinquency adjudication sealed and expunged. See Ohio Dep’t of Youth Servs., *General Information*, <http://www.dys.ohio.gov/dnn/AgencyInformation/GeneralInformation/tabid/119/Default.aspx> (accessed March 6, 2014); R.C. 2151.355-2151.358. But, because he was convicted in adult court of a firearm specification that carried a mandatory prison term, he is not eligible to have his conviction sealed. R.C. 2953.36.

Revised Code Sections 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require that a child like Alexander, if convicted, will forever be labeled a “felon” without permitting the juvenile court judge to make an individualized determination about whether such a label is appropriate.

D. Penological Justifications

Although Alexander's case was transferred to adult court, the fact that it originated in juvenile court is still relevant. In juvenile court, children are treated differently. For example, "[t]he overriding purposes for [juvenile] dispositions * * * are to provide for the care, protection, and mental and physical development of children subject to this chapter." R.C. 2152.01(A). But, "[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.11(A).

Additionally, in *C.P.*, this Court noted that "retribution, deterrence, incapacitation, and rehabilitation" are legitimate goals of penal sanctions. *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 50, citing *Graham*, 560 U.S. at 71, 130 S.Ct. 2011, 176 L.Ed.2d 825. However, at "the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *C.P.* at ¶ 51, citing *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). Further, the Court noted that "retribution does not justify imposing the same serious penalty on a less culpable defendant. *Id.* citing *Roper*, 543 U.S. at 571, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Graham* at 72 ("Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.")).

Both the juvenile and adult systems provide for incapacitation and protecting the public, and both systems can serve these aims. R.C. 2152.01(A); 2929.11(A).

Further, deterrence is not a proper justification for punishing a juvenile offender, where the likelihood that a teenage offender has made the type of cost-benefit analysis that attaches the weight to the possibility of the penalty is so remote as to be virtually nonexistent. *Roper* at 572. And, research shows that youth whose cases are transferred to adult court are 34 percent more likely to recidivate than youth with similar offenses whose cases remain in juvenile court. *Falling Through the Cracks* at 1. But, under Ohio's mandatory transfer statutes, the juvenile court is prohibited from considering whether the aims of juvenile court could appropriately address the particular facts and circumstances of each case.

As was so simply stated by the high school students in their brief to the Michigan Supreme Court, "It is illogical to give the harshest sentence, a sentence that does not allow redemption, to the ones who may have the greatest capacity for redemption[; therefore, o]ur criminal justice system and correction facilities should focus on exacting proportionate punishment and restorative justice." Brief of Amicus Curiae in Support of Appellants, *Michigan v. Carp, et al.* at 10.

III. The juvenile court judge is uniquely qualified to determine whether to retain or transfer jurisdiction.

Through an amenability determination, the judge alone must decide, based upon all the facts and circumstances involved in each case, whether the child "is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions" or whether the child can be rehabilitated within the juvenile system. R.C. 2152.12(B),(D)-(E). But,

in mandatory-transfer cases, like Alexander's, the juvenile court is prohibited from considering any of these factors.

Requiring an amenability determination in every case in which a child may be transferred, would make the law constitutional. It would allow the court to maintain its involvement as *parens patriae*. Under the *parens patriae* theory, the juvenile court judge, during any court proceeding including amenability, must care for the child standing before the court—a child whom the law presumes cannot care for himself. The State has 'a *parens patriae* interest in preserving and promoting the welfare of the child,' which makes a juvenile proceeding fundamentally different from an adult criminal trial." *In re D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 50, citing *Santosky v. Kramer*, 455 U.S. 745, 766, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Through this paternal role, the state maintains a stake in the rehabilitation of the juvenile offender. *D.H.* at ¶ 49.

This Court has placed special emphasis on the importance of the role and the expertise of the juvenile court judge when the state has moved to invoke the adult portion of a child's SYO sentence as follows:

The judge, given the factors set forth in R.C. 2152.13(D)(2)(a)(i), must assess the strengths and weaknesses of the juvenile system vis-à-vis a particular child to determine how this particular juvenile fits within the system and whether the system is equipped to deal with the child successfully. That assessment requires as much familiarity with the juvenile justice system as it does a familiarity with the facts of the case. To leave that determination to an expert, given the juvenile system's goal of rehabilitation, does not offend fundamental fairness * * *.

Id. at ¶ 59.

This Court recognizes that the juvenile court judge is uniquely qualified to assess the strengths and weaknesses of the juvenile system in light of the particular child and facts of the case, in order to determine whether the child deserves the chance to benefit from the rehabilitative efforts of the juvenile justice system, and whether the juvenile justice system is equipped to deal with the child successfully. *Id.* And, it is within judge's responsibility alone, as *parens patriae*, to determine whether the child is amenable to care or rehabilitation within the juvenile system, or whether the safety of the community may require that the child be subject to adult sanctions. See R.C. 2152.12(B), (D)-(E).

Juvenile judges themselves agree with this principle. Specifically, The National Council of Juvenile and Family Court Judges affirms "that waiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge * * * [and that] transfer of juveniles to adult court should be rare and only after a thorough considered process." Nat'l Council of Juvenile & Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases: Motions to Waive Jurisdiction and Transfer to Criminal Court* (2005) 102, available at <http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed%5b1%5d.pdf> (accessed March 2, 2014).

Under these circumstances and in light of *Miller*, *Graham*, and *Roper*, Alexander asks this Court to find that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b)

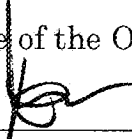
violate the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.

CONCLUSION

Children must be recognized as children, no matter the criminal stage or the constitutional context. Therefore, because children have a recognized liberty interest in the individualized treatment that the juvenile court provides that cannot be circumvented in a manner that violates due process, equal protection, or the Eighth Amendment, Alexander asks this Court to find that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional.

Respectfully submitted,

Office of the Ohio Public Defender



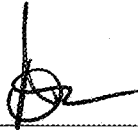
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COUNSEL FOR ALEXANDER QUARTERMAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Merit Brief of Appellant Alexander Quarterman** was served by ordinary U.S. Mail, postage-prepaid, this 10th day of March, 2014, to the office of Richard Kasay, Assistant Summit County Prosecutor, Summit County Prosecutor's Office, 53 University Avenue, 7th Floor, Safety Building, Akron, Ohio 44308.



AMANDA J. POWELL #0076418
Assistant State Public Defender

COUNSEL FOR ALEXANDER QUARTERMAN

#413084

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2013-1591
Plaintiff-Appellee,	:	
vs.	:	On Appeal from the Summit County
	:	Court of Appeals, Ninth Appellate
ALEXANDER QUARTERMAN,	:	District Case No. 26400
Defendant-Appellant.	:	

APPENDIX TO

MERIT BRIEF OF APPELLANT ALEXANDER QUARTERMAN

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

v.

ALEXANDER QUARTERMAN

Appellant

Case No.

13-1591

On Appeal from the Summit
County Court of Appeals
Ninth Appellate District

C.A. Case No. 26400

NOTICE OF APPEAL OF ALEXANDER QUARTERMAN

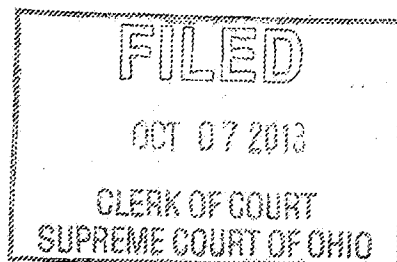
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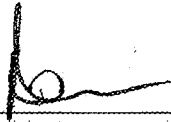


NOTICE OF APPEAL OF ALEXANDER QUARTERMAN

Alexander Quarterman hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Summit County Court of Appeals, Ninth Appellate District, entered in Court of Appeals Case No. 26400 on August 21, 2013. This case involves a felony offense, substantial constitutional questions, and is of public or great general interest.

Respectfully Submitted

The Office of the Ohio Public Defender



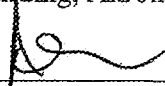
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COUNSEL FOR ALEXANDER QUARTERMAN

CERTIFICATE OF SERVICE

A copy of the foregoing **Notice of Appeal** was forwarded by regular U.S. Mail this 7th day of October, 2013 to the office of Richard Kasay, Assistant Summit County Prosecuting Attorney, 53 University Avenue, 7th Floor Safety Building, Akron, Ohio 44308.


AMANDA J. POWELL #0076418
Assistant State Public Defender

COUNSEL FOR ALEXANDER QUARTERMAN

STATE OF OHIO)
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

CLERK OF COURTS CA. No. 26400

Appellee

v.

ALEXANDER QUARTERMAN

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 12 02 0303

DECISION AND JOURNAL ENTRY

Dated: August 21, 2013

HENSAL, Judge.

{¶1} Alexander Quarterman appeals a judgment of the Summit County Common Pleas Court convicting him of aggravated robbery. For the following reasons, this Court affirms.

I.

{¶2} A group of friends were playing cards when Mr. Quarterman robbed them at gunpoint. The victims filed criminal complaints against him in juvenile court, alleging that he was delinquent for committing acts that constitute aggravated robbery. Because of the nature of the offenses, the juvenile court was required by statute to transfer the case to adult court. The Grand Jury subsequently indicted Mr. Quarterman for three counts of aggravated robbery, each with a firearm specification. Pursuant to a plea agreement, Mr. Quarterman pled guilty to one count of aggravated robbery and the associated firearm specification. The trial court sentenced him to four years imprisonment. Mr. Quarterman has appealed, assigning four errors.

II.

ASSIGNMENT OF ERROR I

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) ARE UNCONSTITUTIONAL IN VIOLATION OF A CHILD'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR II

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE A CHILD'S RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 2 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR III

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENTS AS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 9 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR IV

ALEXANDER QUARTERMAN WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO OBJECT TO HIS CASE BEING TRANSFERRED TO ADULT COURT WHEN THE TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) ARE UNCONSTITUTIONAL.

{¶3} In his first three assignments of error, Mr. Quarterman argues that the statutory provisions that required the juvenile court to transfer his case to adult court violate his right to due process, equal protection, and to be free from cruel and unusual punishment. This Court

need not address the merits of his arguments, however, because Mr. Quarterman waived them by pleading guilty.

{¶4} The Ohio Supreme Court has held that “a defendant who * * * voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel ‘may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.’” *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 78, quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). This Court has explained that “[a] defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings, although [he] may contest the constitutionality of the plea itself.” *State v. Atkinson*, 9th Dist. Medina No. 05CA0079-M, 2006-Ohio-5806, ¶ 21, quoting *State v. McQueeney*, 148 Ohio App.3d 606, 2002-Ohio-3731, ¶ 13 (12th Dist.).

{¶5} Whether the Revised Code’s mandatory bind-over provisions are constitutional does not implicate the common pleas court’s jurisdiction. Under Sections 2151.23(H) and 2152.12(I), the common pleas court’s general division has jurisdiction over any case that is transferred to it from the juvenile court, regardless of whether it is a mandatory bind-over under Section 2152.12(A) or a discretionary bind-over under Section 2152.12(B). R.C. 2151.23(H); 2151.12(I). *State v. Wilson*, 73 Ohio St.3d 40, 44 (1995)

{¶6} In his appellate brief, Mr. Quarterman does not argue that his plea was not knowing, intelligent, or voluntary. Rather, he argues that the juvenile court should not have transferred his case to adult court. By pleading guilty to aggravated robbery, however, he waived his right to challenge the constitutionality of the mandatory transfer provisions, which involved an earlier stage of the proceeding. *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-

5283, ¶ 105 (explaining that defendant's "guilty plea waived any complaint as to claims of constitutional violations not related to the entry of the guilty plea.").

{¶7} In his fourth assignment of error, Mr. Quarterman argues that his trial counsel was ineffective for not objecting to the constitutionality of his transfer to adult court. This Court has held that "[a] guilty plea waives the right to appeal issues of ineffective assistance of counsel, unless the ineffective assistance of counsel caused the guilty plea to be involuntary." *State v. Carroll*, 9th Dist. Lorain No. 06CA009037, 2007-Ohio-3298, ¶ 5. In his brief, Mr. Quarterman has not argued that his lawyer's allegedly deficient performance caused the entry of his guilty plea to be less than knowing, intelligent, and voluntary. *State v. Dallas*, 9th Dist. Wayne No. 06CA0033, 2007-Ohio-1214, ¶ 4. We, therefore, conclude that he has also waived his ineffective assistance of counsel claim.

{¶8} By pleading guilty to the charge of aggravated robbery, Mr. Quarterman waived his right to appeal the constitutionality of the mandatory transfer provisions and his lawyer's failure to object to their application. Mr. Quarterman's assignments of error are overruled.

III.

{¶9} Mr. Quarterman waived his arguments regarding the constitutionality of Revised Code Section 2152.10(A)(2)(b) and 2152.12(A)(1)(b). The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



JENNIEER HENSAL
FOR THE COURT

BELFANCE, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶10} I concur in the majority's judgment. With respect to Mr. Quarterman's fourth assignment of error, in light of the limited argument made on appeal, I agree that it is properly overruled.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶11} I agree with the majority that Quarterman's conviction must be affirmed albeit on a different basis.

{¶12} In regard to his first three assignments of error challenging the constitutionality of the mandatory bindover provisions, I would conclude that he has not properly preserved those issues for appeal. This Court has recognized:

“Failure to raise at the trial level the issue of the constitutionality of a statute or its application, which is apparent at the time of the trial, constitutes a waiver of such issue * * * and therefore need not be heard for the first time on appeal.” *State v. Pitts*, 9th Dist. Summit No. 20976, 2002-Ohio-6291, ¶ 106, quoting *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. See also *State v. Jefferson*, 9th Dist. Summit No. 20156, 2001 WL 276343 (Mar. 21, 2001) (holding that defendant’s failure to raise the constitutionality of a statute at the trial court level waived such issue on appeal).

State v. Moore, 9th Dist. Summit No. 21182, 2003-Ohio-244, ¶ 14. Accordingly, I would decline to address those assignments of error except as necessary to address the fourth assignment of error.

{¶13} In regard to his fourth assignment of error, I would overrule it as Quarterman failed to demonstrate prejudice. This Court uses a two-step process as set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to determine whether a defendant’s right to the effective assistance of counsel has been violated.

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id.

{¶14} To demonstrate prejudice, “the defendant must prove that there exists a reasonable probability that, were it not for counsel’s errors, the result of the trial would have been different.” *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph three of the syllabus. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the

judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691.

{¶15} This Court has previously discounted a constitutional challenge to the statutory mandatory bindover provisions. We concluded that, where the defendant has not claimed that the right to an amenability hearing constitutes a fundamental right, the legislative purposes of societal protection and crime reduction present a rational basis for the legislation. *State v. Collins*, 9th Dist. Lorain No. 97CA006845, 1998 WL 289390 (June 3, 1998). Moreover, other appellate courts have concluded that the mandatory bindover provisions are constitutional based on all the arguments Quarterman has raised here. *See, e.g., State v. Smith*, 8th Dist. Cuyahoga No. 76692, 2001 WL 1134871 (Sept. 18, 2001); *State v. Wilson*, 8th Dist. Cuyahoga No. 72165, 1998 WL 842060 (Dec. 3, 1998); *State v. Kelly*, 3d Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998); *State v. Lee*, 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998); and *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998).

{¶16} Here, although Quarterman argued that he had a due process right to an amenability hearing, he did not couch his argument in terms of a substantive right to such hearing. He similarly made no such argument with regard to equal protection. Moreover, in regard to his cruel and unusual punishment argument, he cites no authority for application of the Eighth Amendment proscription to matters that do not constitute punishment. Mandatory bindover does not equate to punishment any more than the mere prosecution of an adult in the common pleas court constitutes punishment. Accordingly, Quarterman has not demonstrated that defense counsel’s failure to challenge the constitutionality of the mandatory bindover provision resulted in prejudice in that the result of the proceedings would have been different.

APPEARANCES:

AMANDA J. POWELL, Assistant State Public Defender, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

THE STATE OF OHIO

vs.

ALEXANDER QUARTERMAN

DANIEL M. HERRIGAN

2012 MAR 15 PM 12:42

SUMMIT COUNTY
CLERK OF COURTS

Case No. CR 12 02 0303

JOURNAL ENTRY

On March 7, 2012, the Prosecuting Attorney Kevin Mayer and the Defendant with counsel, David Lowry, appeared before the Court. The Defendant was fully advised of his Constitutional rights and his rights as required under Rule 11 of the Ohio Rules of Criminal Procedure.

Upon request of the Prosecuting Attorney, the Court amends the FIREARM SPECIFICATION 1 TO COUNT 1 to be a 1 year specification.

Pursuant to plea negotiations, the Defendant retracts his plea of Not Guilty, heretofore entered, and for plea to the Indictment, says he is GUILTY of Count 1, AGGRAVATED ROBBERY, and the amended FIREARM SPECIFICATION 1 TO COUNT 1, which plea, voluntarily made and with a full understanding of the consequences, is accepted by the Court.

The remaining charge(s) in the Indictment of Count 2, AGGRAVATED ROBBERY, FIREARM SPECIFICATION 1 TO COUNT 2, Count 3, AGGRAVATED ROBBERY, and the FIREARM SPECIFICATION 1 TO COUNT 3, are dismissed upon Motion of the Prosecutor.

The Defendant was afforded all rights pursuant to Crim. R. 11. The Court considered the record, statements of counsel, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court further finds the following pursuant to O.R.C. 2929.13(B): not to sentence the Defendant to a period of incarceration would not adequately protect society from future crimes by the Defendant, and would demean the seriousness of the offense; and the Court further finds the Defendant is not amenable to community control, and that prison is consistent with the purposes of O.R.C. 2929.11;

The Court inquired of the Defendant if he had anything to say why judgment should not be pronounced against him. Having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

The Defendant is to be committed to the Ohio Department of Rehabilitation and Correction for a definite period of 3 years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of AGGRAVATED ROBBERY, Ohio Revised Code Section 2911.01(A)(1), a felony of the first (1st) degree, and for a definite term 1 year which is a **mandatory** term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FIREARM SPECIFICATION 1 TO COUNT 1, Ohio Revised Code Section 2941.141.

The sentence imposed in the amended FIREARM SPECIFICATION 1 TO COUNT 1 shall be served **first and consecutively** to the sentence imposed in Count 1, for a total of 4 years.

The Defendant was advised of potential earned credit on the record in Open Court.

The Defendant is to pay the costs of this prosecution for which execution is hereby awarded. The monies are to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. The Summit County Clerk of Courts shall collect monies from the

COPY

Defendant in the following order of priority: (1) Costs and Adult Probation Department fees and (2) Restitution if applicable.

If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

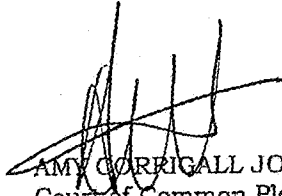
And, if the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

Pursuant to the above sentence, that the Defendant is to be conveyed to the Lorain Correctional Institution at Grafton, Ohio, FORTHWITH, to commence the prison intake procedure.

As part of the sentence in this case, the Defendant *shall* be supervised on post-release control by the Adult Parole Authority for a *mandatory* period of *5 years* after being released from prison. If the Defendant violates the terms and conditions of post-release control, the Adult Parole Authority may impose a residential sanction that may include a prison term of up to nine months, and the maximum cumulative prison term for all violations shall not exceed one-half of the stated prison term. If the Defendant pleads guilty to, or is convicted of, a new felony offense while on post-release control, the sentencing court may impose a prison term for the new felony offense as well as an additional consecutive prison term for the post-release control violation of twelve months or whatever time remains on the Defendant's post-release control period, whichever is greater.

Within 30 days from this date, credit for time served is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

APPROVED:
March 9, 2012
jng


AMY CORRIGAN JONES, Judge
Court of Common Pleas
County of Summit, Ohio

cc: Prosecutor Kevin Mayer
Criminal Division
Attorney David Lowry
Adult Probation Department
Court Convey
Registrar

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§2 EQUAL PROTECTION AND BENEFIT

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I. BILL OF RIGHTS

§ 9 BAIL; CRUEL AND UNUSUAL PUNISHMENTS

All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 16 REDRESS FOR INJURY; DUE PROCESS

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

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Current through Legislation passed by the 130th Ohio General Assembly
and filed with the Secretary of State through File 59
*** Annotations current through December 5, 2013 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
PROCEDURE IN CHILDREN'S CASES

Go to the Ohio Code Archive Directory

ORC Ann. 2151.26 (2013)

§ 2151.26. Renumbered

Amended and renumbered *RC* § 2152.12 in 148 v S 179. Eff 1-1-2002.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
SEALING AND EXPUNGEMENT OF RECORDS CONCERNING DELINQUENT AND UNRULY CHILDREN
AND JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2151.355 (2013)

§ 2151.355. Definitions

As used in *sections 2151.356 to 2151.358 of the Revised Code*:

(A) "Expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(B) "Seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court.

HISTORY:

151 v H 137, § 1, eff. 10-9-06.

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AND JUVENILE TRAFFIC OFFENDERS

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ORC Ann. 2151.356 (2013)

§ 2151.356. Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders

(A) The records of a case in which a person was adjudicated a delinquent child for committing a violation of *section 2903.01, 2903.02, or 2907.02 of the Revised Code* shall not be sealed under this section.

(B) (1) The juvenile court shall promptly order the immediate sealing of records pertaining to a juvenile in any of the following circumstances:

(a) If the court receives a record from a public office or agency under division (B)(2) of this section;

(b) If a person was brought before or referred to the court for allegedly committing a delinquent or unruly act and the case was resolved without the filing of a complaint against the person with respect to that act pursuant to *section 2151.27 of the Revised Code*;

(c) If a person was charged with violating division (E)(1) of *section 4301.69 of the Revised Code* and the person has successfully completed a diversion program under division (E)(2)(a) of *section 4301.69 of the Revised Code* with respect to that charge;

(d) If a complaint was filed against a person alleging that the person was a delinquent child, an unruly child, or a juvenile traffic offender and the court dismisses the complaint after a trial on the merits of the case or finds the person not to be a delinquent child, an unruly child, or a juvenile traffic offender;

(e) Notwithstanding division (C) of this section and subject to *section 2151.358 of the Revised Code*, if a person has been adjudicated an unruly child, that person has attained eighteen years of age, and the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.

(2) The appropriate public office or agency shall immediately deliver all original records at that public office or agency pertaining to a juvenile to the court, if the person was arrested or taken into custody for allegedly committing a delinquent or unruly act, no complaint was filed against the person with respect to the commission of the act pursuant to *section 2151.27 of the Revised Code*, and the person was not brought before or referred to the court for the commission of the act. The records delivered to the court as required under this division shall not include fingerprints, DNA specimens, and DNA records described under division (A)(3) of *section 2151.357 of the Revised Code*.

(C) (1) The juvenile court shall consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of *section 2903.01, 2903.02, or 2907.02 of the Revised Code*, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a

complaint alleging the person to be a delinquent child. The court shall not require a fee for the filing of the application. The motion or application may be made at any time after six months after any of the following events occur:

- (a) The termination of any order made by the court in relation to the adjudication;
- (b) The unconditional discharge of the person from the department of youth services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication;
- (c) The court enters an order under *section 2152.84 or 2152.85 of the Revised Code* that contains a determination that the child is no longer a juvenile offender registrant.

(2) In making the determination whether to seal records pursuant to division (C)(1) of this section, all of the following apply:

- (a) The court may require a person filing an application under division (C)(1) of this section to submit any relevant documentation to support the application.
- (b) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.
- (c) The court shall promptly notify the prosecuting attorney of any proceedings to seal records initiated pursuant to division (C)(1) of this section.
- (d) (i) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings.
- (ii) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.
- (iii) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.
- (e) After conducting a hearing in accordance with division (C)(2)(d) of this section or after due consideration when a hearing is not conducted, except as provided in division (B)(1)(c) of this section, the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (i) The age of the person;
- (ii) The nature of the case;
- (iii) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (iv) The education and employment history of the person;
- (v) The granting of a new tier classification or declassification from the juvenile offender registry pursuant to *section 2152.85 of the Revised Code*, except for public registry-qualified juvenile offender registrants;
- (vi) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(D) (1) (a) The juvenile court shall provide verbal notice to a person whose records are sealed under division (B) of this section, if that person is present in the court at the time the court issues a sealing order, that explains what sealing a record means, states that the person may apply to have those records expunged under *section 2151.358 of the Revised Code*, and explains what expunging a record means.

(b) The juvenile court shall provide written notice to a person whose records are sealed under division (B) of this section by regular mail to the person's last known address, if that person is not present in the court at the time the court issues a sealing order and if the court does not seal the person's record upon the court's own motion, that explains what sealing a record means, states that the person may apply to have those records expunged under *section 2151.358 of the Revised Code*, and explains what expunging a record means.

(2) Upon final disposition of a case in which a person has been adjudicated a delinquent child for committing an act other than a violation of *section 2903.01, 2903.02, or 2907.02 of the Revised Code*, an unruly child, or a juvenile traffic offender, the juvenile court shall provide written notice to the person that does all of the following:

(a) States that the person may apply to the court for an order to seal the record;

(b) Explains what sealing a record means;

(c) States that the person may apply to the court for an order to expunge the record under *section 2151.358 of the Revised Code*;

(d) Explains what expunging a record means.

(3) The department of youth services and any other institution or facility that unconditionally discharges a person who has been adjudicated a delinquent child, an unruly child, or a juvenile traffic offender shall immediately give notice of the discharge to the court that committed the person. The court shall note the date of discharge on a separate record of discharges of those natures.

HISTORY:

151 v H 137, § 1, eff. 10-9-06; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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ORC Ann. 2151.357 (2013)

§ 2151.357. Effects of order sealing records; index of sealed records; inspection of sealed records

(A) If the court orders the records of a person sealed pursuant to *section 2151.356 of the Revised Code*, the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, except as provided in division (D) of this section, shall do all of the following:

(1) Order that the proceedings in a case described in divisions (B) and (C) of *section 2151.356 of the Revised Code* be deemed never to have occurred;

(2) Except as provided in division (C) of this section, delete all index references to the case and the person so that the references are permanently irretrievable;

(3) Order that all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected pursuant to *section 2152.74 of the Revised Code*, and DNA records derived from DNA specimens pursuant to *section 109.573 of the Revised Code*, be delivered to the court;

(4) Order each public office or agency, upon the delivering of records to the court under division (A)(3) of this section, to expunge remaining records of the case that are the subject of the sealing order that are maintained by that public office or agency, except fingerprints, DNA specimens, and DNA records described under division (A)(3) of this section;

(5) Send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record;

(6) Seal all of the records delivered to the court under division (A)(3) of this section, in a separate file in which only sealed records are maintained.

(B) Except as provided in division (D) of this section, an order to seal under *section 2151.356 of the Revised Code* applies to every public office or agency that has a record relating to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Except as provided in division (D) of this section, upon the written request of a person whose record has been sealed and the presentation of a copy of the order and compliance with division (A)(3) of this section, a public office or agency shall expunge its record relating to the case, except a record of the adjudication or arrest or taking into custody that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order.

(C) The court that maintains sealed records pursuant to this section may maintain a manual or computerized index of the sealed records and shall make the index available only for the purposes set forth in division (E) of this section.

(1) Each entry regarding a sealed record in the index of sealed records shall contain all of the following:

- (a) The name of the person who is the subject of the sealed record;
 - (b) An alphanumeric identifier relating to the person who is the subject of the sealed record;
 - (c) The word "sealed";
 - (d) The name of the court that has custody of the sealed record.
- (2) Any entry regarding a sealed record in the index of sealed records shall not contain either of the following:
- (a) The social security number of the person who is subject of the sealed record;
 - (b) The name or a description of the act committed.

(D) Notwithstanding any provision of this section that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under *sections 3301.121 and 3313.662 of the Revised Code* is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under *section 2151.356 of the Revised Code* to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of an adjudication that an individual is a delinquent child may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and *sections 3301.121 and 3313.662 of the Revised Code*, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to division (F) of this section.

(E) Inspection of records that have been ordered sealed under *section 2151.356 of the Revised Code* may be made only by the following persons or for the following purposes:

- (1) By the court;
- (2) If the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for any valid law enforcement or prosecutorial purpose;
- (3) Upon application by the person who is the subject of the sealed records, by the person that is named in that application;
- (4) If the records in question pertain to an alleged violation of division (E)(1) of *section 4301.69 of the Revised Code*, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for the purpose of determining whether the person is eligible for diversion under division (E)(2) of *section 4301.69 of the Revised Code*;
- (5) At the request of a party in a civil action that is based on a case the records for which are the subject of a sealing order issued under *section 2151.356 of the Revised Code*, as needed for the civil action. The party also may copy the records as needed for the civil action. The sealed records shall be used solely in the civil action and are otherwise confidential and subject to the provisions of this section;
- (6) By the attorney general or an authorized employee of the attorney general or the court for purposes of determining whether a child is a public registry-qualified juvenile offender registrant, as defined in *section 2950.01 of the Revised Code*, for purposes of Chapter 2950. of the Revised Code.

(F) No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to *section 2151.356 of the Revised Code* and the release, dissemination, or making available of which is not expressly permitted by this section. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(G) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest or taking into custody for which the records were sealed. If an inquiry is made in violation of this division, the person may respond as if the sealed arrest or taking into custody did not occur, and the person shall not be subject to any adverse action because of the arrest or taking into custody or the response.

(H) The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication, and no child shall be charged with or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court shall not operate to disqualify a child in any future civil service examination, appointment, or application. Evidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding. Otherwise, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in *section 2929.01 of the Revised Code*.

HISTORY:

151 v H 137, § 1, eff. 10-9-06; 152 v S 10, § 1, eff. 7-1-07.

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ORC Ann. 2151.358 (2013)

§ 2151.358. Expungement of records

(A) The juvenile court shall expunge all records sealed under *section 2151.356 of the Revised Code* five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier.

(B) Notwithstanding division (A) of this section, upon application by the person who has had a record sealed under *section 2151.356 of the Revised Code*, the juvenile court may expunge a record sealed under *section 2151.356 of the Revised Code*. In making the determination whether to expunge records, all of the following apply:

(1) The court may require a person filing an application for expungement to submit any relevant documentation to support the application.

(2) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.

(3) The court shall promptly notify the prosecuting attorney of any proceedings to expunge records.

(4) (a) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the expungement proceedings.

(b) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the expungement of the records, the court may order the records of the person that are under consideration to be expunged without conducting a hearing on the application. If the court decides in its discretion to conduct a hearing on the application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(c) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the expungement of the records, the court shall conduct a hearing on the application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(5) After conducting a hearing in accordance with division (B)(4) of this section or after due consideration when a hearing is not conducted, the court may order the records of the person that are the subject of the application to be expunged if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(a) The age of the person;

- (b) The nature of the case;
- (c) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (d) The education and employment history of the person;

(e) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(C) If the juvenile court is notified by any party in a civil action that a civil action has been filed based on a case the records for which are the subject of a sealing order, the juvenile court shall not expunge a record sealed under *section 2151.356 of the Revised Code* until the civil action has been resolved and is not subject to further appellate review, at which time the records shall be expunged pursuant to division (A) of this section.

(D) (1) A juvenile court that issues a protection order or approves a consent agreement under *section 2151.34* or *3113.31 of the Revised Code* shall automatically seal all of the records of the proceeding in which the order was issued or agreement approved on the date the person against whom the protection order was issued or the consent agreement approved attains the age of nineteen years if the court determines that the person has complied with all of the terms of the protection order or consent agreement.

(2) In a proceeding under *section 2151.34 of the Revised Code*, if the juvenile court does not issue any protection order under division (E) of that section, the court shall automatically seal all of the records in that proceeding. In a proceeding under *section 3113.31 of the Revised Code*, if the juvenile court does not issue any protection order or approve any consent agreement under division (E) of that section, the court shall automatically seal all of the records in that proceeding.

(3) (a) If a juvenile court that issues a protection order or approves a consent agreement under *section 2151.34* or *3113.31 of the Revised Code* determines that the person against whom the protection order was issued or the consent agreement approved has not complied with all of the terms of the protection order or consent agreement, the court shall consider sealing all of the records of the proceeding in which the order was issued or agreement approved upon the court's own motion or upon the application of a person. The court may make the motion or the person who is the subject of the records under consideration may apply for an order sealing the records of the proceeding at any time after two years after the expiration of the protection order or consent agreement.

(b) In making a determination whether to seal records pursuant to division (D)(3) of this section, all of the following apply:

- (i) The court may require a person filing an application under division (D)(3) of this section to submit any relevant documentation to support the application.
- (ii) The court shall promptly notify the victim or the victim's attorney of any proceedings to seal records initiated pursuant to division (D)(3) of this section.
- (iii) The victim or the victim's attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings.

If the victim or the victim's attorney does not file a response with the court or if the victim or the victim's attorney files a response but indicates that the victim or the victim's attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the victim or the victim's attorney and to the person who is the subject of the records under consideration.

If the victim or the victim's attorney files a response with the court that indicates that the victim or the victim's attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the victim or the victim's attorney and to the person who is the subject of the records under consideration.

(iv) After conducting a hearing in accordance with division (D)(3)(b)(iii) of this section or after due consideration when a hearing is not conducted, the court may order the records of the person that are the subject of the motion or application to be sealed.

(4) Inspection of the records sealed pursuant to division (D)(1), (2), or (3) of this section may be made only by the following persons or for the following purposes:

(a) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(b) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(c) Upon application by the person who is the subject of the records, by the persons named in the application;

(d) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(e) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to *section 2935.36 of the Revised Code*;

(f) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;

(g) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, *section 2953.321 of the Revised Code*;

(h) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of *section 109.57 of the Revised Code*;

(i) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in *section 109.77 of the Revised Code* is to be awarded;

(j) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of *section 109.572 of the Revised Code* that was requested pursuant to any of the sections identified in division (B)(1) of that section;

(k) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in *section 311.41 of the Revised Code*;

(l) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code.

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense.

(E) In addition to the methods of expungement provided for in divisions (A) and (B) of this section, a person who has been adjudicated a delinquent child for having committed an act that would be a violation of *section 2907.24, 2907.241, or 2907.25 of the Revised Code* if the child were an adult may apply to the adjudicating court for the expungement of the record of adjudication if the person's participation in the act was a result of the person having been a victim of human trafficking. The application shall be made in the same manner as an application for expungement under *section 2953.38 of the Revised Code*, and all of the provisions of that section shall apply to the expungement procedure.

(F) After the records have been expunged under this section, the person who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.

HISTORY:

151 v H 137, § 1, eff. 10-9-06; 153 v H 10, § 1, eff. 6-17-10; 2012 HB 262, § 1, eff. June 27, 2012.

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ORC Ann. 2152.01 (2013)

§ 2152.01. Purposes of dispositions under chapter; application of Chapter 2151

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

HISTORY:

148 v S 179. Eff 1-1-2002.

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ORC Ann. 2152.02 (2013)

§ 2152.02. Definitions

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C) (1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (8) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Except as otherwise provided in divisions (C)(5) and (7) of this section, any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code* and who subsequently is convicted of or pleads guilty to a felony in that case, unless a serious youthful offender dispositional sentence is imposed on the child for that offense under division (B)(2) or (3) of *section 2152.121 of the Revised Code* and the adult portion of that sentence is not invoked pursuant to *section 2152.14 of the Revised Code*, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to *section 2152.13 of the Revised Code*, and whose adult portion of the dispositional sentence is invoked pursuant to *section 2152.14 of the Revised Code*, shall be deemed after the conviction, plea, or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains twenty-one years of age, the places at which the person

may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of *section 2152.26 of the Revised Code*, in places other than those authorized under this chapter solely for confinement of children.

(7) The juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in division (F)(1) or (4) of *section 2152.26 of the Revised Code* unless the person is convicted of or pleads guilty to a felony in the adult court.

(8) Any person who, while eighteen years of age, violates division (A)(1) or (2) of *section 2919.27 of the Revised Code* by violating a protection order issued or consent agreement approved under *section 2151.34 or 3113.31 of the Revised Code* shall be considered a child for the purposes of that violation of *section 2919.27 of the Revised Code*.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in *section 5139.01 of the Revised Code*.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under *section 2151.87 of the Revised Code*;

(3) Any child who violates division (C) of *section 2907.39*, division (A) of *section 2923.211*, or division (C)(1) or (D) of *section 2925.55 of the Revised Code*;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of *section 2152.12 of the Revised Code*.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in *section 2925.01 of the Revised Code*.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in *section 2929.01 of the Revised Code*.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Firearm" has the same meaning as in *section 2923.11 of the Revised Code*.

(N) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in *section 2151.011 of the Revised Code*.

(P) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer and also includes, for purposes of imposition of a mandatory serious youthful dispositional sentence under *section 2152.13 of the Revised Code*, a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of *section 2152.121 of the Revised Code*.

(Q) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under *section 2152.13 of the Revised Code*.

(R) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of *section 2152.12 of the Revised Code*.

(S) "Mental illness" has the same meaning as in *section 5122.01 of the Revised Code*.

(T) "Mentally retarded person" has the same meaning as in *section 5123.01 of the Revised Code*.

(U) "Monitored time" and "repeat violent offender" have the same meanings as in *section 2929.01 of the Revised Code*.

(V) "Of compulsory school age" has the same meaning as in *section 3321.01 of the Revised Code*.

(W) "Public record" has the same meaning as in *section 149.43 of the Revised Code*.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer and also includes, for purposes of imposition of a mandatory serious youthful dispositional sentence under *section 2152.13 of the Revised Code*, a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of *section 2152.121 of the Revised Code*.

(Y) "Sexually oriented offense," "juvenile offender registrant," "child-victim oriented offense," "tier I sex offender/child-victim offender," "tier II sex offender/child-victim offender," "tier III sex offender/child-victim offender," and "public registry-qualified juvenile offender registrant" have the same meanings as in *section 2950.01 of the Revised Code*.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under *sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code*, and that is not eligible for a disposition under *section 2152.13 of the Revised Code*.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

- (1) A violation of *section 2903.01 or 2903.02 of the Revised Code*;
- (2) A violation of *section 2923.02 of the Revised Code* involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

- (1) A violation of *section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code*;
- (2) A violation of *section 2903.04 of the Revised Code* that is a felony of the first degree;
- (3) A violation of *section 2907.12 of the Revised Code* as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v H 23, § 1, eff. 8-17-06; 152 v S 10, § 1, eff. 1-1-08; 153 v H 10, § 1, eff. 6-17-10; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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ORC Ann. 2152.10 (2013)

§ 2152.10. Children eligible for mandatory or discretionary transfer; order of disposition when child not transferred

(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in *section 2152.12 of the Revised Code* in any of the following circumstances:

(1) The child is charged with a category one offense and either of the following apply:

(a) The child was sixteen years of age or older at the time of the act charged.

(b) The child was fourteen or fifteen years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category one or category two offense and was committed to the legal custody of the department of youth services upon the basis of that adjudication.

(2) The child is charged with a category two offense, other than a violation of *section 2905.01 of the Revised Code*, the child was sixteen years of age or older at the time of the commission of the act charged, and either or both of the following apply:

(a) The child previously was adjudicated a delinquent child for committing an act that is a category one or a category two offense and was committed to the legal custody of the department of youth services on the basis of that adjudication.

(b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) Division (A)(2) of *section 2152.12 of the Revised Code* applies.

(B) Unless the child is subject to mandatory transfer, if a child is fourteen years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for discretionary transfer to the appropriate court for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court shall follow the procedures in *section 2152.12 of the Revised Code*. If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court shall issue an order of disposition in accordance with *section 2152.11 of the Revised Code*.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

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ORC Ann. 2152.12 (2013)

§ 2152.12. Transfer of case; prosecution of child nullity in absence of transfer; juvenile court loses jurisdiction if child is not taken into custody or apprehended prior to attaining age twenty-one

(A) (1) (a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

(ii) The child was fourteen or fifteen years of age at the time of the act charged, *section 2152.10 of the Revised Code* provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:

(i) Division (A)(2)(a) of *section 2152.10 of the Revised Code* requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(ii) Division (A)(2)(b) of *section 2152.10 of the Revised Code* requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of *section 2152.02 of the Revised Code* or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under *section 2152.10 of the Revised Code* and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with *section 2152.121 of the Revised Code*.

(B) Except as provided in division (A) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

- (1) The child was fourteen years of age or older at the time of the act charged.
- (2) There is probable cause to believe that the child committed the act charged.

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
- (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- (3) The child's relationship with the victim facilitated the act charged.
- (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
- (5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of *section 2923.12 of the Revised Code*, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

- (1) The victim induced or facilitated the act charged.
- (2) The child acted under provocation in allegedly committing the act charged.
- (3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
- (4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

- (5) The child previously has not been adjudicated a delinquent child.
- (6) The child is not emotionally, physically, or psychologically mature enough for the transfer.
- (7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of *section 2151.23 of the Revised Code*.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

HISTORY:

RC § 2151.26, 133 v H 320 (Eff 11-19-69); 134 v S 325 (Eff 1-14-72); 137 v S 119 (Eff 8-30-78); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 141 v H 499 (Eff 3-11-87); 144 v H 27 (Eff 10-10-91); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 124 (Eff 3-31-97); *RC* § 2152.12, 148 v S 179, § 3. Eff 1-1-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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ORC Ann. 2152.121 (2013)

§ 2152.121. Jurisdiction retained by juvenile court; determination of sentence or disposition

(A) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of *section 2152.12 of the Revised Code*, the juvenile court that transferred the case shall retain jurisdiction for purposes of making disposition of the child when required under division (B) of this section.

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of *section 2152.12 of the Revised Code*, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(1) The court in which the child is convicted of or pleads guilty to the offense shall determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of *section 2152.12 of the Revised Code* would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case. The court shall not consider the factor specified in division (B)(3) of *section 2152.12 of the Revised Code* in making its determination under this division.

(2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of *section 2152.12 of the Revised Code* would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under *sections 2152.19 and 2152.20 of the Revised Code*.

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of *section 2152.12 of the Revised Code* would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer

jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. In no case may the child waive a right to a hearing of the type described in division (B)(3)(b) of this section, regarding a motion filed as described in that division by the prosecuting attorney in the case. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

(a) Except as otherwise provided in division (B)(3)(b) of this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child under division (D)(1) of *section 2152.13 of the Revised Code*. In imposing the adult portion of that sentence, the juvenile court shall consider and give preference to the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense. Upon imposing a serious youthful offender dispositional sentence upon the child as described in this division, the juvenile court shall notify the court in which the child was convicted of or pleaded guilty to the offense, the sentence imposed upon the child by that court shall terminate, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, and the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child.

(b) Within fourteen days after the filing of the journal entry regarding the transfer, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense be invoked. Upon the filing of a motion under this division, the juvenile court shall hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, the court shall grant the motion. Absent such a finding, the juvenile court shall deny the motion. In making its decision under this division, the juvenile court shall consider the factors listed in division (D) of *section 2152.12 of the Revised Code* as factors indicating that the motion should be granted, shall consider the factors listed in division (E) of that section as factors indicating that the motion should not be granted, and shall consider whether the applicable factors listed in division (D) of that section outweigh the applicable factors listed in division (E) of that section.

If the juvenile court grants the motion of the prosecuting attorney under this division, the juvenile court shall transfer jurisdiction of the case back to the court in which the child was convicted of or pleaded guilty to the offense, and the sentence imposed by that court shall be invoked. If the juvenile court denies the motion of the prosecuting attorney under this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child in accordance with division (B)(3)(a) of this section.

(4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of *section 2152.12 of the Revised Code* would have required mandatory transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

HISTORY:

2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.86 (2013)

§ 2152.86. Court's duty on or after January 1, 2008 to classify child as juvenile offender registrant, specify compliance with SORN law, and additionally classify child as public registry-qualified juvenile offender registrant; reclassification

(A) (1) The court that, on or after January 1, 2008, adjudicates a child a delinquent child for committing an act shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if the child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code*, and the child is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing any of the following acts:

(a) A violation of *section 2907.02 of the Revised Code*, division (B) of *section 2907.05 of the Revised Code*, or *section 2907.03 of the Revised Code* if the victim of the violation was less than twelve years of age;

(b) A violation of *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child;

(c) A violation of division (B) of *section 2903.03 of the Revised Code*.

(2) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The child was adjudicated a delinquent child, and a juvenile court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for committing one of the acts described in division (A)(1)(a) or (b) of this section or for committing on or after the effective date of this amendment a violation of division (B) of *section 2903.03 of the Revised Code*.

(b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(c) The court did not issue an order classifying the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to division (A)(1) of this section.

(3) If a court issued an order classifying a child a juvenile offender registrant pursuant to *section 2152.82 or 2152.83 of the Revised Code* prior to January 1, 2008, not later than February 1, 2008, the court shall issue a new order that reclassifies the child as a juvenile offender registrant, specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The sexually oriented offense that was the basis of the previous order that classified the child a juvenile offender registrant was an act described in division (A)(1)(a) or (b) of this section.

(b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(c) The court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for the act described in division (A)(1)(a) or (b) of this section.

(B) (1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to division (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. *Section 2152.831 of the Revised Code* does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.

(2) The judge that issues an order under division (A)(1), (2), or (3) of this section shall provide to the delinquent child who is the subject of the order and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of *section 2950.03 of the Revised Code* and shall provide as part of that notice a copy of the order required under division (A)(1), (2), or (3) of this section. The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A)(1), (2), or (3) of this section was made pursuant to this section.

(C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code* as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in *section 2950.15 of the Revised Code*, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) 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 of time described in this division. If an order is issued under division (A)(3) of this section, the duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* based upon that order shall be considered, for purposes of *section 2950.07 of the Revised Code* and for all other purposes, to be a continuation of the duty to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under *section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code*.

(D) (1) If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court's classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under *section 2950.04 or 2950.041 of the Revised Code*. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, the Rules of Juvenile Procedure apply except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing and shall provide notice to the delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on and after January 1, 2008. If a delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the is-

sue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and that it has terminated the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under *section 2950.04* or *2950.041 of the Revised Code* and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

(2) An order issued under division (D)(1) of this section is independent of any order of a type described in division (F) of *section 2950.031 of the Revised Code* or division (E) of *section 2950.032 of the Revised Code*, and the court may issue an order under both division (D)(1) of this section and an order of a type described in division (F) of *section 2950.031 of the Revised Code* or division (E) of *section 2950.032 of the Revised Code*. A court that conducts a hearing under division (D)(1) of this section may consolidate that hearing with a hearing conducted for the same delinquent child under division (F) of *section 2950.031 of the Revised Code* or division (E) of *section 2950.032 of the Revised Code*.

HISTORY:

152 v S 10, § 1, eff. 1-1-08; 2012 SB 160, § 1, eff. Mar. 22, 2013.

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*** Annotations current through December 5, 2013 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.11 (2013)

§ 2929.11. Purposes of felony sentencing; discrimination prohibited

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

HISTORY:

146 v S 2. Eff 7-1-96; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
SEALING OF RECORD OF CONVICTION

Go to the Ohio Code Archive Directory

ORC Ann. 2953.36 (2013)

§ 2953.36. Exceptions to preceding sections

Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

- (A) Convictions when the offender is subject to a mandatory prison term;
- (B) Convictions under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former section 2907.12, or Chapter 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;
- (C) Convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of *section 2917.03 of the Revised Code* and is not a violation of *section 2903.13, 2917.01, or 2917.31 of the Revised Code* that is a misdemeanor of the first degree;
- (D) Convictions on or after October 10, 2007, under *section 2907.07 of the Revised Code* or a conviction on or after October 10, 2007, for a violation of a municipal ordinance that is substantially similar to that section;
- (E) Convictions on or after October 10, 2007, under *section 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33 of the Revised Code* when the victim of the offense was under eighteen years of age;
- (F) Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony, except for convictions under *section 2919.21 of the Revised Code*;
- (G) Convictions of a felony of the first or second degree;
- (H) Bail forfeitures in a traffic case as defined in *Traffic Rule 2*.

HISTORY:

135 v S 5 (Eff 1-1-74); 142 v H 175 (Eff 6-29-88); 145 v H 335 (Eff 12-9-94); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 353 (Eff 9-17-96); 148 v S 13. Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 152 v S 18, § 1, eff. 10-10-07; 2012 SB 337, § 1, eff. Sept. 28, 2012.

OHIO RULES OF COURT SERVICE
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*** Rules current through rule amendments received through January 6, 2014 ***
*** Annotations current through December 5, 2013 ***

Ohio Rules Of Juvenile Procedure

Ohio Juv. R. 30 (2014)

Review Court Orders which may amend this Rule.

Rule 30. Relinquishment of jurisdiction for purposes of criminal prosecution

(A) Preliminary hearing.

In any proceeding where the court considers the transfer of a case for criminal prosecution, the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that the act would be an offense if committed by an adult. The hearing may be upon motion of the court, the prosecuting attorney, or the child.

(B) Mandatory transfer.

In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.

(C) Discretionary transfer.

In any proceeding in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court shall continue the proceeding for full investigation. The investigation shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing shall be held to determine whether to transfer jurisdiction. The criteria for transfer shall be as provided by statute.

(D) Notice.

Notice in writing of the time, place, and purpose of any hearing held pursuant to this rule shall be given to the state, the child's parents, guardian, or other custodian and the child's counsel at least three days prior to the hearing, unless written notice has been waived on the record.

(E) Retention of jurisdiction.

If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

(F) Waiver of mental examination.

The child may waive the mental examination required under division (C) of this rule. Refusal by the child to submit to a mental and physical examination or any part of the examination shall constitute a waiver of the examination.

(G) Order of transfer.

The order of transfer shall state the reasons for transfer.

(H) Release of child.

With respect to the transferred case, the juvenile court shall set the terms and conditions for release of the child in accordance with *Crim.R. 46*.

HISTORY: Amended, eff 7-1-76; 7-1-94; 7-1-97.