

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: D.S.,
adjudicated delinquent child

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Case No. 2014-0607

On Appeal from the Licking
County Court of Appeals
Fifth Appellate District

C.A. Case No. 13CA58

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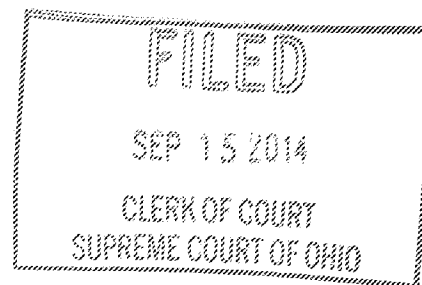


TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	3
FIRST PROPOSITION OF LAW: A juvenile court is without authority to hold an evidentiary hearing after a youth's adjudication and disposition in order to allow the State to prove that a child was age-eligible for registration under Senate Bill 10. <i>State v. Raber</i>, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684.	3
SECOND PROPOSITION OF LAW: The timing mechanism of R.C. 2152.83(B) is unconstitutional because the imposition of classification at any time other than disposition violates the Double Jeopardy Clauses of the United States and Ohio Constitutions. <i>State v. Raber</i>, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684.	11
THIRD PROPOSITION OF LAW: The imposition of a punitive sanction that extends beyond the age jurisdiction of the juvenile court violates the Due Process Clauses of the United States and Ohio Constitutions..	16
CONCLUSION	28
CERTIFICATE OF SERVICE	29
APPENDIX:	
<i>In re D.S.</i> , Case No. 2014-0607, Ohio Supreme Court, Notice of Appeal (April 17, 2014).	A-1
<i>In re D.S.</i> , Case No. 13CA58, Court of Appeals, Fifth Appellate District, Decision and Journal Entry (March 3, 2014).....	A-4
<i>In re D.S.</i> , Case No. A2010-0578, Court of Common Pleas, Juvenile Division, Licking County, Journal Entry (June 24, 2013).....	A-25
Fifth Amendment, U.S. Constitution	A-28
Fourteenth Amendment, U.S. Constitution.....	A-29
Ohio Constitution, Section 1, Article IV	A-30

TABLE OF CONTENTS

Page No.

APPENDIX:

R.C. 2151.23	A-31
R.C. 2152.01	A-35
R.C. 2152.02	A-36
R.C. 2152.10	A-40
R.C. 2152.12	A-41
R.C. 2152.13	A-45
R.C. 2152.14	A-48
R.C. 2152.22	A-50
R.C. 2152.82	A-54
R.C. 2152.83	A-56
R.C. 2152.84	A-59
R.C. 2152.85	A-61
R.C. 2152.86	A-63
R.C. 2505.02	A-66
R.C. 2907.05	A-68
R.C. 2907.06	A-70
R.C. 2907.09	A-71
R.C. 2929.12	A-73
R.C. 2950.01	A-75
R.C. 2950.02	A-82
R.C. 2950.07	A-84

TABLE OF CONTENTS

Page No.

APPENDIX:

R.C. 2950.081	A-88
R.C. 2950.11	A-89
App.R. 4	A-96
Juv.R. 29	A-99
Juv.R. 30	A-101
Juv.R. 34	A-103
Juv.R. 35	A-105

TABLE OF AUTHORITIES

Page No.

CASES:

<i>Bellotti v. Baird</i> , 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979)	23
<i>Breed v. Jones</i> , 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975)	11, 12
<i>Children's Home of Marion City v. Fetter</i> , 90 Ohio St. 110, 106 N.E. 761 (1914)	16
<i>Crist v. Bretz</i> , 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978).....	13
<i>Ex Parte Lange</i> , 85 U.S. 163, 21 L.Ed. 872 (1874)	11
<i>Graham v. Florida</i> , 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).....	27
<i>Hudson v. United States</i> , 522 U.S. 93, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)	11
<i>In re A.E.</i> , 184 Ohio App.3d 812, 2009-Ohio-6094, 922 N.E.2d 1017 (5th Dist.).....	3
<i>In re Andrew</i> , 119 Ohio St.3d 466, 2008-Ohio-4791, 895 N.E.2d 166	18
<i>In re Andrew J.R.</i> , 6th Dist. Williams Nos. WM-06-011 and WM-06-112, 2007-Ohio-5310.....	9
<i>In re B.D.</i> , 11th Dist. Portage No. 2011-P-0078, 2012-Ohio-4463, 975 N.E.2d 5	3, 10
<i>In re Bolden</i> , 37 Ohio App.2d 7, 306 N.E.2d 166 (3d. Dist.1973)	8
<i>In re Burt</i> , 5th Dist. Stark No. 2006-CA-00328, 2007-Ohio-4034	13
<i>In re C.B.</i> , 2d Dist. Montgomery No. 23615, 2010-Ohio-2129.....	13
<i>In re C.B.</i> , 129 Ohio St.3d 231, 2011-Ohio-2899, 951 N.E.2d 398	8
<i>In re C.C.</i> , 10th Dist. Franklin No. 07AP993, 2008-Ohio-2803	8
<i>In re C.P.</i> , 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729	<i>passim</i>
<i>In re C.S.</i> , 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177	11, 20
<i>In re Caldwell</i> , 76 Ohio St.3d 156, 666 N.E.2d 1367 (1996).....	17, 20
<i>In re Cases held for the decision in In re D.J.S.</i> , 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288	19

TABLE OF AUTHORITIES

CASES:	<u>Page No.</u>
<i>In re Cross</i> , 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258	11
<i>In re D.J.S.</i> , 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291	19
<i>In re D.S.</i> , 5th Dist. Licking No. 13CA58, 2014-Ohio-867.....	1, 2, 14, 15
<i>In re Echols</i> , 190 Ohio App.3d 85, 2010-Ohio-4072, 940 N.E.2d 990 (3d.Dist.).....	14
<i>In re I.A.</i> , Slip Op., 2014-Ohio-3155	10, 12
<i>In re J.M.</i> , 7th Dist. Jefferson No. 09JE21, 2010-Ohio-2700.....	4
<i>In re J.V.</i> , 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203	18
<i>In re Kirby</i> , 101 Ohio St.3d 312, 2004-Ohio-970, 804 N.E.2d 476	17
<i>In re N.Z.</i> , 11th Dist. Lake Nos. 2010-L-023, 2010-L-035, and 2010-L-041, 2011- Ohio-6845	4
<i>In re Sekulich</i> , 65 Ohio St.2d 13, 417 N.E.2d 1014 (1981).....	8, 14, 28
<i>In re Whittington</i> , 17 Ohio App.2d 164, 245 N.E.2d 364 (5th Dist.1969)	8
<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).....	14
<i>In the Interest of J.B., et al.</i> , CP-67-JV-0000726-2010 (York County Court of Common Pleas, Nov. 4, 2013).....	27
<i>Kent v. United States</i> , 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).....	20, 24
<i>Miller v. Alabama</i> , __ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).....	23, 24
<i>Missouri v. Hunter</i> , 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983).....	14
<i>Myers v. State Farm Ins.</i> , 8th Dist. Cuyahoga No. 81162, 2003-Ohio-174	7
<i>North Carolina v. Pearce</i> , 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969)	11
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).....	17, 23, 24, 27
<i>State v. Cook</i> , 83 Ohio St.3d 404, 700 N.E.2d 570 (1998).....	15

TABLE OF AUTHORITIES

CASES:	<u>Page No.</u>
<i>State v. D.H.</i> , 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209.....	23, 24, 24
<i>State v. D.W.</i> , 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894	24, 25, 26
<i>State v. Edwards</i> , 157 Ohio St. 175, 105 N.E.2d 259 (1952)	5
<i>State ex rel. Cruzado v. Zaleksi</i> , 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263.....	5, 6, 7
<i>State ex. rel. Fowler v. Smith</i> , 68 Ohio St.3d 357, 626 N.E.2d 950 (1994).....	8
<i>State ex rel. Hansen v. Reed</i> , 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992)	5, 7
<i>State ex rel. Schwartz, v. Haines</i> , 172 Ohio St. 572, 179 N.E.2d 46 (1962)	18
<i>State ex rel. White v. Cuyahoga Metro. Hous. Auth.</i> , 115 Ohio St.3d 86, 2007-Ohio- 4840, 873 N.E.2d 886	8
<i>State ex rel. White v. Junkin</i> , 80 Ohio St.3d 335, 686 N.E.2d 267 (1997)	5
<i>State v. Gustafson</i> , 76 Ohio St.3d 425, 668 N.E.2d 435 (1996)	15
<i>State v. Jordan</i> , 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864	14
<i>State v. Pickett</i> , 8th Dist. Cuyahoga No. 88265, 2007-Ohio-3899	6
<i>State v. Quarterman</i> , 137 Ohio St.3d 1440, 2013-Ohio-5678, 999 N.E.2d 695.....	25
<i>State v. Raber</i> , 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684.....	<i>passim</i>
<i>State v. Robb</i> , 88 Ohio St.3d 59, 723 N.E.2d 1019 (2000)	5
<i>State v. Simpkins</i> , 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568	13
<i>State v. Sweet</i> , 72 Ohio St.3d 375, 650 N.E.2d 450 (1995)	5, 7
<i>State v. Walls</i> , 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829	11
<i>State v. Williams</i> , 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108	11, 12, 16, 19
<i>State v. Wilson</i> , 73 Ohio St.3d 40, 652 N.E.2d 196 (1995)	11, 12, 16, 19

TABLE OF AUTHORITIES

	<u>Page No.</u>
CASES:	
<i>Strack v. Pelton</i> , 70 Ohio St.3d 172, 637 N.E.2d 914 (1994).....	7
<i>United States v. DiFrancesco</i> , 449 U.S. 117, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980).....	13
<i>United States v. Fogel</i> , 829 F.2d 77 (D.C.Cir.1987)	13
<i>United States v. Husein</i> , 478 F.3d 318 (6th Cir.2007).....	11
<i>United States v. Wiltberger</i> , 18 U.S. 76, 5 L.Ed. 37 (1820)	14
CONSTITUTIONAL PROVISIONS:	
Fifth Amendment, U.S. Constitution	11, 12
Fourteenth Amendment, U.S. Constitution.....	16, 23
Ohio Constitution, Section 1, Article IV	18
STATUTES:	
R.C. 2151.23	18
R.C. 2152.01	17, 20
R.C. 2152.02	18
R.C. 2152.10	25
R.C. 2152.12	25, 26
R.C. 2152.13	24
R.C. 2152.14	24, 25, 26
R.C. 2152.22	18, 19, 20, 28
R.C. 2152.82	7, 19, 26
R.C. 2152.83	<i>passim</i>
R.C. 2152.84	19, 26

TABLE OF AUTHORITIES

	<u>Page No.</u>
STATUTES:	
R.C. 2152.85	19
R.C. 2152.86	19
R.C. 2505.02	<i>passim</i>
R.C. 2907.05	1, 6, 7
R.C. 2907.06	6
R.C. 2907.09	1
R.C. 2929.12	10
R.C. 2950.01	5, 6
R.C. 2950.02	15
R.C. 2950.07	19
R.C. 2950.081	21
R.C. 2950.11	10
RULES:	
App.R. 4	8, 9
Juv.R. 29	8, 9
Juv.R. 30	25, 26
Juv.R. 34	9
Juv.R. 35	9
MISCELLANEOUS:	
Pa. CONSOL. STAT. tit. 42 § 9799.10 (2014)	27

TABLE OF AUTHORITIES

MISCELLANEOUS:

Page No.

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C.C. Mercado, et. al., <i>The Impact of Specialized Sex Offender Legislation on Community Reentry</i> , 20 Sexual Abuse: A Journal of Research and Treatment 188 (2008)	21
E.J. Letourneau & M.H. Miner, <i>Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo</i> , 17 Sexual Abuse: A Journal of Research and Treatment 293 (2005).....	17
F.E. Zimring, <i>An American Travesty: Legal Responses to Adolescent Sexual Offending</i> , Chicago, IL: The University of Chicago Press. (2004)	17
F.E. Zimring, <i>The Youth Violence Epidemic: Myth or Reality?</i> , 33 Wake Forest L.Rev. 727 (1998).....	17
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M.C. Seto & M.L. Lalumiere, <i>What is So Special About Male Adolescent Sexual Offending? A review and test of explanations through meta-analysis</i> , 136 Psychol. Bull. 526 (2010).....	22
Michael F. Caldwell, <i>Study Characteristics in Recidivism Base Rates in Juvenile Sex Offender Recidivism</i> , 54 International Journal of Offender Therapy and Comparative Criminology 197 (2010).....	22
Phoebe Geer, <i>Justice Served? The High Cost of Juvenile Sex Offender Registration</i> , 27 Dev. in Mental Health L. 33 (2008).....	21
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TABLE OF AUTHORITIES

	<u>Page No.</u>
MISCELLANEOUS:	
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STATEMENT OF THE CASE AND FACTS

On August 20, 2010, a complaint was filed in the Licking County Juvenile Court, alleging that then 14-year-old D.S. was delinquent of two counts of gross sexual imposition, violations of R.C. 2907.05(A)(4), felonies of the third degree if committed by an adult; and, one count of public indecency, a violation of R.C. 2907.09(B)(1), a second-degree misdemeanor. *In re D.S.*, 5th Dist. Licking No. 13CA58, 2014-Ohio-867, ¶ 2; (S-1). The complaint alleged that the offenses occurred between August 1, 2009 and June 4, 2010, during which D.S. was 13 and 14 years old. *Id.* at ¶ 2; (S-1).

On October 13, 2010, D.S. entered an admission to the two counts of gross sexual imposition and the State dismissed the public indecency charge. *Id.* at ¶ 3. The court did not determine how old D.S. was when the offenses occurred. *Id.* at ¶ 3; (S-3). On December 8, 2010, the juvenile court committed him to the Ohio Department of Youth Services (“DYS”) for two consecutive six-month minimum commitments. *Id.* at ¶ 3; (S-3).

The court scheduled a classification hearing to occur on June 17, 2013, following D.S.’s release from DYS. *Id.* at ¶ 4; R.C. 2152.83(B)(1); (S-7). At this hearing, before addressing classification, the court held an evidentiary hearing and allowed the State to present evidence to prove D.S.’s age at the time of the offenses, over defense counsel’s objections. (S-10-43). Based on the testimony presented, the court found that D.S. “committed * * * at least one count of gross sexual imposition when he was 14 years of age.” *D.S.* at ¶ 4; (S-64). The court then heard arguments and classified D.S. as a tier II juvenile offender registrant with a duty to comply with registration requirements every 180 days for 20 years. *Id.* at ¶ 4; (S-64).

On appeal, D.S. assigned error to the juvenile court’s holding an evidentiary hearing after his adjudication and disposition, the constitutionality of the imposition of punishment after

disposition, and the constitutionality of extending a punitive sanction beyond the age jurisdiction of the juvenile court. *D.S.*, 5th Dist. Licking No. 13CA58, 2014-Ohio-867, at ¶ 6-8. On March 3, 2014, the Fifth District affirmed D.S.'s classification. *Id.* at ¶ 82. Specifically, the court found that it was proper for the juvenile court to hear evidence related to D.S.'s age at the time of his offense at his classification hearing because R.C. 2152.83 permits juvenile courts to classify children upon their release from a secure facility. *Id.* at ¶ 47. The court also determined that R.C. 2152.83 was constitutional. *Id.* at ¶ 76.

ARGUMENT

FIRST PROPOSITION OF LAW

A juvenile court is without authority to hold an evidentiary hearing after a youth's adjudication and disposition in order to allow the State to prove that a child was age-eligible for registration under Senate Bill 10. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684.

In *State v. Raber*, this Court held that a trial court lacks authority to reopen a case to reconsider a final judgment; and, in particular, to reopen a case to allow the State to prove a fact necessary to establish a defendant's registration eligibility. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at paragraph one of the syllabus. Although *Raber* concerned an adult offender, the holding should also apply to juvenile cases when registration eligibility is predicated on the child's age at the time of the offense. R.C. 2152.83(A), (B).

1. Proof of a child's age at the time of the offense is a condition precedent to eligibility for classification as a juvenile offender registrant.

According to R.C. 2152.83, a child is eligible for classification if the offense for which he is adjudicated is a "sexually oriented offense or a child-victim oriented offense," committed on or after January 1, 2002, and the child was 14, 15, 16, or 17 years old at the time of the offense. R.C. 2152.83(A)(1)(a)-(b), (B)(1)(a)-(b). For 16- and 17-year-olds, classification is mandatory. R.C. 2152.83(A)(1). But, for children who were 14 or 15 at the time of the offense, classification is discretionary, meaning that the court may decline to issue an order classifying the child as a juvenile offender registrant. R.C. 2152.83(B)(2)(a). Children who were under 14 at the time of the offense are not eligible for classification. *In re B.D.*, 11th Dist. Portage No. 2011-P-0078, 2012-Ohio-4463, 975 N.E.2d 5, ¶ 27 ("Given the interplay between [R.C. 2152.83(A) and (B)], juveniles 13 years old or younger at the time they commit their offense are not subject to sex offender classification or registration."); *In re A.E.*, 184 Ohio App.3d 812,

2009-Ohio-6094, 922 N.E.2d 1017, ¶ 16 (5th Dist.) (“children that are 13 years of age and younger that are adjudicated delinquent for a sex offense are not subject to classification and registration.”). It is reversible error for a juvenile court to classify a child as a registrant in the absence of a determination of his age at the time of the offense. *See, e.g., In re N.Z.*, 11th Dist. Lake Nos. 2010-L-023, 2010-L-035, and 2010-L-041, 2011-Ohio-6845, ¶ 112; *In re J.M.*, 7th Dist. Jefferson No. 09JE21, 2010-Ohio-2700, ¶ 21. Thus, proof of age is a condition precedent to determining a child’s eligibility for classification.

In this case, the complaint did not allege, nor did the juvenile court issue a finding as to how old D.S. was at the time of the offenses. *D.S.*, 5th Dist. Licking No. 13CA58, 2014-Ohio-867, at ¶ 2; (S-1; S-3). The complaint charged D.S. with conduct that occurred between August 1, 2009 and June 4, 2010; but, because D.S.’s date of birth is November 30, 1995, he was 13 years old for approximately four months of the time span set forth in the complaint. *Id.* The complaint was never amended to specify that he was 14 when either offense occurred and he never stipulated to his age. (S-1). Therefore, in order for D.S. to be eligible for classification, the State needed to prove and the court needed to find—at adjudication—that he was 14 at the time of at least one of the offenses. R.C. 2152.83(A), (B). Instead, the court reopened the proceedings two years and eight months after disposition to hold an evidentiary hearing so that the State could present evidence of D.S.’s age at the time of the offenses. (S-64).

2. This Court’s decision in *Raber* controls this case.

This Court was faced with a similar issue in *Raber*, in which the defendant was convicted of sexual imposition, a registration-eligible offense. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 2-8. Similar to the age eligibility requirements in the juvenile registration provisions, a finding of consent or a lack thereof is a condition precedent for

registration eligibility under R.C. 2950. Specifically, R.C. 2950.01(B) provides that the term “sex offender” does not apply if the sexual act in question is consensual, and the victim is over 18 and not under the custodial authority of the offender. R.C. 2950.01(B)(2)(a); *Raber* at ¶ 17.

In *Raber*, the indictment did not allege that the sexual contact between Raber and his girlfriend was nonconsensual. *Raber* at ¶ 2. And at trial, the State did not present any evidence regarding consent. *Id.* At sentencing, the parties disputed the issue. *Id.* at ¶ 3, 8. The court directed each side to brief the question, but neither complied. *Id.* at ¶ 3, 8. On December 1, 2008, the court sentenced Raber to 60 days in jail and imposed a fine and community control. *Id.* The court’s order did not contain a registration requirement. *Id.* On March 2, 2010, more than 13 months after journalizing its sentencing entry, the trial court held “an evidentiary hearing * * * to determine whether Raber should be classified as a sex offender subject to Tier I registration.” *Id.* at ¶ 19.

On review, this Court vacated Raber’s classification, finding that a trial court lacks authority to reconsider a final judgment in a criminal case. *Id.* at ¶ 20, citing *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 338, 686 N.E.2d 267 (1997), citing *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992). First, this Court highlighted that “a presumption of regularity attaches to all judicial proceedings.” *Raber* at ¶ 19, citing *State v. Edwards*, 157 Ohio St. 175, 183, 105 N.E.2d 259 (1952); *State v. Sweet*, 72 Ohio St.3d 375, 376, 650 N.E.2d 450 (1995); and *State v. Robb*, 88 Ohio St.3d 59, 87, 723 N.E.2d 1019 (2000). Thus, Raber’s case could only be reopened if the trial court’s order was void or contained a clerical error. *Raber* at ¶ 20, citing *State ex rel. Cruzado v. Zaleksi*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 19 (holding that courts have continuing jurisdiction to correct void sentences or clerical errors).

The subsection of sexual imposition for which Raber was responsible makes it a felony offense for a person to “have sexual contact with another, not the spouse of the offender, * * * when * * * the offender knows that the sexual contact is offensive to the other person, * * * or is reckless in that regard.” R.C. 2907.06(A)(1). Consent or lack of consent is not an element of sexual imposition; therefore, the trial court’s failure to issue a finding on consent, though necessary for registration eligibility, was not fatal to Raber’s conviction. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 19.

Next, this Court had to determine whether the trial court erred by failing to include its reason for not classifying Raber in its entry. *Id.* at ¶ 19. According to R.C. 2950.01, a court does not have a duty to classify someone whose conviction was based on consensual conduct. *Id.* at ¶ 21. Because the trial court’s order did not make a finding regarding consent, the court did not have a duty to classify Raber as a sex offender. *Id.* As such, the lack of a registration order was not a clerical error. *Id.* at ¶ 20, citing *Cruzado* at ¶ 19. Accordingly, because Raber’s conviction was valid, and there was no clerical error in the court’s judgment, the trial court lacked the authority to reopen his case in order to find that the sexual contact at issue was nonconsensual. *Raber* at ¶ 20-21. The same is true here.

The age of the offender is not an element of gross sexual imposition; nor is the date on which the offense is alleged to have occurred. R.C. 2907.05(A)(4); *State v. Pickett*, 8th Dist. Cuyahoga No. 88265, 2007-Ohio-3899, ¶ 22 (“The precise time and date of an offense are not ordinarily considered to be essential elements of an offense; hence, the failure to provide specific times and dates in the indictment is not, in and of itself, a basis for dismissal of the charges.”). Instead, gross sexual imposition is defined as having “sexual contact with another, not the spouse of the offender * * * when * * * the other person * * * is less than thirteen years of age, whether

or not the offender knows the age of that person.” R.C. 2907.05(A)(4). As such, the State did not have to prove D.S.’s age in order for the court to find him delinquent. And, because D.S. was not a repeat offender, and the complaint did not allege that he was 16 or 17 at the time of the offense, the juvenile court was not required to classify him. R.C. 2152.82; 2152.83(A). Accordingly, D.S.’s adjudication is valid and there is no clerical error or infirmity that allowed the court to reopen his case. *Sweet*, 72 Ohio St.3d at 376, 650 N.E.2d 450; *Cruzado*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, at ¶ 19.

This Court has repeatedly recognized the finality of valid judgments in criminal cases. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 20, quoting *Junkin*, 80 Ohio St.3d at 338, 686 N.E.2d 267, citing *Hansen*, 63 Ohio St.3d 597, 589 N.E.2d 1324. Because D.S.’s adjudication is valid, this Court must determine whether a juvenile court has authority to reopen its own valid final judgment in a delinquency case. The answer must be no.

3. The juvenile court’s December 2010 disposition order is a final order, not subject to reopening.

It is well accepted that judgments must be accorded finality. *Myers v. State Farm Ins.*, 8th Dist. Cuyahoga No. 81162, 2003-Ohio-174, ¶ 14. “For obvious reasons, courts have typically placed finality above perfection in the hierarchy of values.” *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994). R.C. 2505.02(B)(2) provides that an order is final and appealable if it is “[a]n order that affects a substantial right made in a special proceeding.” “Special proceeding is defined as an “action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2). Delinquency proceedings are governed by Chapter 2152 and did not exist prior to 1853. Accordingly, classification hearings are “special proceedings” as defined by R.C. 2505.02(A)(1).

And, this Court has held that juvenile court proceedings are special proceedings. *State ex. rel. Fowler v. Smith*, 68 Ohio St.3d 357, 360, 626 N.E.2d 950 (1994).

The Revised Code defines a substantial right as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). “A substantial right is a legal right enforced and protected by law.” *In re C.B.*, 129 Ohio St.3d 231, 234, 2011-Ohio-2899, 951 N.E.2d 398, ¶ 13, citing *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, ¶ 43. And, courts of appeals have found that an order adjudicating a child delinquent and committing him to DYS is an order affecting the child’s substantial rights. *In re C.C.*, 10th Dist. Franklin No. 07AP993, 2008-Ohio-2803, ¶ 14.

Moreover, this Court has found that a juvenile court’s finding of delinquency is final and appealable, provided it is accompanied by a disposition. *In re Sekulich*, 65 Ohio St.2d 13, 14, 417 N.E.2d 1014 (1981), citing *In re Whittington*, 17 Ohio App.2d 164, 245 N.E.2d 364 (5th Dist.1969); *In re Bolden*, 37 Ohio App.2d 7, 306 N.E.2d 166 (3d. Dist.1973). In this case, the juvenile court’s December 2010 order adjudicating D.S. delinquent and committing him to DYS was a final order, subject to appeal. App.R. 4(A).

The juvenile court’s jurisdiction is limited in scope; and, any attempt to reopen a case must comport with the Juvenile Rules. Juv.R. 29(F) outlines the proper procedure that juvenile courts are to take upon determination of the issues. The rule provides that if the allegations in the complaint are not proven, the court shall dismiss the complaint. Juv.R. 29(F)(1). But, if the allegations are proven, the court shall: a) enter adjudication and proceed immediately to disposition; b) enter adjudication and continue the matter for disposition, but not for more than six months; c) postpone entry of adjudication for not more than six months; and d) dismiss the

complaint if dismissal is in the best interest of the child and the community. Juv.R. 29(F)(2)(a)-(d). The court is then required to enter its judgment within 7 days; and upon entry, the order is final and appealable. Juv.R. 34(C); App.R. 4(A); *In re Andrew J.R.*, 6th Dist. Williams Nos. WM-06-011 and WM-06-112, 2007-Ohio-5310, ¶ 9 (finding that once a juvenile court issues a dispositional order, such an order becomes final and appealable).

Once the juvenile court enters disposition in a child's case, the only way to lawfully reopen that matter is through Juv.R. 35. But, Juv.R. 35 does not give juvenile courts unfettered discretion once a juvenile's case is reopened; rather, it permits a juvenile court to revoke a child's probation if the court finds that the child violated a condition of probation of which the child had been notified. Juv.R. 35(B). Nothing in Juv.R. 35 authorizes a juvenile court to reopen a child's case in order to prove facts relevant to his offense, adjudication, or disposition.

At the conclusion of the juvenile court's December 2010 disposition hearing the juvenile court entered its order; and no further mechanism was available under the Juvenile Rules to reopen the fact-finding stage of the proceedings.

4. At a discretionary registrant's classification hearing, a court is limited to considering the factors listed in R.C. 2152.83(D).

Although R.C. 2152.83(B) directs that first-time juvenile offenders who are committed to a secure facility be classified upon their release from the facility, the statute does not authorize the juvenile court to reopen a child's case for the purpose of proving additional facts not proven at trial. Instead, R.C. 2152.83(B)(1) provides that "[t]he court * * * may conduct * * * a hearing for the purposes described in division (B)(2) of this section *if all of the following apply*: * * * the child was fourteen or fifteen years of age at the time of committing the offense." Thus, a determination of the child's age is a prerequisite to the court's being able to hold the hearing, not a factor to be determined at the hearing. And, R.C. 2152.83(B)(2) provides, "[a] judge shall

conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting, and to determine whether the child should be classified a juvenile offender registrant.” *In re I.A.*, Slip Op., 2014-Ohio-3155, ¶ 6. Accordingly, the purpose of the hearing is for the court to determine whether to classify the child based on his success at treatment and potential risk to the community, not to determine his age eligibility for registration. *See B.D.*, 11th Dist. Portage No. 2011-P-0078, 2012-Ohio-4463, ¶ 27. The statute does not authorize the juvenile court to hear additional evidence on the child’s age at the time of the offense.

According to R.C. 2152.83(D), the only fact finding that occurs at a hearing conducted pursuant to R.C. 2152.83 is limited to the court’s determination of the factors listed in R.C. 2152.83(D)(1)-(6). Specifically, prior to determining whether to classify a discretionary registrant, the court must consider: the nature of the offense; the child’s remorse; the public interest and safety; the factors in 2950.11 and 2929.12; and, the results of the child’s treatment. R.C. 2152.83(D). Age is not one of the factors listed in R.C. 2152.83(D). As such, the only time the court may lawfully make a determination as to a child’s age at the time of the offense, is at his adjudication and disposition hearing. R.C. 2152.83(A)(1)(b), (B)(1)(b), (D)(1)-(6).

Here, years after the final judgment was issued, the juvenile court reopened the fact-finding stage of the proceedings against D.S., and had a separate trial on the issue of his age at the time of his offenses. (S-7). This offends the principles of finality and double jeopardy protections. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 26; (*See* Second proposition of law). This Court’s holding in *Raber* applies equally to a delinquency case because, this Court has long recognized that delinquency laws feature inherently criminal aspects and “the state’s goals in prosecuting a criminal action and in adjudicating a juvenile delinquency

case are the same: ‘to vindicate a vital interest in the enforcement of *criminal* laws.’” (Emphasis sic.) *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 76, quoting *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 26, citing *Breed v. Jones*, 421 U.S. 519, 531, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975). Further, this Court has found that S.B. 10 is punitive for adults and juveniles alike. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16; *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. For these reasons, D.S. respectfully requests that this Court adopt his first proposition of law.

SECOND PROPOSITION OF LAW

The timing mechanism of R.C. 2152.83(B) is unconstitutional because the imposition of classification at any time other than disposition violates the Double Jeopardy Clauses of the United States and Ohio Constitutions. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684.

1. The Double Jeopardy Clauses of the United States and Ohio Constitutions prohibit multiple, successive punishments for the same offense.

“If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense.” *North Carolina v. Pearce*, 395 U.S. 711, 717-718, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), quoting *Ex Parte Lange*, 85 U.S. 163, 168, 173, 21 L.Ed. 872 (1874). And “there has never been any doubt of [the rule’s] entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense.” *Pearce* at 718, quoting *Lange* at 168. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution protects against the imposition of multiple criminal punishments for the same offense in successive proceedings. *Raber* at ¶ 22; *Hudson v. United States*, 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997); *United States v. Husein*, 478 F.3d 318, 338 (6th Cir.2007). Juveniles have the same right to be protected against double jeopardy violations as adults. *In re Cross*, 96

Ohio St.3d 328, 332-33, 2002-Ohio-4183, 774 N.E.2d 258, citing *Breed*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (holding that the Double Jeopardy Clause of the Fifth Amendment applies to juvenile delinquency proceedings). Because registration under Senate Bill 10 (“S.B. 10”) is punitive, classifying a child as a juvenile offender registrant at any time other than his adjudication and disposition hearing violates double jeopardy.

Recently, this Court examined the timing mechanism in R.C. 2152.83(B), and specifically, whether a juvenile court is prohibited from classifying a discretionary registrant at disposition if the court commits the child to a secure facility. *I.A.*, Slip Op., 2014-Ohio-3155, at ¶ 1. Since *I.A.* concerned the interpretation of the timing mechanism in R.C. 2152.83, this Court did not address the constitutionality of the second timing option under R.C. 2152.83(B)—that the child be classified upon his release from a secure facility. *Id.* at ¶ 2. The question now is whether R.C. 2152.83(B) is constitutional, given this Court’s determination that classification under S.B. 10 is punitive.

This Court’s decision in *Raber* was twofold. First, this Court held that a trial court lacks authority to reconsider a valid judgment in a criminal case. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 20. Second, this Court examined the constitutional impact of the trial court classifying Raber more than a year after his sentencing, and held that the imposition of a punitive sanction after a valid final judgment violates double jeopardy. *Id.* at ¶ 26. On review, this Court noted that it previously upheld Megan’s Law—Ohio’s prior sex offender registration and notification scheme—deeming it to be civil and remedial. *Id.* at ¶ 22. But, in *Williams*, this Court found that R.C. 2950 is punitive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16. Thus, requiring an offender to register is no longer a civil collateral consequence; rather, it is an “additional criminal punishment.” *Raber* at ¶ 24.

This analysis is not limited to adult registrants, because this Court has found that S.B. 10 is punishment for juvenile offenders as well. *Id.* at ¶ 23, citing *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. Since the juvenile court adjudicated D.S. delinquent and imposed disposition on December 8, 2010, its subsequent order classifying him as a juvenile offender registrant on June 17, 2013 constitutes a successive punishment. *Raber* at ¶ 24, 26.

2. D.S. had a legitimate expectation of finality in the juvenile court's December 2010 judgment.

One of the primary purposes of the Double Jeopardy Clause is to preserve the finality and integrity of judgments. *United States v. DiFrancesco*, 449 U.S. 117, 128, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980); *Crist v. Bretz*, 437 U.S. 28, 33, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978). Therefore, any “[a]pplication of the Double Jeopardy Clause depends upon the legitimacy of a defendant’s expectation of finality in the judgment.” *In re C.B.*, 2d Dist. Montgomery No. 23615, 2010-Ohio-2129, ¶ 33, quoting *In re Burt*, 5th Dist. Stark No. 2006-CA-00328, 2007-Ohio-4034, ¶ 61. “If a defendant has a legitimate expectation of finality, then an increase in that sentence is prohibited by the double jeopardy clause.” *Raber* at ¶ 24, citing *United States v. Fogel*, 829 F.2d 77, 87 (D.C.Cir.1987).

This Court has held that where “the sentence imposed [is] unlawful and thus void, there can be no reasonable, legitimate expectation of finality in it.” *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 36. In *Raber*, this Court determined that, because *Raber*’s conviction was “neither unlawful nor void,” he “had a legitimate expectation of finality in his sentence when the trial court entered its judgment of conviction.” *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 25-26. Accordingly, “the protections of the Double Jeopardy Clause prohibited the trial court from reopening [the] case,” and classifying him as a registrant. *Id.* at ¶ 26. The outcome here must be the same.

D.S.'s expectation of finality in the fact-finding phase of the adjudicatory process is no different than in *Raber*, in that the State was required to prove all facts relative to his adjudication beyond a reasonable doubt at trial. *In re Winship*, 397 U.S. 358, 363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (finding that a juvenile is entitled to an acquittal if the State fails to carry its burden of proof). As argued above, D.S.'s adjudication for gross sexual imposition was valid; and, it did not contain any clerical error or infirmity such that it was subject to correction. Therefore, he had a legitimate expectation of finality in his December 2010 disposition, and double jeopardy applies. *See State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 25 (holding that courts are prohibited from subsequently imposing a statutorily required sentence if the initial sentence is valid).

It is well accepted that the juvenile court could not have simply reopened D.S.'s case to impose additional orders or further disposition. *In re Echols*, 190 Ohio App.3d 85, 2010-Ohio-4072, 940 N.E.2d 990 (3d.Dist.) (vacating a juvenile's commitment to DYS when the record reflected that he had already been given a valid disposition on that case from another county), citing *Sekulich*, 65 Ohio St.2d at 15, 417 N.E.2d 1014 (holding that once a disposition was entered concerning a youth's case, the second disposition entered after transfer to his home county was invalid). Classification is a punitive disposition; and thus, is subject to the same constitutional limits.

In this case, the Fifth District found that "Because the substantive power to prescribe crimes and determine punishments is vested with the legislature, the question under the Double Jeopardy Clause whether punishments are 'multiple' is essentially one of legislative intent." (Internal citations omitted.) *D.S.*, 5th Dist. Licking No. 13CA58, 2014-Ohio-867, at ¶ 68, quoting *United States v. Wiltberger*, 18 U.S. 76, 5 L.Ed. 37 (1820); and *Missouri v. Hunter*, 459

U.S. 359, 366, 103 S.Ct. 673, 678, 74 L.Ed.2d 535 (1983). The court also noted that “if pursued in a single proceeding, * * * multiple punishments may constitutionally be imposed.” *D.S.* at ¶ 69, citing *State v. Gustafson*, 76 Ohio St.3d 425, 437, 668 N.E.2d 435 (1996). Overruling *D.S.*’s double jeopardy claims, the Fifth District determined that classification is not “a new proceeding but rather a continuation of the original delinquency case,” thus, multiple punishments are not imposed when classification occurs after disposition. *D.S.* at ¶ 73. But, the court also found that the legislature’s intent to impose multiple punishments was clearly reflected in the language that granted juvenile court’s jurisdiction to classify children upon their release from a secure facility. *Id.* at ¶ 69, 73. The Fifth District’s reasoning fails for multiple reasons.

First, there is no statutory support for the court’s holding that the classification hearing authorized by R.C. 2152.83 is a continuation of an open disposition. When a juvenile court issues a classification order upon a child’s release from a secure facility, that order is a separate final order from the child’s disposition order, each subject to its own appeal and traditional principles of finality. R.C. 2505.02(B). Second, when the General Assembly enacted S.B. 10, it did not intend to impose a successive punishment on youth adjudicated delinquent of sexually oriented offenses.

The General Assembly enacted R.C. 2950 as a civil and remedial scheme. *State v. Cook*, 83 Ohio St.3d 404, 417, 700 N.E.2d 570 (1998) (“the statute [was] absolutely devoid of any language indicating an intent to punish.”). When the legislature amended Ohio’s registration statutes and enacted S.B. 10, it did not change its stated purpose. Specifically, R.C. 2950.02(B) provides:

[I]t is the policy of this state to require the exchange * * * of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release * * * of necessary and relevant information about sex offenders and child-victim offenders to members of the general public

as a means of assuring public protection and that the exchange or release of that information is not punitive.

The General Assembly's non-punitive intent was drafted before this Court found R.C. 2950 to be punitive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 11, 14. The legislature could not have intended that children receive multiple and successive punishments under R.C. 2152.83 because it did not consider S.B. 10 to be punitive when it enacted the bill.

In *Raber*, this Court found that the Double Jeopardy Clause “prohibited the trial court from reopening [the defendant’s] case, [and] conducting a separate trial to determine whether the sexual activity at issue here was consensual, and classifying Raber as a sex offender.” *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, at ¶ 26. And, since classification is punitive for children, just as it is for adults, double jeopardy protects children like D.S. from being subject to subsequent proceedings that allow the State to produce additional evidence and the court to impose additional punishment for the same offense. For these reasons, D.S. respectfully requests that this Court adopt his second proposition of law.

THIRD PROPOSITION OF LAW

The imposition of a punitive sanction that extends beyond the age jurisdiction of the juvenile court violates the Due Process Clauses of the United States and Ohio Constitutions.

Since its inception, the objective of the juvenile court has been to protect wayward children from evil influences, save them from criminal prosecution, and provide them social and rehabilitative services. *Children’s Home of Marion City v. Fetter*, 90 Ohio St. 110, 127, 106 N.E. 761 (1914).

We as a society believe that our goal should be to rehabilitate, wherever possible, a child who may be young enough that the behavior can be molded and the child directed away from delinquent and criminal acts and toward a productive and responsible future. Therefore, our inquiry must begin with the premise that the

goal of the juvenile code is to rehabilitate, not to punish, while protecting society from criminal and delinquent acts during rehabilitation.

In re Caldwell, 76 Ohio St.3d 156, 157, 666 N.E.2d 1367 (1996). Accordingly, juvenile courts are to remain centrally concerned with the care, protection, development, treatment, and rehabilitation of youthful offenders who remain in the juvenile justice system. *Id.*; *In re Kirby*, 101 Ohio St.3d 312, 2004-Ohio-970, 804 N.E.2d 476; R.C. 2152.01. Yet, in the mid-90's, treatment of children in juvenile court took a drastic turn with the advent of the juvenile "super-predator" myth. Compare *Roper v. Simmons*, 543 U.S. 551, 556, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (recognizing the "particular trend in recent years toward cracking down on juvenile crime.") with F.E. Zimring, *The Youth Violence Epidemic: Myth or Reality?*, 33 Wake Forest L.Rev. 727 (1998) (analyzing juvenile crime statistics and concluding "there never was a general pattern of increasing adolescent violence in the 1980s and 1990s.").

In recent years, "the convergence of three trends—the generalized societal alarm over juvenile violent crime, increased punitive responses to juvenile offenders, and the expansion of social control over known sex offenders—has produced a range of policies aimed at juveniles who sexually offend." A.J. Harris et. al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, (Manuscript submitted for publication) (2014) 1, citing E.J. Letourneau & M.H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*. 17 *Sexual Abuse: A Journal of Research and Treatment* 293, 293-312 (2005), and F.E. Zimring, *An American Tragedy: Legal Responses to Adolescent Sexual Offending*, Chicago, IL: The University of Chicago Press. (2004). The enactment of the federal Adam Walsh Act brought harsher requirements on juvenile offenders than what was previously required under federal law, so harsh that many states declined to adopt their own version of SORNA. *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967

N.E.2d 729, at ¶ 11, 31-32. *See also* Press Release, Office of Justice Programs, Jurisdictions Substantially Implement Sex Offender Registration and Notification Act (November 8, 2013) (available at <http://ojp.gov/newsroom/pressreleases/2013/ojppr110813.pdf>) (accessed September 12, 2014) (finding that, to date, only 17 of the 50 states have enacted their own versions of the federal Adam Walsh Act). But, unlike other statutory schemes in Ohio, which allow juveniles to receive penalties for offenses they committed when they were a child, a juvenile's classification as a registrant transfers into adulthood without full due process.

1. Juvenile sex offender registration and notification is the sole exception to the juvenile court's general power over a "child."

A juvenile court's power "is derived from Section 1, Article IV of the Constitution of Ohio, and the court is established and its jurisdiction defined by [O.R.C.] Chapter 2151." *State ex rel. Schwartz v. Haines*, 172 Ohio St. 572, 573, 179 N.E.2d 46 (1962). Juvenile courts have exclusive jurisdiction over children who are alleged to be delinquent. R.C. 2151.23(A)(1). In delinquency proceedings, "child" means a person who is under 18 years of age, except as otherwise provided in R.C. 2152.02(C)(2)-(6). R.C. 2152.02(C)(1); *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, 895 N.E.2d 166, ¶ 4-17.

Generally, the juvenile court's jurisdiction over a child terminates when the child turns 21. *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203, ¶ 24. Specifically, the Revised Code provides that, once validly entered, dispositions made under R.C. 2152 "shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age." R.C. 2152.22(A). But, a narrow exception exists for children who are subject to Ohio's juvenile registration and notification statutes.

Revised Code Section 2151.23(A)(15) authorizes juvenile courts to “conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86¹ and Chapter 2950 of the Revised Code” for delinquent children. In turn, R.C. 2152.82 and 2152.83 extend the jurisdiction of the juvenile court beyond the termination of a case, or beyond the age of 21, for juvenile offender registrants. Specifically, R.C. 2152.83(E) provides that “[a]n order issued under [R.C. 2152.83(B)] and any determinations included in the order shall remain in effect for the period of time specified in Chapter 2950.07,” and “[t]he child’s attainment of age eighteen or twenty-one ‘does not affect or terminate the order, and the order remains in effect for the period of time described in this division.’” *See also* R.C. 2152.82(C). R.C. 2152.84 and 2152.85 govern the hearings at which a child’s classification may be revisited. Under those sections, juvenile courts may review, continue, modify, or terminate the registration duties of any juvenile offender registrant indefinitely. R.C. 2152.84-2152.85

When read together, R.C. 2152.82(C), 2152.83(E), 2152.84, and 2152.85 grant juvenile courts jurisdiction over adults who were adjudicated delinquent children, where it would otherwise not exist. This is the only delinquency disposition that may extend beyond the age jurisdiction of the juvenile court. R.C. 2152.22(A). This extension is contrary to the purposes of juvenile delinquency dispositions and violates a child’s right to due process.

2. Revised Code Chapter 2950 is punitive.

As noted above, this Court has found that R.C. 2950 is punitive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16. That finding applies to juvenile registration as well. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291, ¶ 1; *In*

¹ This Court found R.C. 2152.86 unconstitutional in *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 86.

re Cases held for the decision in In re D.J.S., 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288, ¶ 1; and *C.P.* at ¶ 11, 86.

3. The purpose of the juvenile justice system is rooted in rehabilitation.

Juvenile courts “occupy a unique place in our legal system.” *C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶ 65. Traditionally, the juvenile court has functioned “to provide measures of guidance and rehabilitation for the child and protection for society, not to affix criminal responsibility, guilt and punishment.” *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). As such, the philosophy driving juvenile justice has been rooted in social welfare, rather than in the body of the law. *Id.* When faced with the question of “what does one do with a child who commits serious offenses?,” this Court recognized that “punishment is not the goal of the juvenile system, except as necessary to direct the child toward the goal of rehabilitation.” *Caldwell*, 76 Ohio St.3d at 157, 666 N.E.2d 1367. Thus, this Court directed that inquiries into the appropriateness of a disposition must begin with that premise and implement efforts to protect society during the period of rehabilitation. *Id.* Therefore, if registration under S.B. 10, although punitive, is necessary to protect society from a child who is being rehabilitated and to hold that child accountable; then, like other delinquency dispositions, it can only extend until the juvenile court’s rehabilitative goal has been accomplished. R.C. 2152.22(A). Once the child turns 21, the period of rehabilitation is over and all dispositions and punishments must cease.

4. The punitive nature of registration frustrates the rehabilitative purpose of the juvenile system.

In *C.P.*, this Court recognized that lifetime registration and community notification are especially harsh punishments for juveniles, because they run contrary to R.C. 2152.01’s goals of

rehabilitating the offender and aiding his mental and physical development, by anchoring the juvenile offender to his crime. *C.P.* , 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 44, 47. This Court found that “lifetime registration and notification ensure that PRQJORS will encounter continued difficulties, because of their offenses, long into adulthood.” *Id.* at ¶ 47. Research supports this finding and has shown that registration and notification statutes “can impede community reentry and adjustment in a variety of ways,” including “difficulty securing and maintaining employment, housing disruption, relationship loss, threats and harassment, physical assault, and property damage.” A.J. Harris, et. al. (manuscript submitted for publication) at 9, citing C.C. Mercado, et. al., *The Impact of Specialized Sex Offender Legislation on Community Reentry*, 20 Sexual Abuse: A Journal of Research and Treatment 188, 188-205 (2008). This Court has already recognized the significant impediments that plague juvenile registrants, including the negative economic and social impacts on a registrant’s attempt at reintegration. *C.P.* at ¶ 55, 56, citing Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. in Mental Health L. 33, 48-49 (2008), and Stacey Hiller, *The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure*, 7 B.U.Pub.Intl.L.J. 271, 287 (1998). And, because the Ohio Revised Code makes any juvenile registrant’s status available to the public through a public records request, all juvenile registrants are subject to these impediments. R.C. 2950.081.

Further, research demonstrates that the negative impacts of being on the registry are not limited to children who are subject to community notification. Treatment providers report that registered juveniles are more likely to experience mental health problems, feelings of hopelessness, and experience harassment and unfair treatment than their unregistered counterparts. A.J. Harris, et. al., at 15-16. And, all youth subject to registration are likely to

experience disruption of their pro-social development, negative impact in peer networks, school, and employment opportunities. Assn. for the Treatment of Sexual Abusers, *Adolescents Who Have Engaged in Sexually Abusive Behavior: Effective Policies and Practices* (2012), <http://www.atsa.com/adolescents-engaged-in-sexually-abusive-behavior> (accessed September 11, 2014).

Punishing a child who remains in the juvenile system into adulthood is not justified, given what research shows about juveniles who commit sex offenses. First, juvenile sex offenders rarely reoffend. A.J. Harris, et. al., at 2, citing Michael F. Caldwell, *Study Characteristics in Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 International Journal of Offender Therapy and Comparative Criminology 197, 197-212 (2010). In a 2010 study involving 63 unique datasets of juvenile offenders, the mean sexual recidivism rate for juvenile offenders, across studies, was 7.08%. *Caldwell* at 197-212. And, because juveniles are especially amenable to treatment, those who sexually offend are “decidedly distinct from the adult sex offender population.” A.J. Harris, et. al., at 2; 5. Research shows that children who commit sex offenses closely resemble their non-sex-offending counterparts, in that they share similar family and peer backgrounds, risk factors, and weaker family bonding. *Id.* at 5. The major difference is that children who commit sex offenses are more likely to have suffered sexual abuse, sexual violence, exposure to abuse, neglect, social isolation, low self-esteem, and early exposure to sex or pornography. M.C. Seto & M.L. Lalumiere, *What is So Special About Male Adolescent Sexual Offending? A review and test of explanations through meta-analysis*, 136 Psychol. Bull. 526, 526-575 (2010).

The low recidivism rates of juvenile sex offenders, coupled with the similarities between them and their non-sex-offending counterparts demonstrates that there is no justification for

allowing a child's punitive classification to carry into adulthood, while other dispositions stop at the age of 21.

5. Punishments that extend beyond the jurisdiction of the juvenile court violate a juvenile's right to due process.

"Constitutional procedural safeguards in the juvenile context find their genesis in the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 44. "From a due process perspective, both this Court and the United States Supreme Court have held that juveniles may be treated differently from adults:

[O]ur acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. * * * Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, * * *, sympathy, and * * * paternal attention."

(Citation omitted.) *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 72, citing *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). This disparate treatment is justified, since children are "not as culpable for their acts as adults." *C.P.* at ¶ 39.

The United States Supreme Court has recognized that children are different from adults in three distinct ways. First, "children have a 'lack of maturity and an underdeveloped sense of responsibility' leading to recklessness, impulsivity, and heedless risk-taking." *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012), 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 a 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. Given the differences between adults and juveniles, great care must be taken before a child can be treated like an adult for actions he took when he was a child. *See generally Kent*, 383 U.S. at 554, 86 S.Ct. 1045, 16 L.Ed.2d 84.

Ohio has a system whereby juveniles receive adult penalties only in rare circumstances and only after a juvenile court has followed the statutory procedures that protect a child's due process rights. *D.H.* at ¶ 18, 31; *see also State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 48. Under Ohio's serious youthful offender ("SYO") statutes, a child can receive a blended sentence, which includes a juvenile disposition and a stayed adult sentence. R.C. 2152.13; *D.H.* at ¶ 18. According to statute, the child's suspended adult sentence is only a "potential sentence" since it is not invoked if the child successfully completes his juvenile disposition without committing a serious violation or a new felony offense. R.C. 2152.13(D)(2)(a)(iii); *D.H.* at ¶ 30. This Court found that the threat of future incarceration "encourages a juvenile's cooperation in his own rehabilitation, functioning as both carrot and stick." *Id.* at ¶ 18.

But, before the court can invoke the stayed portion of the SYO disposition, the juvenile must engage in a "further bad conduct" while in custody. *C.P.* at ¶ 79; R.C. 2152.14(A), (B). After a formal request for invocation is filed, the child is afforded a hearing, where he has the right to counsel, which cannot be waived. R.C. 2152.14(A), (B). At that hearing, the child may present evidence on his behalf; and, the court must find, by clear and convincing evidence, that he is "unlikely to be rehabilitated during the remaining period of juvenile jurisdiction." R.C. 2152.14(D); *D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, at ¶ 31.

In *D.H.*, this Court found the child's retention in the juvenile court to be the governing principle defining a juvenile's treatment:

The statutory scheme establishes that a juvenile subject to serious-youthful-offender status, despite the carrot/stick of the possible imposition of an adult sentence, remains squarely in the juvenile court system. The juvenile cannot be sent directly to an adult facility for the acts that led to his serious-youthful-offender status. The juvenile court retains jurisdiction. The juvenile would have to engage in separate conduct detrimental to his own rehabilitation in the juvenile system to be committed to an adult facility. The aims of the juvenile system – and its heightened goals of rehabilitation and treatment – control his disposition. To get the rehabilitative benefit of the juvenile system, the juvenile's case must remain in juvenile court.

D.H. at ¶ 38. After the invocation process is triggered by the new bad act, R.C. 2152.14 grants “procedural protections for juveniles before the adult portion of their disposition can be invoked.” *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 79. But, if the child never commits another bad act, he never receives the sting of the adult punishment.

The second way that Ohio provides for a juvenile to be punished as an adult for acts he committed when he was “a child” is through a transfer proceeding. R.C. 2152.12; 2152.10; Juv.R. 30; *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 10. Mandatory transfer “removes discretion from judges in the transfer decision in certain situations.” *Id.* at ¶ 10.² Eligibility for mandatory transfer is determined by a child's age, offense type, delinquency history in some cases, and a finding of probable cause. R.C. 2152.10(A); R.C. 2152.12(A). Discretionary transfer is governed by R.C. 2152.10(B); and, 2152.12(B) and, following a probable cause determination, allows juvenile court judges to “transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system.” *D.W.* at ¶ 10. This requires a full investigation into the child's background

² This Court is currently considering the constitutionality of Ohio's mandatory transfer statutes in *State v. Quarterman*, Case No. 2013-1591. *State v. Quarterman*, 137 Ohio St.3d 1440, 2013-Ohio-5678, 999 N.E.2d 695.

and an amenability hearing. Juv.R. 30(C); R.C. 2152.12(B)-(E). This Court has found that a juvenile's right to the amenability procedure prior to discretionary transfer is a "vital safeguard," grounded in the constitution. *D.W.* at ¶ 17, 25. If a court fails to comply with the juvenile transfer statutes, the resulting criminal court judgment is a nullity and void ab initio. *State v. Wilson*, 73 Ohio St.3d 40, 44, 652 N.E.2d 196 (1995).

But, the protective factors in the SYO and discretionary transfer statutes are nonexistent for a child who is classified as a juvenile offender registrant for offenses that he committed when he was a child. And the punishment through classification and registration duties, carries into adulthood. Unlike SYOs, who must commit a new bad act before they risk serving their adult sentence, the adult registration penalty continues past the child's 21st birthday automatically, without a finding that the child committed any new infraction or offense. R.C. 2152.82(C); 2152.83(E). And, the child is not afforded any due process protections prior to the classification continuing into adulthood. *Compare* R.C. 2152.83(E) *with* R.C. 2152.14. Although R.C. 2152.84 requires a mandatory review hearing when the child is discharged from probation or parole, declassification is not guaranteed, and mandatory registrants may not have their classification removed at that hearing. And, unlike children who are subject to discretionary transfer, the extension of a juvenile's registration duties does not require the court to issue a finding that the child is not amenable to rehabilitation in the juvenile system. Instead, juvenile registrants receive adult punishment like children with SYO dispositions or youth subject to discretionary transfer without being given the same protections.

This Court was the first in the nation to recognize the importance of protecting the constitutional rights of juveniles subject to sex offender classification. Since then, other states have followed this Court's lead. *See In the Interest of J.B., et al.*, CP-67-JV-0000726-2010

(York County Court of Common Pleas, Nov. 4, 2013), opinion available at <http://www.jlc.org/blog/juvenile-court-judge-finds-pennsylvania-juvenile-sex-offender-registration-law-unconstitutional> (accessed April 17, 2014). In December 2012, Pennsylvania's version of SORNA went into effect. Pa. CONSOL. STAT. tit. 42 § 9799.10 (2014) *et seq.* And, in November 2013, a Pennsylvania court found the law unconstitutional as applied to juvenile offenders, "both retroactively and prospectively." *J.B.* at 41. Specifically, citing this Court's decision in *C.P.*, as well as recent United States Supreme Court precedent, the court found that the new law runs counter to "the juvenile justice system, as a court of second chances." *Id.* at 33-34, citing *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 41-51; *Roper*, 543 U.S. 551, 570, 125 S.Ct. 1183, 161 L.Ed.2d 1 and *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). *J.B.* is already hailed as a "landmark" decision. Scolforo, *York County judge's ruling on juvenile sex offenders called a 'landmark decision,'* York Dispatch (Sept. 13, 2014), http://www.yorkdispatch.com/breaking/ci_24483313/york-county-judges-ruling-juvenile-sex-offenders-called (accessed Sept. 13, 2014). As such, it is currently pending review in the Supreme Court of Pennsylvania as Case No. 34 WAP 2013.³

Holding that registration duties cannot extend beyond the age jurisdiction of the juvenile court is consistent with this Court's jurisprudence concerning children whose cases are retained in the juvenile justice system. Further, it ensures that a juvenile's right to due process is not violated by his receiving a penalty that attaches when he is a child and automatically continues when he ages out of the age jurisdiction of the juvenile court. Accordingly, this Court should adopt D.S.'s third proposition of law.

³ Available at Juvenile Law Center, Juvenile and Criminal Justice, *In re J.B.* case update page, pending as Case No. 34 WAP 2013 <http://jlc.org/legal-docket/re-jb> (accessed Sept. 13, 2014).

CONCLUSION

Juvenile court adjudications are final orders, not subject to reopening except to correct void sentences or clerical errors. R.C. 2505.02(B); *Sekulich*, 65 Ohio St.2d at 14, 417 N.E.2d 1014. Accordingly, juvenile courts are without jurisdiction to reopen a valid juvenile court judgment in order to engage in post-adjudication fact-finding. Further, because R.C. 2152.83(B) authorizes juvenile courts to impose multiple punishments in successive proceedings, it violates a youth's right against double jeopardy. Moreover, since the juvenile system's primary goal is a delinquent's child rehabilitation, punishment should be imposed in juvenile court only to the extent that it aids in a child's rehabilitation. *Caldwell*, 76 Ohio St.3d at 157, 666 N.E.2d 1367. Therefore, any punitive disposition that the juvenile court imposes, including classification as a tier I, II, or III juvenile offender registrant should terminate at the same time as all other dispositions in the case. R.C. 2152.22(A).

Respectfully submitted,

The Office of the Ohio Public Defender

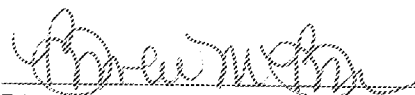

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COUNSEL FOR D.S.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MERIT BRIEF OF MINOR CHILD-APPELLANT, D.S. was forwarded by regular U.S. Mail to the office of Eric Murphy, State Solicitor, Attorney General of Ohio, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, this 15th day of September, 2014.

A handwritten signature in cursive script, appearing to read "Brooke M. Burns", is written over a horizontal line.

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Assistant State Public Defender

COUNSEL FOR D.S.

#424738

IN THE SUPREME COURT OF OHIO

IN RE: D.S.

A delinquent child.

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Case No. 2014-0607

On Appeal from the
Licking County Court of Appeals
Fifth Appellate District

C.A. Case No. 13CA58

APPENDIX TO MERIT BRIEF OF APPELLANT D.S.

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: D.S.,
adjudicated delinquent child

14-0607

Case No. _____

On Appeal from the Licking
County Court of Appeals
Fifth Appellate District

C.A. Case No. 13CA58

NOTICE OF APPEAL OF MINOR CHILD-APPELLANT, D.S.

Licking County Prosecutor's Office

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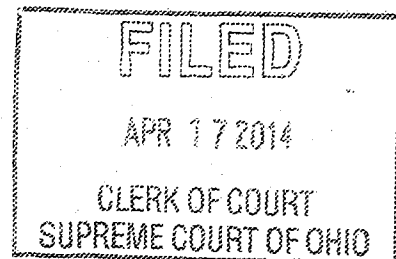
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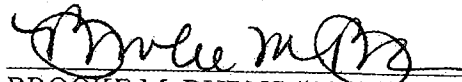
NOTICE OF APPEAL OF MINOR CHILD-APPELLANT, D.S.

Minor child-Appellant, D.S. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Licking County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 13CA58 on March 3, 2014.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

The Office of the Ohio Public Defender



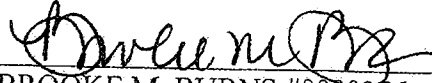
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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing NOTICE OF APPEAL OF MINOR CHILD-APPELLANT, D.S. was served by ordinary U.S. Mail, postage-prepaid, this 17th day of April, 2014, to the office of Kenneth W. Oswalt, Licking County Prosecutor, 20 South Second Street, Newark, Ohio 43055.



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Assistant State Public Defender

COUNSEL FOR D.S.

#416574

FILED

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2014 MAR -3 P 3 14

CLERK OF COURTS
OF APPEALS
LICKING COUNTY OH
GARY R. WALTERS

IN RE: D.S.,

A MINOR CHILD

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 13-CA-58

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Juvenile Division, Case
No. A 2010-0578

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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41
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Hoffman, P.J.

{¶1} Appellant D.S., a delinquent child, appeals the June 24, 2013 Judgment Entry entered by the Licking County Court of Common Pleas, Juvenile Division, denying his motion to dismiss and classifying him a Tier II Juvenile Sex Offender Registrant. Appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On August 20, 2010, a complaint was filed in the Licking County Court of Common Pleas, Juvenile Division, alleging Appellant D.S. was delinquent by reason of having committed two counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4), a felony of the third degree if committed by an adult, and one count of public indecency, in violation of R.C. 2907.09(B)(1), a second degree misdemeanor if committed by an adult. The complaint alleged the offenses occurred between August 1, 2009, and June 4, 2010. D.S.'s date of birth is November 30, 1995, as alleged in the complaint. Accordingly, D.S. could have been either 13 or 14 years of age at the time of the alleged offenses.

{¶3} On October 13, 2010, D.S. entered an admission to the two counts of gross sexual imposition. The State dismissed the charge of public indecency. On December 8, 2010, the juvenile court adjudicated Appellant a delinquent child and committed him to the Ohio Department of Youth Services for two consecutive six month minimum terms. The juvenile court's disposition entry did not include a determination as to how old D.S. was at the time the offenses were committed. The December 8, 2010

¹ A rendition of the underlying facts supporting D.S.'s conviction is unnecessary for our resolution of this appeal.

823

disposition entry states, "classification as a juvenile sex offender registrant is deferred or delayed pending efforts at rehabilitation while committed to ODYS."

{14} On June 17, 2013, following D.S.'s release from ODYS, the trial court conducted a classification hearing. The trial court considered evidence as to the age of D.S. at the time the offenses were committed. The court determined D.S. was fourteen years of age at the time at least one of the offenses was committed; therefore, D.S. was subject to classification. Following the classification hearing, via Judgment Entry of June 24, 2013, the trial court overruled Appellant's motion to dismiss and the juvenile court classified D.S. a Tier II Juvenile Sex Offender Registrant with a duty to comply with registration requirements every 180 days for 20 years.

{15} D.S. now appeals, assigning as error:

{16} "I. THE LICKING COUNTY JUVENILE COURT ERRED WHEN IT HELD AN EVIDENTIARY HEARING ON JUNE 17, 2013 TO DETERMINE WHETHER D.S. WAS AGE-ELIGIBLE FOR REGISTRATION UNDER SENATE BILL 10, BECAUSE THAT DETERMINATION COULD ONLY HAVE BEEN LAWFULLY MADE ON DECEMBER 18, 2010, WHEN THE COURT ADJUDICATED D.S. DELINQUENT.

{17} "II. THE LICKING COUNTY JUVENILE COURT ERRED WHEN IT CLASSIFIED D.S. AS A TIER II JUVENILE OFFENDER REGISTRANT, BECAUSE THE IMPOSITION OF A DISPOSITION AT ANY TIME OTHER THAN AT THE DISPOSITION HEARING VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS.

{18} "III. THE LICKING COUNTY JUVENILE COURT ERRED WHEN IT CLASSIFIED D.S. AS A TIER II JUVENILE REGISTRANT, BECAUSE THE

824

IMPOSITION OF A PUNITIVE SANCTION THAT EXTENDS BEYOND THE AGE JURISDICTION OF THE JUVENILE COURT VIOLATES DUE PROCESS.

{¶9} "IV. D.S. WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO CHALLENGE THE CONSTITUTIONALITY OF A CLASSIFICATION THAT EXTENDED BEYOND THE JURISDICTION OF THE JUVENILE COURT. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION."

I.

{¶10} In the first assignment of error, Appellant argues the juvenile court erred in considering evidence at the classification hearing subsequent to his original adjudication as being delinquent and disposition thereon to determine whether he was age eligible for registration under S.B. 10.

{¶11} Ohio Revised Code Section 2152.83 provides,

{¶12} "(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if all of the following apply:

{¶13} "(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

825

{¶14} "(b) The child was sixteen or seventeen years of age at the time of committing the offense.

{¶15} "(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

{¶16} "(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under section 2152.831 of the Revised Code, except as otherwise provided in that section, to determine whether the child is a tier I sex offender/child-victim offender, a tier II-sex offender/child-victim offender, or a tier III sex offender/child-victim offender. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B) (5) of section 2152.82 of the Revised Code.

{¶17} "(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, *if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:*

{¶18} "(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

{¶19} "(b) *The child was fourteen or fifteen years of age at the time of committing the offense.*

826

{120} "(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

{121} "(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

{122} "(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

{123} "(b) Issue an order that classifies the child a juvenile offender registrant and 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 that states the determination that the judge makes at the hearing held pursuant to section 2152.831 of the Revised Code as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

827

{¶24} "(C)(1) Prior to issuing an order under division (B)(2)(b) of this section , the judge shall conduct a hearing under section 2152.831 of the Revised Code to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. The judge may hold the hearing at the same time as the hearing under division (B) of this section. ****"

{¶25} (Emphasis added.)

{¶26} In support of his argument, Appellant cites the Ohio Supreme Court decision in *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636.

{¶27} In *Raber*, the defendant, an adult offender, was convicted of sexual imposition; therefore, according to R.C. 2950.01(B)(2)(a), a finding of consent, or lack thereof, was required before the court could classify the offender as a registrant when the victim was over eighteen years of age and not under the custody of the offender. The indictment did not allege whether the sexual conduct between Raber and his girlfriend was consensual. At sentencing, the issue remained disputed. The trial court sentenced Raber to sixty days in jail, plus a fine and community control. The sentencing entry did not contain a registration requirement.

{¶28} On March 2, 2010, thirteen months after sentencing, the trial court held an evidentiary hearing to determine whether Raber should be classified a Tier I sex offender subject to registration. During the hearing, the victim testified she had consented to vaginal intercourse, but not anal intercourse. Based upon the testimony, the trial court determined the intercourse was not consensual, and proceeded in classifying Raber a Tier I sex offender.

328

{¶29} The Supreme Court of Ohio vacated the classification finding the trial court lacked authority to classify Raber. The Court found R.C. 2950.01(B)(2) specifically excepted consensual conduct from being registration eligible, and the State needed to prove the issue before Raber was convicted and sentenced.

{¶30} The Raber court held:

{¶31} "In this case, at the November 26, 2008 sentencing hearing, the state failed to prove the lack of consent to the sexual activity, nor did it file a supplemental brief pointing to evidence in the record demonstrating a lack of consent. The court thereafter entered a judgment of conviction without finding Raber to be a sex offender subject to Tier I registration and without notifying him of a duty to register, presumably on its determination that no duty existed based on the sexual activity's being consensual.

{¶32} "A presumption of regularity attaches to all judicial proceedings. See, e.g., *State v. Edwards*, 157 Ohio St. 175, 183, 105 N.E.2d 259 (1952); *State v. Sweet*, 72 Ohio St.3d 375, 376, 650 N.E.2d 450 (1995); *State v. Robb*, 88 Ohio St.3d 59, 87, 723 N.E.2d 1019 (2000). Here, the record is silent regarding the trial court's reasoning for not classifying Raber as a sex offender subject to registration in its judgment of conviction, and therefore '[t]here is no showing of irregularity to contradict the presumption of regularity accorded all judicial proceedings.' *Sweet*, 72 Ohio St.3d at 376, 650 N.E.2d 450.

{¶33} "*Reconsideration of Final Judgments*

{¶34} "We have previously recognized that 'trial courts lack authority to reconsider their own valid final judgments in criminal cases.' *State ex rel. White v.*

829

Junkin, 80 Ohio St.3d 335, 338, 686 N.E.2d 267 (1997), citing *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992). And although trial courts retain continuing jurisdiction to correct a void sentence and to correct a clerical error in a judgment, *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 19, neither of those exceptions to the general rule applies here.

{¶35} "The trial court had no mandatory duty to impose sex-offender registration after determining the sexual activity to be consensual and considering the ages of those involved. The state fails to demonstrate a clerical mistake, which, as we explained in *Cruzado*, "refers to a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment." *Id.* at ¶ 19, quoting *State v. Brown*, 136 Ohio App.3d 816, 819-820, 737 N.E.2d 1057 (3d Dist.2000). Nothing in the record demonstrates error by the trial court in failing to classify Raber as a sex offender in its original judgment of conviction.

{¶36} "*Double Jeopardy*"

{¶37} "This court previously upheld the prior sex-offender registration statutes enacted by the General Assembly against constitutional challenge. In *State v. Williams*, 88 Ohio St.3d 513, 528, 728 N.E.2d 342 (2000), we held that because Megan's Law did not impose punishment, it necessarily did not violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. And in *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, we concluded that sex-offender registration remained a civil, remedial regulatory scheme notwithstanding amendments to Megan's Law enacted by Am.Sub.S.B. No. 5, effective July 31, 2003, that increased burdens on

830

sex offenders, because the amended statute did not impose criminal punishment. *Id.* at ¶ 39, 43.

{¶38} "However, in *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, we determined that the registration duties imposed by S.B. 10 could no longer be considered civil in nature, holding that 'R.C. Chapter 2950 is punitive.' *Id.* at ¶ 16. And *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, stands for the proposition that S.B. 10 violates Ohio's constitutional prohibition against cruel and unusual punishment by imposing an automatic, lifetime requirement of sex-offender registration and notification on certain juvenile offenders. *Id.* at ¶ 86. Thus, our cases hold that S.B. 10 imposes additional criminal punishment on those convicted of sexually oriented offenses.

{¶39} "The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution protects against the imposition of multiple criminal punishments for the same offense in successive proceedings. *Hudson v. United States*, 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997); *United States v. Husein*, 478 F.3d 318, 338 (6th Cir.2007). As the United States Court of Appeals for the D.C. Circuit has explained, 'If a defendant has a legitimate expectation of finality, then an increase in that sentence is prohibited by the double jeopardy clause.' *United States v. Fogel*, 829 F.2d 77, 87 (D.C.Cir.1987).

{¶40} "Although we have recognized that '[w]here * * * the sentence imposed was unlawful and thus void, there can be no reasonable, legitimate expectation of finality in it,' *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 36, the judgment of conviction entered in this case is neither unlawful nor void. And

831

although trial courts 'possess inherent authority to correct errors in judgment entries so that the record speaks the truth,' *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 163-164, 656 N.E.2d 1288 (1995), the decision not to classify Raber as a Tier I sex offender was not a clerical error.

{¶41} "Accordingly, Raber had a legitimate expectation of finality in his sentence when the trial court entered its judgment of conviction on December 1, 2008, and the protections of the Double Jeopardy Clause prohibited the trial court from reopening this case, conducting a separate trial to determine whether the sexual activity at issue here was consensual, and classifying Raber as a sex offender subject to Tier I registration.

{¶42} "Conclusion

{¶43} "The trial court lacked authority to reopen this case to reconsider the final judgment it had entered, and the protections against double jeopardy barred it from classifying Raber as a Tier I sex offender more than a year after it imposed sentence. Accordingly, the judgment of the court of appeals is reversed."

{¶44} We find *Raber* to be factually and procedurally distinguishable from the case at hand. Raber was classified pursuant to R.C. 2950.01(B)(2) as an adult sexual offender. The same statute is not applicable to Appellant, D.S. a juvenile offender. Rather, as set forth above, the juvenile statute applicable herein specifically provides for the classification hearing to occur upon Appellant's release from ODYS.

{¶45} R.C. 2950.03(A)(3) states,

{¶46} "(3) If the person is a delinquent child who is classified a juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (C) of

832

section 2152.83, division (C) of section 2152.84, or division (E) of section 2152.85 of the Revised Code, whichever is applicable."

{¶47} We find Appellant's age at the time of the offense and the effect thereof on his classification were properly considered at the classification hearing. The complaint adequately set forth the time parameters of the offenses, Appellant's date of birth, raising the issue as to whether Appellant was fourteen years of age at the time of the offense. Whether Appellant D.S. was "subject to registration" was an issue properly to be determined during the trial court's hearing on registration/classification. It was not an issue that needed to be determined at his original disposition because of his commitment to a secure facility.

{¶48} Pursuant to R.C. 2152.83(B)(2), the trial court was directed to hold a hearing to determine whether the delinquent child had been rehabilitated during the time of commitment. If the trial court determined the juvenile had not been adequately rehabilitated, the issue of whether the juvenile was subject to registration and classification was properly before the trial court. The State and delinquent child could and did present evidence regarding the juvenile's treatment progress, behaviors while incarcerated, and other relevant information. Appellant's age became a factor relative to classification properly considered at that time.

{¶49} Appellant cites the Seventh District Court of Appeals' decision in *In re J.M.*, 7th Dist. No. 09JE21, 2010-Ohio-2700 and the Eleventh District Court of Appeals' decision in *In re N.Z.*, 11th Dist. Nos. 2010-L-023, 2010-L035, 2010-L-041, 2011-Ohio-6845. However, we find these cases procedurally distinguishable from the case sub judice. *In re J.M.* and *In re N.Z.* did not involve procedural situations in which the trial

833

courts considered evidence at the classification hearing on the issue of age prior to the classification. Rather, in both cases, the appellate courts remanded the matter to the trial courts for reclassification hearings to consider evidence on the issue of age.

{¶50} Appellant D.S.'s first assignment of error is overruled.

II. and III.

{¶51} Appellant's second and third assignments of error raise common and interrelated issues; therefore, we will address the arguments together.

{¶52} In the second assignment of error, Appellant argues his classification as a Tier II Juvenile Sex Offender Registrant violates the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution.

{¶53} In the third assignment of error, Appellant maintains the trial court erred in imposing a punitive sanction extending beyond the age jurisdiction of the juvenile court, violating Appellant's right to Due Process.

{¶54} The Double Jeopardy Clause of the Fifth Amendment protects against the imposition of multiple criminal punishments for the same offense in successive proceedings.

{¶55} R.C. 2152.83(E) provides,

{¶56} "(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 of the Revised Code, and section 2152.851 of the Revised Code applies regarding the order and the determinations. *The child's attainment of eighteen or twenty-one years of age does not affect or terminate*

834

the order, and the order remains in effect for the period of time described in this division."

{157} The statute, therefore, specifically, continues the jurisdiction of the juvenile court to classify the juvenile beyond their twenty-first birthday. The legislature retains the power to define the jurisdiction of the courts as long as powers inherently reserved for the judiciary are not infringed upon. *Seventh Urban, Inc. v. University Circle*, (1981) 67 Ohio St.2d 19.

{158} In the case at bar, the classification of D.S. as a juvenile offender registrant was not mandatory under the circumstances of this case because D.S. was fourteen years old at the time of at least one offense, did not have a prior adjudication for a sexually oriented offense, and had not been labeled a serious youthful offender. See R.C. 2152.83(B)(1), 2152.82, and 2152.86. As classification was not mandated by statute, the juvenile court was given the broad discretion to determine whether D.S. should be classified as a juvenile offender registrant and under which tier D.S. should be placed.

{159} Recently, this Court addressed the issues raised herein in *In Re D.R., a Minor Child* 5th Dist No. 13CA27, 2014-Ohio-588, holding:

{160} "Laws limiting rights, other than fundamental rights, are constitutional with respect to substantive due process and equal protection if the laws are rationally related to a legitimate goal of government. *State v. Thompkins* (1996), 75 Ohio St.3d 558.

{161} * * *

{162} In the case at bar, we cannot say that the classification authorized by R.C. 2152.83(B) is irrational. Pursuant to R.C. 2152.83(B), the juvenile court judge retains

235

discretion to deal individually with juvenile offenders. *In Re C.P.*, (citation omitted). 'Fundamental fairness requires that the judge decide the appropriateness of any such penalty.' *Id.* at ¶78. Although imposition of R.C. 2152.83(B) registration requirements may be punitive, they may help achieve the goal of rehabilitation by motivating the juvenile to comply with treatment in order to reduce or eliminate the registration requirement. *In Re I.A.*, 2nd Dist. Montgomery No. 25078, 2012 Ohio 4973.

{¶63} "Accordingly, D.R. has failed to show that a JOR classification that extends beyond a child's twenty-first birthday violates either the United States or Ohio constitutional prohibitions against cruel and unusual punishment or the requirements of due process.

{¶64} * * *

{¶65} "In her second assignment of error, D.R. contends that the juvenile court erred by classifying D.R. upon release from a secure facility rather than at the time of disposition. Classifying a juvenile at any time other than disposition, D.R. argues, violates the Double Jeopardy Clause of the Fourteenth Amendment to the United States Constitution, by imposing multiple criminal punishments for the same offense in successive proceedings.

{¶66} "The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution protect criminal defendants against multiple prosecutions for the same offense. The Ohio Supreme Court has recognized that '[t]he protections afforded by the two Double Jeopardy Clauses are coextensive.' *State v. Martello*, 97 Ohio St.3d 398, 2002-Ohio-6861, 780

836

N.E.2d 250, ¶ 7, citing *State v. Gustafson*, 76 Ohio St.3d 425, 432, 668 N.E.2d 435(1996).

{¶67} "The principle behind the Double Jeopardy Clause 'is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for the alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.' " *State v. Roberts*, 119 Ohio St.3d 294, 2008-Ohio-3835, 893 N.E.2d 818, ¶ 11, quoting *Green v. United States*, 355 U.S. 184, 187-188, 78 S.Ct. 221, 2 L.Ed.2d 199(1957). The federal and state constitutions' double jeopardy protection further guards citizens against cumulative punishments for the 'same offense.' *State v. Moss*, 69 Ohio St.2d 515, 518, 433 N.E.2d 181(1982). '[T]he Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended.' *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S.Ct. 673, 678, 74 L.Ed.2d 535, 542(1983). See, also, *Moss*, 69 Ohio St.2d at 518, 433 N.E.2d at 184-185. In *Ohio v. Johnson*, 467 U.S. 493, 499, 104 S.Ct. 2536, 81 L.Ed.2d 425(1984), the United States Supreme Court stated:

{¶68} " * * * Because the substantive power to prescribe crimes and determine punishments is vested with the legislature, *United States v. Wiltberger*, 5 Wheat. 76, 93, 5 L.Ed. 37 (1820), the question under the Double Jeopardy Clause whether punishments are 'multiple' is essentially one of legislative intent, see *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S.Ct. 673, 678, 74 L.Ed.2d 535 (1983). * * * "

937

{¶69} "The Double Jeopardy Clause of the federal constitution 'protects only against the imposition of multiple criminal punishments for the same offense, * * * and then only when such occurs in successive proceedings.' (Citations omitted.) *Hudson v. United States*, 522 U.S. 93, 99, 118 S.Ct. 488 (1997); *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 24; *State v. Martello*, 97 Ohio St.3d 398, 2002-Ohio-6661, ¶ 8. 'If pursued in a single proceeding, * * * multiple punishment may constitutionally be imposed [.]' *State v. Gustafson*, 76 Ohio St.3d 425, 437, 668 N.E.2d 435(1998).

{¶70} "D.R. relies primarily on *State v. Raber* in which the Ohio Supreme Court held that the trial court lacked authority to re-open sentencing to classify the defendant a sex offender more than one year after it imposed its original sentence. 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 4. The Supreme Court further stated, 'Because sex-offender registration is now punitive in nature, double-jeopardy protections barred the court from subsequently classifying Raber as a Tier I sex offender at a new proceeding held more than a year after its original sentence.' *Id.*

{¶71} "However, in the case at bar, the court's ability to classify D.R. arose from the clause of R.C. 2152.83(B)(1) granting the court jurisdiction to issue an order classifying D.R. as part of the dispositional order. *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶ 24. In *Jean-Baptiste*, Jean-Baptiste was released from custody on January 18, 2010, which was also the date of his 21st birthday. *Id.* ¶ 5. However, the JOR classification hearing did not occur until February 8, 2010. *Id.* In *Jean-Baptiste*, the Supreme Court observed,

{¶72} "Because Jean-Baptiste was adjudicated a delinquent child and was committed to a secure facility, the statute [R.C. 2152.83(A)(1)] is clear that the court must issue the order classifying the child as a juvenile-offender registrant at the time the child is released from the secure facility—not afterward. The statute is logical, given that the juvenile-offender registrant may be subject to certain registration requirements upon his or her release into the community. Because Jean-Baptiste was released on the day that he turned 21 and because R.C. 2152.83 specifies that classification must occur when a child is released from a secure facility, the juvenile court patently and unambiguously lacks jurisdiction to classify Jean-Baptiste after his 21st birthday, when he was no longer a child.' *Id.*, ¶ 28.

{¶73} "In the case at bar, D.R. had not attained the age of 21 at the time of the classification and was therefore still subject to the jurisdiction of the juvenile court. Like R.C. 2152.83(A)(1), the statute by which D.R.'s hearing was held in the case at bar, R.C. 2152.83(B), provides that the court may issue the order classifying the child as a JOR at the time the child is released from the secured facility. This Court found the classification process was not a new proceeding but rather a continuation of the original delinquency case. *In re B.D.*, 5th Dist Guernsey No. 11-CA-27, 2012-Ohio-2223, 970 N.E.2d 1178, ¶ Accordingly, multiple punishments have not been imposed in D.R.'s case in subsequent proceedings. (Footnote omitted.)

{¶74} "We note the Ohio Supreme Court has recognized a split between appellate districts on when the classification hearing must occur and has certified the following question: 'If a court commits a child to a secure facility, does R.C.

839

2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?' *In re I.A.*, 134 Ohio St.3d 1447, 2013-Ohio-347, 982 N.E.2d 726."

{¶75} "D.R.'s second assignment of error is overruled."

{¶76} In accordance with this Court's holding in *In re D.R.*, supra, Appellant's second and third assignments of error are overruled.

IV.

{¶77} In the fourth assignment of error, Appellant maintains based upon cumulative errors in the trial court's classification D.S. he was denied the effective assistance of trial counsel. We disagree.

{¶78} To succeed on a claim of ineffectiveness, an appellant must satisfy a two-prong test. Initially, an appellant must show trial counsel acted incompetently. See, *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In assessing such claims, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.* at 689, citing *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158 (1955). "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland*, 466 U.S. at 689. The question is whether counsel acted "outside the wide range of professionally competent assistance." *Id.* at 690.

{¶79} Even if an appellant shows counsel was incompetent, the appellant must then satisfy the second prong of the *Strickland* test. Under this "actual prejudice" prong, the appellant must show that "there is a reasonable probability that, but for counsel's

840

unprofessional errors, the result of the proceeding would have been different." *Strickland*, 488 U.S. at 694. The United States Supreme Court and the Ohio Supreme Court have held a reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Bradley* at 143, 538 N.E.2d 373, quoting *Strickland* at 697. Accordingly, we will direct our attention to the second prong of the *Strickland* test. *In re Huffman*, 5th Dist. Stark No.2005-CA-00107, 2005-Ohio-4725, ¶ 22.

{¶80} Based upon our analysis and disposition of Appellant's first, second and third assignments of error, we do not find Appellant has demonstrated the ineffective assistance of trial counsel in that he has not shown the outcome of the classification hearing would have been different but for any presumed error.

{¶81} The fourth assignment of error is overruled.

{¶82} Appellant D.S.'s classification as a Tier II Juvenile Sex Offender Registrant in the Licking County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur


HON. WILLIAM B. HOFFMAN


HON. SHEILA G. FARMER


HON. JOHN W. WISE

840 A

FILED
IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2014 MAR -3 P 3:19

IN RE: D.S.,

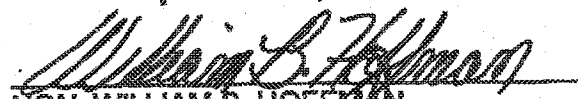
A MINOR CHILD

CLERK OF COURTS
OF APPEALS
LICKING COUNTY OH
GARY R. WALTERS


JUDGMENT ENTRY

Case No. 13-CA-58

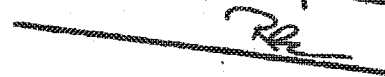
For the reasons stated in our accompanying Opinion, Appellant's classification as a Tier II Juvenile Sex Offender Registrant in the Licking County Court of Common Pleas, Juvenile Division, is affirmed. Costs to Appellant.


HON. WILLIAM B. HOFFMAN


HON. SHEILA G. FARMER


HON. JOHN W. WISE

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41
842

IN THE COMMON PLEAS COURT OF LICKING COUNTY, JUVENILE DIVISION

☐ Unruly

2013 JUN 24 AM 10:36

☒ Delinquent

Name D

School S

Age 17

Date of Birth 11/30/1995

Attorney John D. Weaver

Case No. A200-0598

JUDGMENT ENTRY

Date 6/17/2013

PERSONS PRESENT:

Child and

Juv. Sex Offender
Classification/Regis. trial

Father ☐

Mother ☐

Stepfather ☐

Stepmother ☐

Other ☒

Hearings
Ass't. Udc. 2

ATTORNEY - Waived in Writing ☐

Waived in Open Court ☐

Present ☒

Prosecuting

Continuance granted until

Reason:

☐

To consult attorney

☐

Other:

Conditions:

☐

House arrest

☐

Other:

☐

Detention ordered because

Atty. Joseph

~~Detention is in the best interests of child. Reasonable efforts have been made to prevent child's removal from home.~~

PLEA:

THIS COURT ~~DEEMED~~ DENIED JUVENILE'S

Count I ☐

Deny ☐

Admit ☐

Unruly ☐

Delinquency ☐

JTO ☐

Count II ☐

Deny ☐

Admit ☐

Unruly ☐

Delinquency ☐

JTO ☐

Motion to Revoke ☐

Deny ☐

Admit ☐

Motion for further hearing ☐

Deny ☐

Admit ☐

☐ Set for hearing

☐ Interim Conditions:

☐ House Arrest

☐ Other:

MOTION TO
DISMISS. DOUBLE
JEOPARDY IS NOT
AT ISSUE. THERE IS
NO CONSTITUTIONAL
INFIRMITY.

CHANGE OF PLEA:

FACTUAL BASIS FOR ACCEPTING PLEA OR MAKING ADJUDICATION:

1. The Court considered the written report(s) filed by the law enforcement agency and/or the complaining witness. These reports are incorporated by reference as a part of the herein Entry.
2. The Court considered the oral statements of the juvenile which were made in open court, and which were tape recorded. These oral statements/admissions are incorporated by reference.

THE YOUTH STATES:

JOURNALIZED

DOCKETED

VOL 556 PG 14-15

LOB
JLS
JLP
J. Weaver

1: S

15
JUL 11 00:45
E. BROAD ST STE 200
CIS 43265

THE COURT'S FINDINGS AND ORDERS ARE AS FOLLOWS:

FINDINGS:

Adjudicated

Count I ☐ Dismissed ☐ Unruly ☐ Delinquent ☐ JTO ☐
 Count II ☐ Dismissed ☐ Unruly ☐ Delinquent ☐ JTO ☐
 Count III ☐ Dismissed ☐ Unruly ☐ Delinquent ☐ JTO ☐

Motion to Revoke ☐ Dismissed ☐ Probation Violator ☐

Motion for further hearing Sustained ☐ Denied ☐

TEMPORARY ORDERS:

☐ Final disposition of this case is continued for a period of not more than _____ until final disposition, child is to comply with certain rules that will be established by the corrections department.

☐ Cont'd for PSI

☐ House Arrest

☐ Place in Detention

☒ Other:

The Court finds that youth is a juvenile sex offender registrant & was age 14 at the time of the commission of at least one of the felony offenses. This finding is made by _____

well as the following special rules: _____ place on probation, child is ordered to comply with the standard rules of probation as

- ☐ hours of community service in the Court's Youth Responsibility Project
- ☐ restitution to the victim(s) in an amount established by the Restitution Department
- ☐ letter of apology to the victim/ _____ ; copy of letter & proof of delivery to Court
- ☐ prison tour
- ☐ word essay on the topic
- ☐ counseling at Family Intervention Services
- ☐ attend and complete at own expense the Licking County Alcoholism Prevention Program
- ☐ Youth shall submit to a drug screen test (urinalysis)
- ☐ Youth shall be subject to electronic home detention; expense assessed as costs

Fine of: _____

☒ Other:

Grandmother of youth (Beverly

☐ Other:

Blakely) shall re-appear in Court

with PO Wednesdays within 10

6/17/2013 days.

CERTIFIED

I hereby certify that this is a true and correct copy of the entry of record in the Licking County Common Pleas Court, Juvenile Division, Newark, Ohio.

Robert H. Hoover
Judge and Ex-Officio Clerk

Date: 7/10/14 By: Rose Lindsey
Deputy Clerk

Date _____
IN COMPLIANCE WITH CIVIL RULE 58,
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SENT TO THE PARTIES AND/OR THEIR ATTORNEY
OF RECORD IN A MANNER PRESCRIBED BY CIVIL
RULE 5(B) ON THIS _____ OF _____ 2014.

DYS # 217397 e-SORN # SSN Court Case Number A2010-0578
County of Adjudication Licking Adjudication O.R.C. #(s) 2907.05
Name S (Last) D (First) F (Middle)
Expected Residence Address (Street) Columbus, OH (City/State) Phone () 4 (Zip)

1. You have been adjudicated delinquent for committing a sexual oriented offense or child-victim offense as defined in O.R.C. 2950.01 and you are one of the following (CHECK BOX, CIRCLE EITHER SEX OFFENDER OR CHILD VICTIM OFFENDER):

- ☐ TIER I Sex Offender/Child Victim Offender Registrant
☒ TIER II Sex offender/Child Victim Offender Registrant
☐ Subject to Community Notification (applies to registrants previously subject to requirement)
☐ TIER III Sex Offender/Child Victim Offender Registrant,
☐ not a Public Registry Qualified Juvenile Offender Registrant, not subject to community notification provisions
☐ not a Public Registry Qualified Juvenile Offender Registrant, but subject to community notification provisions
☐ Public Registry Qualified Juvenile Offender Registrant, subject to community notification provisions

2. You are required to register, in person, with the sheriff of the county in which you establish residency with three (3) days of coming into that county or if temporarily domiciled for more than three (3) days. If you change residence address, you shall provide written notice of that residence change to the sheriff with whom you most recently registered, and to the sheriff in the county in which you intend to reside at least 20 days prior to any change of residence address. If the residence address change is not a fixed address, you shall include a detailed description of the place or places you intend to stay and no later than the end of the first business day immediately following the day you obtain a fixed address, you must register with the sheriff that fixed address.

3. You are required to provide to the sheriff temporary lodging information, including address and length of stay, if your absence will be for seven (7) days or more.

4. If you are a Public Registry Qualified Juvenile Offender Registrant, you are also required to register in person, with the sheriff of the county in which you establish a place of education immediately upon coming into that county. If you establish a place of education in another state but maintain a residence or temporary domicile here, you are also required to register, in person with the sheriff or other appropriate official in that other state immediately upon coming into that state. You are also required to register, in person, with the sheriff of the county in which you establish a place of employment if you have been employed for more than three (3) days or for an aggregate of 14 days in a calendar year. If you establish a place of employment in another state but maintain a residence or domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state if you have been employed for more than three (3) days or for an aggregate of 14 days in a calendar year. Employment includes volunteer services. As a Public Registry Qualified Juvenile offender Registrant, you also shall provide written notice of a change of address for your place of employment and/or place of education at least 20 days prior to any change and no later than three (3) days after the change in employment. If you are a Public Registry Qualified Juvenile Offender Registrant, you shall provide written notice, within three (3) days, of any change in vehicle information, email address, internet identifiers or telephone numbers registered to or used by you, to the sheriff with whom you have most recently registered.

5. After the date of initial registration, you are required to periodically verify, in person, your residence address, and if you are a Public Registry Qualified Juvenile Offender Registrant, your place of employment and/or place of education, at the county sheriff's office no earlier than ten (10) days prior to your verification date.

6. DEPENDING UPON YOUR DESIGNATION, YOU ARE REQUIRED TO COMPLY WITH ALL OF THE ABOVE DESCRIBED REQUIREMENTS FOR THE FOLLOWING PERIOD OF TIME AND FREQUENCY (CHECK ONE)

- ☐ TIER I - requirements for a period of ten (10) years with in-person verification annually.
☒ TIER II - for a period of 20 years with in-person verification every 180 days.
☐ TIER III - for your lifetime with in-person verification every 90 days.

7. Since your expected residence address as stated above is located in Franklin County you shall register in person no later than 7/10/14 with that County Sheriff's Office located at 410 SOUTH HIGH STREET COLUMBUS, OHIO 43215 (Street Address) (City/State) (Zip)

8. Failure to register, failure to verify residence at the specified times or failure to provide notice of a change in residence address or other required information, as described above, will result in criminal prosecution. If the failure occurs while you are under 18 years of age, you will be subject to proceedings under Ohio Revised Code Chapter 2152 and your parent(s), guardian(s), or custodian(s) may be subject to prosecution for a violation of Ohio Revised Code section 2919.24. Your attainment of 18 or 21 years of age does not affect or terminate this order.

9. I acknowledge that the above requirements have been explained to me and that I must abide by all of the provisions of the Ohio Revised Code Chapter 2950.

Juvenile's Signature Date 6/24/13 Parent/Guardian/Custodian's Signature Date 6-24-13

10. I certify that I specifically informed the juvenile and the juvenile's parent, guardian and custodian of their duties as set forth above and they indicated to me an understanding of those duties.

Signature of Official

Print Official's Name

JURAT JUDGE

Print Title and Agency

VOL 556 PG 12

IN COMPLIANCE WITH RULE 5(B) OF THE JUVENILE COURT RULES, COPIES HAVE BEEN SENT TO THE PARTIES AND/OR THEIR ATTORNEY OF RECORD IN A MANNER PRESCRIBED BY CIVIL RULE 5(B) ON THIS 24 DAY OF JUNE 2013

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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 IV. JUDICIAL

§ 1 In whom judicial power vested

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

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Current through Legislation passed by the 130th General Assembly
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*** Annotations current through May 19, 2014 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
ESTABLISHMENT AND JURISDICTION

Go to the Ohio Code Archive Directory

ORC Ann. 2151.23 (2014)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 2151.23. Jurisdiction of juvenile court [Effective until September 17, 2014]

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated *section 2151.87 of the Revised Code* or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant;

(2) Subject to divisions (G), (K), and (V) of *section 2301.03 of the Revised Code*, to determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in *section 5122.01 of the Revised Code*;

(5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;

(6) To hear and determine all criminal cases in which an adult is charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of *section 2919.23*, or *section 2919.24 of the Revised Code*, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of *section 2919.23*, or *section 2919.24 of the Revised Code*;

(7) Under the interstate compact on juveniles in *section 2151.56 of the Revised Code*;

(8) Concerning any child who is to be taken into custody pursuant to *section 2151.31 of the Revised Code*, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

(9) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to *section 5103.15 of the Revised Code*;

(10) To hear and determine applications for consent to marry pursuant to *section 3101.04 of the Revised Code*;

(11) Subject to divisions (G), (K), and (V) of *section 2301.03 of the Revised Code*, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code;

(12) Concerning an action commenced under *section 121.38 of the Revised Code*;

(13) To hear and determine violations of *section 3321.38 of the Revised Code*;

(14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child;

(15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code regarding a child who has been adjudicated a delinquent child and to refer the duties conferred upon the juvenile court judge under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code to magistrates appointed by the juvenile court judge in accordance with *Juvenile Rule 40*;

(16) To hear and determine a petition for a protection order against a child under *section 2151.34 or 3113.31 of the Revised Code* and to enforce a protection order issued or a consent agreement approved under either section against a child until a date certain but not later than the date the child attains nineteen years of age.

(B) Except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, the juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to *sections 3111.01 to 3111.18 of the Revised Code*;

(3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code;

(4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state;

(5) To hear and determine an action commenced under *section 3111.28 of the Revised Code*;

(6) To hear and determine a motion filed under *section 3119.961 of the Revised Code*;

(7) To receive filings under *section 3109.74 of the Revised Code*, and to hear and determine actions arising under *sections 3109.51 to 3109.80 of the Revised Code*.

(8) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction pursuant to *section 3127.32 of the Revised Code*;

(9) To grant any relief normally available under the laws of this state to enforce a child custody determination made by a court of another state and registered in accordance with *section 3127.35 of the Revised Code*.

(C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas with all the papers filed in the action to the juvenile court for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.

(D) The juvenile court, except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children.

(E) The juvenile court, except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if the child comes within the jurisdiction of the juvenile court as defined by this section.

(F) (1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with *sections 3109.04 and 3127.01 to 3127.53 of the Revised Code* and, as applicable, *sections 5103.20 to 5103.22 or 5103.23 to 5103.237 of the Revised Code*.

(2) The juvenile court shall exercise its jurisdiction in child support matters in accordance with *section 3109.05 of the Revised Code*.

(G) Any juvenile court that makes or modifies an order for child support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code*, except as provided in *section 2152.121 of the Revised Code*, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, subject to *section 2152.121 of the Revised Code*, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by *Criminal Rule 11* or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

(I) 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 *section 2152.12 of the Revised Code* 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 that it has in other criminal cases in that court.

(J) In exercising its exclusive original jurisdiction under division (A)(16) of this section with respect to any proceedings brought under *section 2151.34 or 3113.31 of the Revised Code* in which the respondent is a child, the juvenile court retains all dispositional powers consistent with existing rules of juvenile procedure and may also exercise its discretion to adjudicate proceedings as provided in *sections 2151.34 and 3113.31 of the Revised Code*, including the issuance of protection orders or the approval of consent agreements under those sections.

HISTORY:

133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3. Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v

S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06; 152 v S 10, § 1, eff. 1-1-08; 152 v H 214, § 5, eff. 5-14-08; 153 v H 10, § 1, eff. 6-17-10; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.01 (2014)

§ 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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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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ORC Ann. 2152.02 (2014)

§ 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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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.10 (2014)

§ 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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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.12 (2014)

§ 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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 *** Annotations current through May 19, 2014 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.13 (2014)

§ 2152.13. Serious youthful offender dispositional sentence

(A) A juvenile court shall impose a serious youthful dispositional sentence on a child when required under division (B)(3) of *section 2152.121 of the Revised Code*. In such a case, the remaining provisions of this division and divisions (B) and (C) do not apply to the child, and the court shall impose the mandatory serious youthful dispositional sentence under division (D)(1) of this section.

In all other cases, a juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in accordance with this division, and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process in any of the following ways:

- (1) Obtaining an indictment of the child as a serious youthful offender;
- (2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;
- (3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;
- (4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:
 - (a) The date of the child's first juvenile court hearing regarding the complaint;
 - (b) The date the juvenile court determines not to transfer the case under *section 2152.12 of the Revised Code*.

After a written notice is filed under division (A)(4) of this section, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case.

(B) If an alleged delinquent child is not indicted or charged by information as described in division (A)(1) or (2) of this section and if a notice or complaint as described in division (A)(3) or (4) of this section indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

(C) (1) A child for whom a serious youthful offender dispositional sentence is sought by a prosecuting attorney has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is

eligible by age for a serious youthful offender dispositional sentence. The grand jury may be impaneled by the court of common pleas or the juvenile court.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held under Title XXIX of the Revised Code commences on whichever of the following dates is applicable:

(a) If the child is indicted or charged by information, on the date of the filing of the indictment or information.

(b) If the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint.

(c) If the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

(2) If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except as provided in division (D) of *section 2152.14 of the Revised Code*, all provisions of Title XXIX of the Revised Code and the Criminal Rules shall apply in the case and to the child. The juvenile court shall afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

(D) (1) If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence under *section 2152.11 of the Revised Code*, all of the following apply:

(a) The juvenile court shall impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(b) The juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20, and, if applicable, *section 2152.17 of the Revised Code*.

(c) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(2) (a) If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence under *section 2152.11 of the Revised Code*, all of the following apply:

(i) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in *section 2152.01 of the Revised Code* will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(ii) If a sentence is imposed under division (D)(2)(a)(i) of this section, the juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20 and, if applicable, *section 2152.17 of the Revised Code*.

(iii) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(b) If the juvenile court does not find that a sentence should be imposed under division (D)(2)(a)(i) of this section, the juvenile court may impose one or more traditional juvenile dispositions under sections 2152.16, 2152.19, 2152.20, and, if applicable, *section 2152.17 of the Revised Code*.

(3) A child upon whom a serious youthful offender dispositional sentence is imposed under division (D)(1) or (2) of this section has a right to appeal under division (A)(1), (3), (4), or (5) of *section 2953.08 of the Revised Code* the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court shall consider the appeal as if the adult portion were not stayed.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.14 (2014)

§ 2152.14. Motion to invoke adult portion of dispositional sentence

(A) (1) The director of youth services may request the prosecuting attorney of the county in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person under *section 2152.121 or 2152.13 of the Revised Code* to file a motion with that juvenile court to invoke the adult portion of the dispositional sentence if all of the following apply to the person:

- (a) The person is at least fourteen years of age.
- (b) The person is in the institutional custody, or an escapee from the custody, of the department of youth services.
- (c) The person is serving the juvenile portion of the serious youthful offender dispositional sentence.

(2) The motion shall state that there is reasonable cause to believe that either of the following misconduct has occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

- (a) The person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.
- (b) The person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

(B) If a person is at least fourteen years of age, is serving the juvenile portion of a serious youthful offender dispositional sentence imposed under *section 2152.121 or 2152.13 of the Revised Code*, and is on parole or aftercare from a department of youth services facility, or on community control, the director of youth services, the juvenile court that imposed the serious youthful offender dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion shall state that there is reasonable cause to believe that either of the following occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

- (1) The person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.
- (2) The person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim.

(C) If the prosecuting attorney declines a request to file a motion that was made by the department of youth services or the supervising probation department under division (A) or (B) of this section or fails to act on a request made under either division by the department within a reasonable time, the department of youth services or the supervising probation department may file a motion of the type described in division (A) or (B) of this section with the juvenile court to invoke the adult portion of the serious youthful offender dispositional sentence. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court under division (B) of this section or fails to act on a request from the court under that division within a reasonable time, the juvenile court may hold the hearing described in division (D) of this section on its own motion.

(D) Upon the filing of a motion described in division (A), (B), or (C) of this section, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's serious juvenile offender dispositional sentence. The juvenile court shall not invoke the adult portion of the dispositional sentence without a hearing. At the hearing the person who is the subject of the serious youthful offender disposition has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be invoked, to be represented by counsel including counsel appointed under *Juvenile Rule 4(A)*, to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf, including evidence that the person has a mental illness or is a mentally retarded person. The person may not waive the right to counsel. The hearing shall be open to the public. If the person presents evidence that the person has a mental illness or is a mentally retarded person, the juvenile court shall consider that evidence in determining whether to invoke the adult portion of the serious youthful offender dispositional sentence.

(E) (1) The juvenile court may invoke the adult portion of a person's serious youthful offender dispositional sentence if the juvenile court finds all of the following on the record by clear and convincing evidence:

(a) The person is serving the juvenile portion of a serious youthful offender dispositional sentence.

(b) The person is at least fourteen years of age and has been admitted to a department of youth services facility, or criminal charges are pending against the person.

(c) The person engaged in the conduct or acts charged under division (A), (B), or (C) of this section, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

(2) The court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

(F) If a juvenile court issues an order invoking the adult portion of a serious youthful offender dispositional sentence under division (E) of this section, the juvenile portion of the dispositional sentence shall terminate, and the department of youth services shall transfer the person to the department of rehabilitation and correction or place the person under another sanction imposed as part of the sentence. The juvenile court shall state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, the department of youth services under the juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult portion of the dispositional sentence shall be reduced by the total number of days specified in the order plus any additional days the person is held in a juvenile facility or in detention after the order is issued and before the person is transferred to the custody of the department of rehabilitation and correction. In no case shall the total prison term as calculated under this division exceed the maximum prison term available for an adult who is convicted of violating the same sections of the Revised Code.

Any community control imposed as part of the adult sentence or as a condition of a judicial release from prison shall be under the supervision of the entity that provides adult probation services in the county. Any post-release control imposed after the offender otherwise is released from prison shall be supervised by the adult parole authority.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2152.22 (2014)

§ 2152.22. Court control of child following commitment to department; judicial release

(A) When a child is committed to the legal custody of the department of youth services under this chapter, the juvenile court relinquishes control with respect to the child so committed, except as provided in divisions (B), (C), (D), and (H) of this section or in *sections 2152.82 to 2152.86 of the Revised Code*. Subject to divisions (B), (C), and (D) of this section, sections 2151.353 and 2151.412 to 2151.421 of the *Revised Code*, *sections 2152.82 to 2152.86 of the Revised Code*, and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

The department shall not release the child from a department facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court in division (A)(1) of *section 2152.16 of the Revised Code* and any term of commitment imposed under *section 2152.17 of the Revised Code* or prior to the child's attainment of twenty-one years of age, except upon the order of a court pursuant to division (B), (C), or (D) of this section or in accordance with *section 5139.54 of the Revised Code*.

(B) (1) Unless the court grants judicial release under division (D)(1)(b) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department desires to release a child during a period specified in division (B)(1) of this section, it shall request the court that committed the child to grant a judicial release of the child to court supervision under this division. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for a judicial release to court supervision under this division from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following: approve the release by journal entry; schedule within thirty days after the request is received a time for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release to court supervision within the applicable period. The additional request may be made no earlier than thirty days after the filing of the prior request for a judicial release to court supervision. Upon the filing of a second request for a judicial release to court supervision, the court shall

either approve or disapprove the release by journal entry or schedule within thirty days after the request is received a time for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (B)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves the release under this division, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

(C) (1) Unless the court grants judicial release under division (D)(1)(b) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child to department of youth services supervision under this division during the second half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department desires to release a child during a period specified in division (C)(1) of this section, it shall request the court that committed the child to grant a judicial release to department of youth services supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to department of youth services supervision. Upon receipt of a request for judicial release to department of youth services supervision, the child, or the child's parent, or upon its own motion at any time during that period, the court shall do one of the following: approve the release by journal entry; schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for release under this division by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of ninety days that the child is in a secure department facility after the filing of a prior request for early release. Upon the filing of a request for release under this division subsequent to an initial request, the court shall either approve or disapprove the release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (C)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and shall order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to department of youth services supervision.

If the court approves the judicial release to department of youth services supervision, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (F) of this section that shall include the conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by the department as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional conditions, it shall enter those additional conditions in its journal and shall send to the department a copy of the journal entry of the additional conditions.

If the court approves the judicial release to department of youth services supervision, the actual date on which the department shall release the child is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in a department facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in a department facility while the department finds the suitable placement.

(D) (1) Subject to division (D)(3) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child under this division at any time after the expiration of one of the following periods of time:

(a) Except as otherwise provided in division (D)(1)(b) of this section, if the child was committed to the department for a prescribed minimum period and a maximum period not to exceed the child's attainment of twenty-one years, the court may grant judicial release of the child at any time after the expiration of the prescribed minimum term for which the child was committed to the department.

(b) If the child was committed to the department for both one or more definite periods under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* and a period of the type described in division (D)(1)(a) of this section, all of the prescribed minimum periods of commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* and the prescribed period of commitment of the type described in division (D)(1)(a) of this section shall be aggregated for purposes of this division, and the court may grant judicial release of the child at any time after the expiration of one year after the child begins serving the aggregate period of commitment.

(2) If a court grants a judicial release of a child under division (D)(1) of this section, the release shall be a judicial release to department of youth services supervision, if the release is granted during a period described in division (C)(1) of this section, and the second and third paragraphs of division (C)(3) of this section apply regarding the release. In all other cases, the release shall be a judicial release to court supervision, and the second paragraph of division (B)(3) of this section applies regarding the release.

(3) A court at the time of making the disposition of a child shall provide notice in the order of disposition that the judge is retaining jurisdiction over the child for the purpose of a possible grant of judicial release of the child under division (D)(1) of this section. The failure of a court to provide this notice does not affect the authority of the court to grant a judicial release under that division and does not constitute grounds for setting aside the child's delinquent child adjudication or disposition or for granting any post-adjudication relief to the child.

(4) The department of youth services, a child committed to the department, or the parents of the child, during a period specified in division (D)(1) of this section, may request the court that committed the child to grant a judicial release of the child under that division. Upon receipt of a request for judicial release of a child under this division from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following:

(a) Approve the request by journal entry;

(b) Schedule within thirty days after the request is received a time for a hearing on whether the child is to be released;

(c) Reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, division (C)(2) of this section applies regarding the making of additional requests.

If the court schedules a hearing under this division to consider the judicial release, the first paragraph of division (B)(3) of this section applies regarding the hearing.

(E) If a child is released under division (B), (C), or (D) of this section and the court of the county in which the child is placed has reason to believe that the child's deportment is not in accordance with the conditions of the child's judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under division (C) of this section or under division (D) of this section under department supervision, divisions (A) to (E) of *section 5139.52 of the Revised Code* apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was held in a secure department facility prior to the child's judicial release shall be considered as time served in fulfilling the prescribed period of institutionalization that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with which the department has contracted to provide a revocation program.

(F) The department of youth services, prior to the release of a child pursuant to division (C) of this section or pursuant to division (D) of this section on department supervision, shall do all of the following:

(1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release;

(2) Completely discuss the conditions of the plan prepared pursuant to division (F)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;

(3) Have the plan prepared pursuant to division (F)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) or (D) of this section;

(4) Prior to the child's release, file a copy of the treatment plan prepared pursuant to division (F)(1) of this section with the committing court and the juvenile court of the county in which the child is to be placed.

(G) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section or released pursuant to division (D) of this section on judicial release to department supervision at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions for altering the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(H) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in *section 5139.51 of the Revised Code* with respect to the granting of supervised release by the release authority and to perform the functions specified in *section 5139.52 of the Revised Code* with respect to violations of the conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 152 v S 10, § 1, eff. 1-1-08; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012.

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 *** Annotations current through May 19, 2014 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.82 (2014)

§ 2152.82. Classification of child as juvenile offender registrant; compliance with sex offender registration and notification law; determination of tier classification

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

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

(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(B) An order required under division (A) of this section shall be issued at the time the judge makes the order of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct a hearing under *section 2152.83 of the Revised Code* to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*. When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted, and the order and any determinations included in the order are subject to modification or termination pursuant to *sections 2152.84 and 2152.85 of the Revised Code*.

(2) The judge shall provide to the delinquent child 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.

(3) 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) of this section was made pursuant to this section.

(4) If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender, if the child is not a public registry-qualified juvenile offender registrant, and if the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(5) The court shall include in the order its determination made at the hearing held under section 2151.831 of the Revised Code as to whether the delinquent child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C) Except as provided in division (D) of this section, an order issued under division (A) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 or 2152.85 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A) 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.

(D) If a court issues an order under division (A) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing 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;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing 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.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.83 (2014)

§ 2152.83. Classification at time of disposition or release from secure facility; determination of tier classification

(A) (1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under *section 2152.831 of the Revised Code*, except as otherwise provided in that section, to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B)(5) of *section 2152.82 of the Revised Code*.

(B) (1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative.

ative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(b) Issue an order that classifies the child a juvenile offender registrant and 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 that states the determination that the judge makes at the hearing held pursuant to *section 2152.831 of the Revised Code* as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C) (1) Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under *section 2152.831 of the Revised Code* to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

(2) If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(3) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to *section 2152.84 of the Revised Code*.

(D) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;

(2) Whether the child has shown any genuine remorse or compunction for the offense;

(3) The public interest and safety;

(4) The factors set forth in division (K) of *section 2950.11 of the Revised Code*, provided that references in the factors as set forth in that division to "the offender" shall be construed for purposes of this division to be references to "the delinquent child;"

(5) The factors set forth in divisions (B) and (C) of *section 2929.12 of the Revised Code* as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(F) If a court issues an order under division (A) or (B) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing 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;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing 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.

(G) As used in this section, "secure facility" has the same meaning as in *section 2950.01 of the Revised Code*.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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§ 2152.84. Hearing upon completion of disposition on whether to continue classification or determination; reclassification

(A) (1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*, upon completion of the disposition of that child made for the sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated as provided under division (A)(2) of this section, and to determine whether its prior determination made at the hearing held pursuant to *section 2152.831 of the Revised Code* as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender should be continued or modified as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of all relevant factors, including but not limited to, the factors listed in division (D) of *section 2152.83 of the Revised Code*, shall do one of the following as applicable:

(a) Enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable;

(b) If the prior order was issued under division (B) of *section 2152.83 of the Revised Code*, enter an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*. An order issued under division (A)(2)(b) of this section also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. Division (A)(2)(b) of this section does not apply to a prior order issued under section 2152.82 or division (A) of *section 2152.83 of the Revised Code*.

(c) If the prior order was issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, and that modifies the prior determination made at the hearing held pursuant to *section 2152.831 of the Revised Code* that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offend-

er/child-victim offender, whichever is applicable. An order issued under division (A)(2)(c) of this section shall not include a determination that increases to a higher tier the tier classification of the delinquent child. An order issued under division (A)(2)(c) of this section shall specify the new determination made by the court at a hearing held pursuant to division (A)(1) of this section as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable.

(B) (1) If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, the prior classification and the prior determination shall remain in effect.

(2) A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification. A judge may not issue an order under that division that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier III sex offender/child-victim offender classification.

A judge may not issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier I sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier III sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the determination and reclassification.

(3) If a judge issues an order under division (A)(2)(b) of this section that declassifies the delinquent child as a juvenile offender registrant, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the declassification.

(C) If a judge issues an order under division (A)(2)(a), (b), or (c) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(D) An order issued under division (A)(2)(a) or (c) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.85 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A)(2)(a) or (c) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(E) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

Go to the Ohio Code Archive Directory

ORC Ann. 2152.85 (2014)

§ 2152.85. Petition requesting reclassification or declassification

(A) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified in division (B)(1), (2), or (3) of this section, a delinquent child who has been classified pursuant to this section or *section 2152.82 or 2152.83 of the Revised Code* a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier III sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as either a tier II sex offender/child-victim offender or a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(2) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier II sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(3) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*.

(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under *section 2152.84 of the Revised Code*.

(2) After the delinquent child's initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.

(3) After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

(C) Upon the filing of a petition under division (A) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (D) of *section 2152.83 of the Revised Code*, the judge, in the judge's discretion, shall do one of the following:

(1) Enter an order denying the petition;

(2) Issue an order that reclassifies or declassifies the delinquent child in the requested manner.

(D) If a judge issues an order under division (C)(1) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, shall remain in effect.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier I sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the determination and reclassification.

If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the order also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of a copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the declassification.

(E) If a judge issues an order under division (C)(1) or (2) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

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ORC Ann. 2152.86 (2014)

§ 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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TITLE 25. COURTS -- APPELLATE
 CHAPTER 2505. PROCEDURE ON APPEAL

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ORC Ann. 2505.02 (2014)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to *section 2307.85 or 2307.86 of the Revised Code*, a prima-facie showing pursuant to *section 2307.92 of the Revised Code*, or a finding made pursuant to division (A)(3) of *section 2307.93 of the Revised Code*.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly), and the enactment of *sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code* or any changes made by Sub. S.B. 80 of the 125th

general assembly, including the amendment of *sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code*;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of *section 163.09 of the Revised Code*.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

HISTORY:

GC § 12223-2; 116 v 104; 117 v 615; 122 v 754; Bureau of Code Revision, 10-1-53; 141 v H 412 (Eff 3-17-87); 147 v H 394. Eff 7-22-98; 150 v H 342, § 1, eff. 9-1-04; 150 v H 292, § 1, eff. 9-2-04; 150 v S 187, § 1, eff. 9-13-04; 150 v H 516, § 1, eff. 12-30-04; 150 v S 80, § 1, eff. 4-7-05; 152 v S 7, § 1, eff. 10-10-07; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2907. SEX OFFENSES
 SEXUAL ASSAULTS

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ORC Ann. 2907.05 (2014)

§ 2907.05. Gross sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(C) Whoever violates this section is guilty of gross sexual imposition.

(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in *section 3719.41 of the Revised Code* to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.

(2) Gross sexual imposition committed in violation of division (A)(4) or (B) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of divi-

sion (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in *section 2929.14 of the Revised Code* for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(D) A victim need not prove physical resistance to the offender in prosecutions under this section.

(E) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under *section 2945.59 of the Revised Code*, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(F) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(G) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

HISTORY:

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2907. SEX OFFENSES
SEXUAL ASSAULTS

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ORC Ann. 2907.06 (2014)

§ 2907.06. Sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12* of the Revised Code, a violation of this section is a misdemeanor of the first degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 137 v H 134 (Eff 8-8-77); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 149 v S 9. Eff 5-14-2002.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2907. SEX OFFENSES
SEXUAL ASSAULTS

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ORC Ann. 2907.09 (2014)

§ 2907.09. Public indecency

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

- (1) Expose the person's private parts;
- (2) Engage in sexual conduct or masturbation;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

- (1) Engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
- (4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.

(2) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one

violation of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(4) Except as otherwise provided in division (C)(4) of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (B)(1), (2), or (3) of this section is a felony of the fifth degree.

(5) Except as otherwise provided in division (C)(5) of this section, a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, a violation of division (B)(4) of this section is a felony of the fifth degree.

HISTORY:

134 v H 511 (Eff 1-1-74); 143 v H 214 (Eff 4-13-90); 146 v S 2. Eff 7-1-96; 151 v H 50, § 1, eff. 9-26-05; 151 v S 245, § 1, eff. 4-4-07.

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

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ORC Ann. 2929.12 (2014)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 2929.12. Seriousness and recidivism factors [Effective until September 19, 2014]

(A) Unless otherwise required by *section 2929.13 or 2929.14 of the Revised Code*, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in *section 2929.11 of the Revised Code*. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of *section 2903.11, 2903.12, or 2903.13 of the Revised Code* involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

- (1) The victim induced or facilitated the offense.
- (2) In committing the offense, the offender acted under strong provocation.
- (3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.
- (4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code*, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of *section 2967.16 or section 2929.141 of the Revised Code*.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

- (1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.
- (2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.
- (3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.
- (4) The offense was committed under circumstances not likely to recur.
- (5) The offender shows genuine remorse for the offense.

(F) The sentencing court shall consider the offender's military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002; 2012 HB 197, § 1, eff. Mar. 22, 2013.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.01 (2014)

§ 2950.01. Definitions

As used in this chapter, unless the context clearly requires otherwise:

(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(1) A violation of *section 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.21, 2907.22, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code*;

(2) A violation of *section 2907.04 of the Revised Code* when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(3) A violation of *section 2907.04 of the Revised Code* when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(4) A violation of *section 2903.01, 2903.02, or 2903.11 of the Revised Code* when the violation was committed with a sexual motivation;

(5) A violation of division (A) of *section 2903.04 of the Revised Code* when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of division (A)(3) of *section 2903.211 of the Revised Code*;

(7) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the offense is committed with a sexual motivation;

(8) A violation of division (A)(4) of *section 2905.01 of the Revised Code*;

(9) A violation of division (B) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(10) A violation of division (B) of *section 2903.03*, of division (B) of *section 2905.02*, of division (B) of *section 2905.03*, of division (B) of *section 2905.05*, or of division (B)(5) of *section 2919.22 of the Revised Code*;

(11) A violation of *section 2905.32 of the Revised Code* when any of the following applies:

(a) The violation is a violation of division (A)(1) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented.

(b) The violation is a violation of division (A)(2) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is less than sixteen years of age or is a developmentally disabled person whom the offender knows or has reasonable cause to believe is a developmentally disabled person for any purpose listed in divisions (A)(2)(a) to (c) of that section.

(c) The violation is a violation of division (A)(3) of that section, the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is sixteen or seventeen years of age for any purpose listed in divisions (A)(2)(a) to (c) of that section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of *section 2907.03 of the Revised Code* apply with respect to the offender and the other person.

(12) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section;

(13) A violation of division (A)(3) of *section 2907.24 of the Revised Code*;

(14) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of this section.

(B) (1) "Sex offender" means, subject to division (B)(2) of this section, a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense.

(2) "Sex offender" does not include a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and either of the following applies:

(a) The victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense.

(b) The victim of the offense was thirteen years of age or older, and the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense is not more than four years older than the victim.

(C) "Child-victim oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under eighteen years of age and is not a child of the person who commits the violation:

(1) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the violation is not included in division (A)(7) of this section;

(2) A violation of division (A) of *section 2905.02*, division (A) of *section 2905.03*, or division (A) of *section 2905.05 of the Revised Code*;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any

existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (C)(1) or (2) of this section;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (C)(1), (2), or (3) of this section.

(D) "Child-victim offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense.

(E) "Tier I sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.06, 2907.07, 2907.08, 2907.22, or 2907.32 of the Revised Code*;

(b) A violation of *section 2907.04 of the Revised Code* when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or a violation of former *section 2907.12 of the Revised Code*;

(c) A violation of division (A)(1), (2), (3), or (5) of *section 2907.05 of the Revised Code*;

(d) A violation of division (A)(3) of *section 2907.323 of the Revised Code*;

(e) A violation of division (A)(3) of *section 2903.211*, of division (B) of *section 2905.03*, or of division (B) of *section 2905.05 of the Revised Code*;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (E)(1)(a), (b), (c), (d), or (e) of this section;

(g) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (E)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense and who is not within either category of child-victim offender described in division (F)(2) or (G)(2) of this section.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier I sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier I sex offender/child-victim offender relative to the offense.

(F) "Tier II sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.21, 2907.321, or 2907.322 of the Revised Code*;

(b) A violation of *section 2907.04 of the Revised Code* when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of *section 2907.02, 2907.03, or 2907.04 of the Revised Code* or former *section 2907.12 of the Revised Code*;

(c) A violation of division (A)(4) of section 2907.05, of division (A)(3) of section 2907.24, or of division (A)(1) or (2) of *section 2907.323 of the Revised Code*;

(d) A violation of division (A)(1), (2), (3), or (5) of *section 2905.01 of the Revised Code* when the offense is committed with a sexual motivation;

(e) A violation of division (A)(4) of *section 2905.01 of the Revised Code* when the victim of the offense is eighteen years of age or older;

(f) A violation of division (B) of section 2905.02 or of division (B)(5) of *section 2919.22 of the Revised Code*;

(g) A violation of *section 2905.32 of the Revised Code* that is described in division (A)(11)(a), (b), or (c) of this section;

(h) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section;

(j) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or has been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier II sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier II sex offender/child-victim offender set forth in division (F)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, and who prior to that date was determined to be a habitual sex offender or determined to be a habitual child-victim offender, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to *section 2950.031 or 2950.032 of the Revised Code* as a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(b) A juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies the child a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of *section 2907.02 or 2907.03 of the Revised Code*;

(b) A violation of division (B) of *section 2907.05 of the Revised Code*;

(c) A violation of *section 2903.01, 2903.02, or 2903.11 of the Revised Code* when the violation was committed with a sexual motivation;

(d) A violation of division (A) of *section 2903.04 of the Revised Code* when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(e) A violation of division (A)(4) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age;

(f) A violation of division (B) of *section 2905.01 of the Revised Code* when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(g) A violation of division (B) of *section 2903.03 of the Revised Code*;

(h) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section;

(j) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies a tier III sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier III sex offender/child-victim offender set forth in division (G)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or adjudicated a child-victim predator, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to *section 2950.031 or 2950.032 of the Revised Code* as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(b) The sex offender or child-victim offender is a delinquent child, and a juvenile court, pursuant to *section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code*, classifies the child a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that division

(F) of *section 2971.03 of the Revised Code* automatically classifies the offender as a tier III sex offender/child-victim offender;

(7) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States if both of the following apply:

(a) Under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, the offender or delinquent child is in a category substantially equivalent to a category of tier III sex offender/child-victim offender described in division (G)(1), (2), (3), (4), (5), or (6) of this section.

(b) Subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in this state in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under *section 2950.04 or 2950.041 of the Revised Code*.

(H) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to *section 2929.16 or 2929.26 of the Revised Code*.

(I) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(J) "Supervised release" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (J)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(K) "Sexually violent predator specification," "sexually violent predator," "sexually violent offense," "sexual motivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in *section 2971.01 of the Revised Code*.

(L) "Post-release control sanction" and "transitional control" have the same meanings as in *section 2967.01 of the Revised Code*.

(M) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under *section 2152.82, 2152.83, 2152.84, 2152.85, or 2152.86 of the Revised Code*, classifies a juvenile offender registrant and specifies has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(N) "Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* before, on, or after January 1, 2008, and to whom all of the following apply:

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one 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) The person was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(3) A juvenile court judge, pursuant to an order issued under *section 2152.86 of the Revised Code*, classifies the person a juvenile offender registrant, specifies the person has a duty to comply with *sections 2950.04, 2950.05, and 2950.06 of the Revised Code*, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated pursuant to division (D) of *section 2152.86 of the Revised Code*.

(O) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(P) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under *section 2950.04 or 2950.041 of the Revised Code* to register in this state and the duty to otherwise comply with that applicable section and *sections 2950.05 and 2950.06 of the Revised Code*. "Out-of-state juvenile offender registrant" includes a person who prior to January 1, 2008, was an "out-of-state juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(Q) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of *section 2151.23 of the Revised Code*.

(R) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* for committing a sexually oriented offense.

(S) "School" and "school premises" have the same meanings as in *section 2925.01 of the Revised Code*.

(T) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(U) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(V) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(W) "Community control sanction" has the same meaning as in *section 2929.01 of the Revised Code*.

(X) "Halfway house" and "community-based correctional facility" have the same meanings as in *section 2929.01 of the Revised Code*.

HISTORY:

146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393 (Eff 7-5-2002); 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 S 57, § 1, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08; 2012 HB 262, § 1, eff. June 27, 2012; 2012 SB 160, § 1, eff. Mar. 22, 2013; 2014 HB 130, § 1, eff. June 20, 2014.

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Current through Legislation passed by the 130th General Assembly
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 *** Annotations current through May 19, 2014 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.02 (2014)

§ 2950.02. Legislative determinations and intent to provide information to protect public safety

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to

members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.07 (2014)

§ 2950.07. Commencement of duty to register; duration

(A) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of *section 2950.041 of the Revised Code*, the offender's duty to comply with those sections commences immediately after the entry of the judgment of conviction.

(2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of *section 2950.041 of the Revised Code*, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.

(3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of *section 2950.041 of the Revised Code*, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of confinement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of *section 2950.041 of the Revised Code*, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 of the Revised Code*, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of *section 2950.041 of the Revised Code* and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to section 2152.83 or division (A)(2) of *section 2152.86 of the Revised Code*, subject to divisions (A)(7) of this section, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(2), (3), or (4) of *section 2950.04* or *section 2950.041 of the Revised Code* and if the offender or delinquent child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04*, *2950.041*, or *2950.05 of the Revised Code* as they existed prior to that date, the offender or delinquent child initially shall register in accordance with *section 2950.04* or *2950.041 of the Revised Code*, whichever is applicable, as it exists on and after January 1, 2008, not later than the earlier of the dates specified in divisions (A)(7)(a) and (b) of this section. The offender's or delinquent child's duty to comply thereafter with *sections 2950.04*, *2950.041*, *2950.05*, and *2950.06 of the Revised Code* as they exist on and after January 1, 2008, commences on the date of that initial registration. The offender or delinquent child initially shall register under *section 2950.04* or *2950.041 of the Revised Code* as it exists on and after January 1, 2008, not later than the earlier of the following:

(a) The date that is six months after the date on which the offender or delinquent child received a registered letter from the attorney general under division (A)(2) or (B) of *section 2950.031 of the Revised Code*;

(b) The earlier of the date on which the offender or delinquent child would be required to verify a previously registered address under *section 2950.06 of the Revised Code* as it exists on and after January 1, 2008, or, if the offender or delinquent child has changed a previously registered address, the date on which the offender or delinquent child would be required to register a new residence, school, institution of higher education, or place of employment address under *section 2950.05 of the Revised Code* as it exists on and after January 1, 2008.

(8) If the offender's or delinquent child's duty to register was imposed pursuant to *section 2950.04* or *2950.041 of the Revised Code* as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with *sections 2950.04*, *2950.041*, *2950.05*, and *2950.06 of the Revised Code* as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under *section 2950.04* or *2950.041 of the Revised Code* and shall be considered for all purposes as having commenced on the date that the offender's duty under that section commenced.

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with *sections 2950.04*, *2950.041*, *2950.05*, and *2950.06 of the Revised Code* continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84* or *2152.85 of the Revised Code* that the delinquent child no longer is a tier III sex offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to *section 2152.84* or *2152.85 of the Revised Code* as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is

a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(2) If the person is an offender who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for twenty-five years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for twenty years. Regarding a delinquent child who is a tier II sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is a tier II sex offender/child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(3) of this section, based on the reclassification of the child pursuant to *section 2152.84 or 2152.85 of the Revised Code* as a tier I sex offender/child-victim offender.

(3) Except as otherwise provided in this division, if the person is an offender who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for fifteen years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for ten years. Regarding a delinquent child who is a juvenile offender registrant and a tier I sex offender/child-victim offender but is not a public registry-qualified juvenile offender registrant, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to *section 2152.84 or 2152.85 of the Revised Code* that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination. A person who is an offender who is a tier I sex offender/child-victim offender may have the fifteen-year duty to register terminated only pursuant to *section 2950.15 of the Revised Code*.

(C) (1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the offender or delinquent child shall comply with each separately calculated period of time independently.

If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to that offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense and if the juvenile

judge or the judge's successor in office subsequently reclassifies the offense tier in which the child is classified pursuant to *section 2152.84 or 2152.85 of the Revised Code*, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* as determined under division (A) of this section. The child's duty to comply with those sections after the reclassification is a continuation of the child's duty to comply with the sections that was in effect prior to the reclassification, and the duty shall continue for the period of time specified in division (B)(1), (2), or (3) of this section, whichever is applicable.

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in *section 2950.01 of the Revised Code* prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in *section 2950.031 or 2950.032 of the Revised Code*, as applicable.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been or is convicted, has pleaded or pleads guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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Current through Legislation passed by the 130th General Assembly
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*** Annotations current through May 19, 2014 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.081 (2014)

§ 2950.081. Disclosure of sex offender registration information in possession of sheriff; internet database provisions

(A) Any statements, information, photographs, fingerprints, or materials that are required to be provided, and that are provided, by an offender or delinquent child pursuant to *section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code* and that are in the possession of a county sheriff are public records open to public inspection under *section 149.43 of the Revised Code* and shall be included in the internet sex offender and child-victim offender database established and maintained under *section 2950.13 of the Revised Code* to the extent provided in that section.

(B) Except when the child is classified a public registry-qualified juvenile offender registrant, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, fingerprints, or materials that are provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

(C) If a sheriff establishes on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials that are described in division (A) of this section, that are not prohibited from inclusion by division (B) of this section, and that pertain to offenders or delinquent children who register in the sheriff's county, in addition to all of the other information and materials included, the sheriff shall include in the database a chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of tier I sex offender/child-victim offender, tier II sex offender/child-victim offender, and tier III sex offender/child-victim offender and for each offender or delinquent child in relation to whom information and materials are provided a statement as to whether the offender or delinquent child is a tier I sex offender/child-victim offenders, a tier II sex offender/child-victim offenders, or a tier III sex offender/child-victim offenders.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.11 (2014)

§ 2950.11. Community notification provisions

(A) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041, or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 of the Revised Code*, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (10) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

(1) (a) Any occupant of each residential unit that is located within one thousand feet of the offender's or delinquent child's residential premises, that is located within the county served by the sheriff, and that is not located in a multi-unit building. Division (D)(3) of this section applies regarding notices required under this division.

(b) If the offender or delinquent child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and that shares a common hallway with the offender or delinquent child. For purposes of this division, an occupant's unit shares a common hallway with the offender or delinquent child if the entrance door into the occupant's unit is located on the same floor and opens into the same hallway as the entrance door to the unit the offender or delinquent child occupies. Division (D)(3) of this section applies regarding notices required under this division.

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the

notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

(d) All additional persons who are within any category of neighbors of the offender or delinquent child that the attorney general by rule adopted under *section 2950.13 of the Revised Code* requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3) (a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4) (a) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in division (A)(3) of this section;

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by Chapter 3301. of the Revised Code that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, each holder of a license to operate a type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff. As used in this division, "child day-care center," "type A family day-care home," and "type B family day-care home" have the same meanings as in *section 5104.01 of the Revised Code*.

(7) The president or other chief administrative officer of each institution of higher education, as defined in *section 2907.03 of the Revised Code*, that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under *section 3345.04 or 1713.50 of the Revised Code*, if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides;

(10) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification as provided in division (J) of this section.

(B) The notice required under division (A) of this section shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment, as applicable, or the residence address or addresses of a delinquent child who is not a public registry-qualified juvenile offender registrant;

(3) The sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that identifies the category specified in division (F)(1)(a), (b), or (c) of this section that includes the offender or delinquent child and that subjects the offender or delinquent child to this section;

(5) The offender's or delinquent child's photograph.

(C) If a sheriff with whom an offender or delinquent child registers under *section 2950.04, 2950.041, or 2950.05 of the Revised Code* or to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 of the Revised Code* is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) and (10) of this section to each person or entity identified within those divisions that is located within the specified geographical notification area and within the county served by the sheriff in question.

(D) (1) A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notice to the neighbors that are described in division (A)(1) of this section and the notices to law enforcement personnel that are described in divisions (A)(8) and (9) of this section as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notices to all other specified persons that are described in divisions (A)(2) to (7) and (A)(10) of this section as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

(2) If an offender or delinquent child in relation to whom division (A) of this section applies verifies the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, with a sheriff pursuant to *section 2950.06 of the Revised Code*, the sheriff may provide a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (10) of this section. If a sheriff provides a notice pursuant to this division to the sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided the notice under division (A)(8) of this section may provide, but is not required to provide, a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (7) and (A)(9) and (10) of this section.

(3) A sheriff may provide notice under division (A)(1)(a) or (b) of this section, and may provide notice under division (A)(1)(c) of this section to a building manager or person authorized to exercise management and control of a building, by mail, by personal contact, or by leaving the notice at or under the entry door to a residential unit. For purposes of divisions (A)(1)(a) and (b) of this section, and the portion of division (A)(1)(c) of this section relating to the provision of notice to occupants of a multi-unit building by mail or personal contact, the provision of one written notice per unit is deemed as providing notice to all occupants of that unit.

(E) All information that a sheriff possesses regarding an offender or delinquent child who is in a category specified in division (F)(1)(a), (b), or (c) of this section that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under *section 149.43 of the Revised Code*.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a delinquent child unless that child is in a category specified in division (F)(1)(a), (b), or (c) of this section.

(F) (1) Except as provided in division (F)(2) of this section, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender or delinquent child who is in any of the following categories:

(a) The offender is a tier III sex offender/child-victim offender, or the delinquent child is a public registry-qualified juvenile offender registrant, and a juvenile court has not removed pursuant to *section 2950.15 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*.

(b) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was subjected to this section prior to January 1, 2008, as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender, as those terms were defined in *section 2950.01 of the Revised Code* as it existed prior to January 1, 2008, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*.

(c) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was classified a juvenile offender registrant on or after January 1, 2008, the court has imposed a requirement under *section 2152.82, 2152.83, or 2152.84 of the Revised Code* subjecting the delinquent child to this section, and a juvenile court has not removed pursuant to *section 2152.84 or 2152.85 of the Revised Code* the delinquent child's duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*.

(2) The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to January 1, 2008. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;
- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;
- (e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender or delinquent child;
- (h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;
- (j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in *section 2950.01 of the Revised Code* as that section existed prior to January 1, 2008;
- (k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

(G) (1) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home.

(2) The department of education shall compile, maintain, and update in January and July of each year, a list of all boards of education, schools, or programs of a type described in division (A)(3), (4), or (5) of this section that contains the name of each board of education, school, or program of that type, the county in which it is located, its address and telephone number, the name of the superintendent of the board or of an administrative officer or employee of the school or program, and, in relation to a board of education, the county or counties in which each of its schools is located and the address of each such school.

(3) The Ohio board of regents shall compile, maintain, and update in January and July of each year, a list of all institutions of a type described in division (A)(7) of this section that contains the name of each such institution, the county in which it is located, its address and telephone number, and the name of its president or other chief administrative officer.

(4) A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regarding an offender or delinquent child, or a designee of a sheriff of that type, may request the department of job and family services, department of education, or Ohio board of regents, by telephone, in person, or by mail, to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the notices described in divisions (A)(2) to (7) of this section are to be provided. Upon receipt of a request, the department or board shall provide the requesting sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom those notices are to be provided.

(H) (1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under *section 2950.04, 2950.041, or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* and does not suspend the victim notification requirement under *section 2950.10 of the Revised Code*.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with division (A)(2), (3), or (4) of section 2950.04, division (A)(2), (3), or (4) of *section 2950.041* and *sections 2950.05 and 2950.06 of the Revised Code* begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after the judge has entered an order denying the initial motion or the most recent motion made under that division.

(3) The offender and the prosecuting attorney have the right to appeal an order approving or denying a motion made under division (H)(1) of this section.

(4) Divisions (H)(1) to (3) of this section do not apply to any of the following types of offender:

(a) A person who is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense and who, in relation to that offense, is adjudicated a sexually violent predator;

(b) A person who is convicted of or pleads guilty to a sexually oriented offense that is a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007, and either who is sentenced under *section 2971.03 of the Revised Code* or upon whom a sentence of life without parole is imposed under division (B) of *section 2907.02 of the Revised Code*;

(c) A person who is convicted of or pleads guilty to a sexually oriented offense that is attempted rape committed on or after January 2, 2007, and who also is convicted of or pleads guilty to a specification of the type described in *section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code*;

(d) A person who is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* and who is sentenced for that offense pursuant to that division;

(e) An offender who is in a category specified in division (F)(1)(a), (b), or (c) of this section and who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or child-victim oriented offense.

(I) If a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under *section 2950.04, 2950.041, or 2950.05 of the Revised Code* and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under *section 2950.04 or 2950.041 of the Revised Code*, within the period of time specified in division (D) of this section, shall provide a written notice containing the information set forth in division (B) of this section to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff.

(J) Each sheriff shall allow a volunteer organization or other organization, company, or individual who wishes to receive the notice described in division (A)(10) of this section regarding a specific offender or delinquent child or notice regarding all offenders and delinquent children who are located in the specified geographical notification area to notify the sheriff by electronic mail or through the sheriff's web site of this election. The sheriff shall promptly inform the bureau of criminal identification and investigation of these requests in accordance with the forwarding procedures adopted by the attorney general pursuant to *section 2950.13 of the Revised Code*.

(K) In making a determination under division (H)(1) of this section as to whether to suspend the community notification requirement under this section for an offender, the judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The offender's age;
- (2) The offender's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexually oriented offenses or child-victim oriented offenses;
- (3) The age of the victim of the sexually oriented offense or child-victim oriented offense the offender committed;
- (4) Whether the sexually oriented offense or child-victim oriented offense the offender committed involved multiple victims;
- (5) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or child-victim oriented offense the offender committed or to prevent the victim from resisting;
- (6) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sexually oriented offense or a child-victim oriented offense, whether the offender or delinquent child participated in available programs for sex offenders or child-victim offenders;

(7) Any mental illness or mental disability of the offender;

(8) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense the offender committed or the nature of the offender's interaction in a sexual context with the victim of the child-victim oriented offense the offender committed, whichever is applicable, and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(9) Whether the offender, during the commission of the sexually oriented offense or child-victim oriented offense the offender committed, displayed cruelty or made one or more threats of cruelty;

(10) Any additional behavioral characteristics that contribute to the offender's conduct.

(L) As used in this section, "specified geographical notification area" means the geographic area or areas within which the attorney general, by rule adopted under *section 2950.13 of the Revised Code*, requires the notice described in division (B) of this section to be given to the persons identified in divisions (A)(2) to (8) of this section.

HISTORY:

146 v H 180 (Eff 7-1-97); 147 v H 396 (Eff 1-30-98); 147 v H 565 (Eff 3-30-99); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v H 15, § 1, eff. 11-23-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08; 2012 SB 316, § 120.01, eff. Jan. 1, 2014.

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*** Annotations current through June 27, 2014 ***

Ohio Rules Of Appellate Procedure
Title II. Appeals from judgments and orders of court of record

Ohio App. Rule 4 (2014)

Review Court Orders which may amend this Rule.

Rule 4. Appeal as of right -- When taken

(A) Time for appeal.

(1) Appeal from order that is final upon its entry.

Subject to the provisions of *App.R. 4(A)(3)*, a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by *App.R. 3* within 30 days of that entry.

(2) Appeal from order that is not final upon its entry.

Subject to the provisions of *App.R. 4(A)(3)*, a party who wishes to appeal from an order that is not final upon its entry but subsequently becomes final--such as an order that merges into a final order entered by the clerk or that becomes final upon dismissal of the action--shall file the notice of appeal required by *App.R. 3* within 30 days of the date on which the order becomes final.

(3) Delay of clerk's service in civil case.

In a civil case, if the clerk has not completed service of the order within the three-day period prescribed in *Civ.R. 58(B)*, the 30-day periods referenced in *App.R. 4(A)(1)* and *4(A)(2)* begin to run on the date when the clerk actually completes service.

(B) Exceptions.

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals.

If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion.

In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:

(a) a motion for judgment under *Civ.R. 50(B)*;

(b) a motion for a new trial under *Civ.R. 59*;

(c) objections to a magistrate's decision under *Civ.R. 53(D)(3)(b)* or *Juv.R. 40(D)(3)(b)*;

(d) a request for findings of fact and conclusions of law under *Civ.R. 52*, *Juv.R. 29(F)(3)*, *Civ.R. 53(D)(3)(a)(ii)*, or *Juv.R. 40(D)(3)(a)(ii)*; or

(e) a motion for attorneys' fees; or

(f) a motion for prejudgment interest,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the post-judgment filings in question and shall stay appellate proceedings until the trial court has done so. After the trial court has ruled on the post-judgment filing on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under *App.R. 3(F)*, for which leave shall be granted if sought within thirty days of the entry of the last of the trial court's judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted at the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with *App.R. 3* and *4(A)*. In the latter case, any new appeal shall be consolidated with the original appeal under *App.R. 3(B)*.

(3) Criminal and traffic post-judgment motions.

In a criminal or traffic case, if a party files any of the following, if timely and appropriate:

- (a) a motion for arrest of judgment under *Crim.R. 34*;
- (b) a motion for a new trial under *Crim.R. 33* for a reason other than newly discovered evidence; or
- (c) objections to a magistrate's decision under *Crim.R. 19(D)(3)(b)* or *Traf.R. 14*; or
- (d) a request for findings of fact and conclusions of law under *Crim.R. 19(d)(3)(a)(ii)*,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings. A motion for a new trial under *Crim.R. 33* on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds; but if made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in (a), (b), or (c) of this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the motion in question and shall stay appellate proceedings until the trial court has done so.

After the trial court has ruled on the post-judgment filings on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under *App.R. 3(F)*, for which leave shall be granted if sought within thirty days of the entry of the last of the trial court's judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted in the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with *App.R. 3* and *4(A)*. In the latter case, any new appeal shall be consolidated with the original appeal under *App.R. 3(B)*.

(4) Appeal by prosecution.

In an appeal by the prosecution under *Crim.R. 12(K)* or *Juv.R. 22(F)*, the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order.

If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under *Civ.R. 54(B)*, a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under *Civ.R. 54(B)*.

(C) Premature notice of appeal.

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

(D) Definition of "entry" or "entered".

As used in this rule, "entry" or "entered" means when a judgment or order is entered under *Civ.R. 58(A)* or *Crim.R. 32(C)*.

HISTORY: Amended, eff 7-1-72; 7-1-85; 7-1-89; 7-1-92; 7-1-96; 7-1-02; 7-1-09; 7-1-11; 7-1-12; 7-1-13; amended effective July 1, 2014.

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*** Annotations current through June 27, 2014 ***

Ohio Rules Of Juvenile Procedure

Ohio Juv. R. 29 (2014)

Review Court Orders which may amend this Rule.

Rule 29. Adjudicatory hearing

(A) Scheduling the hearing.

The date for the adjudicatory hearing shall be set when the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint alleging a violation of a section of the Revised Code that may be violated by an adult and that does not request a serious youthful offender sentence, and if the child is in detention or shelter care, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.

The prosecuting attorney's filing of either a notice of intent to pursue or a statement of an interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention or shelter care.

The hearing of a removal action shall be scheduled in accordance with *Juv.R. 39(B)*.

If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or for a reasonable time beyond thirty days to obtain service on all parties or complete any necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days after the complaint is filed.

The failure of the court to hold an adjudicatory hearing within any time period set forth in this rule does not affect the ability of the court to issue any order otherwise provided for in statute or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of any order of the court.

(B) Advisement and findings at the commencement of the hearing.

At the beginning of the hearing, the court shall do all of the following:

- (1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;
- (2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under *Juv.R. 30* where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;
- (3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;
- (4) Appoint counsel for any unrepresented party under *Juv.R. 4(A)* who does not waive the right to counsel;

(5) Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

(C) Entry of admission or denial.

The court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial, except in cases where the court consents to entry of a plea of no contest.

(D) Initial procedure upon entry of an admission.

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

(E) Initial procedure upon entry of a denial.

If a party denies the allegations, the court shall:

(1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;

(2) Order the separation of witnesses, upon request of any party;

(3) Take all testimony under oath or affirmation in either question-answer or narrative form; and

(4) Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings; by clear and convincing evidence in dependency, neglect, and abuse cases, and in a removal action; and by a preponderance of the evidence in all other cases.

(F) Procedure upon determination of the issues.

Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to *Civ.R. 52*.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in *Juv.R. 27(B)(1)* and to relative placement in accordance with *Juv.R. 7(F)(3)*.

HISTORY: Amended, eff 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-04.

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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.

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Ohio Rules Of Juvenile Procedure

Ohio Juv. R. 34 (2014)

Review Court Orders which may amend this Rule.

Rule 34. Dispositional hearing

(A) Scheduling the hearing.

Where a child has been adjudicated as an abused, neglected, or dependent child, the court shall not issue a dispositional order until after it holds a separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or dependent child shall be held at least one day but not more than thirty days after the adjudicatory hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing and all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child, the court may continue a dispositional hearing for a reasonable time not to exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed. If the dispositional hearing is not held within this ninety day period of time, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

In all other juvenile proceedings, the dispositional hearing shall be held pursuant to *Juv.R. 29(F)(2)(a)* through (d) and the ninety day requirement shall not apply. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.

(B) Hearing procedure.

The hearing shall be conducted in the following manner:

- (1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;
- (2) Except as provided in division (I) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;
- (3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(C) Judgment.

After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the judgment is conditional, the order shall state the conditions. If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from public funds.

(D) Dispositional orders.

Where a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;
- (4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;
- (5) Place the child in a planned permanent living arrangement with a public or private agency if the agency requests the court for placement, if the court finds that a planned permanent living arrangement is in the best interest of the child, and if the court finds that one of the following exists:
 - (a) The child because of physical, mental, or psychological problems or needs is unable to function in a family-like setting;
 - (b) The parents of the child have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the best interest of the child and the child retains a significant and positive relationship with a parent or relative;
 - (c) The child is sixteen years of age or older, has been counseled, is unwilling to accept or unable to adapt to a permanent placement and is in an agency program preparing the child for independent living.

(E) Protective supervision.

If the court issues an order for protective supervision, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or any other person including, but not limited to, any of the following:

- (1) Ordering a party within forty-eight hours to vacate the child's home indefinitely or for a fixed period of time;
- (2) Ordering a party, parent, or custodian to prevent any particular person from having contact with the child;
- (3) Issuing a restraining order to control the conduct of any party.

(F) Case plan.

As part of its dispositional order, the court shall journalize a case plan for the child. The agency required to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but not later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. The plan shall specify what additional information, if any, is necessary to complete the plan and how the information will be obtained. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child. If all parties agree to the content of the case plan and the court approves it, the court shall journalize the plan as part of its dispositional order. If no agreement is reached, the court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(G) Modification of temporary order.

The department of human services or any other public or private agency or any party, other than a parent whose parental rights have been terminated, may at any time file a motion requesting that the court modify or terminate any order of disposition. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties and the guardian *ad litem* notice of the hearing pursuant to these rules. The court, on its own motion and upon proper notice to all parties and any interested agency, may modify or terminate any order of disposition.

(H) Restraining orders.

In any proceeding where a child is made a ward of the court, the court may grant a restraining order controlling the conduct of any party if the court finds that the order is necessary to control any conduct or relationship that may be detrimental or harmful to the child and tend to defeat the execution of a dispositional order.

(I) Bifurcation; Rules of evidence.

Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.

(J) Advisement of rights after hearing.

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

HISTORY: Amended, eff 7-1-94; 7-1-96; 7-1-02.

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Ohio Rules Of Juvenile Procedure

Ohio Juv. R. 35 (2014)

Review Court Orders which may amend this Rule.

Rule 35. Proceedings after judgment

(A) Continuing jurisdiction; invoked by motion.

The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

(B) Revocation of probation.

The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to *Juv.R. 4(A)*. Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to *Juv.R. 34(C)*, been notified.

(C) Detention.

During the pendency of proceedings under this rule, a child may be placed in detention in accordance with the provisions of Rule 7.

HISTORY: Amended, eff 7-1-94.