

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :
 :
 APPELLEE : Case No. 2015-0677
 :
 :
 v. : ON APPEAL from the Montgomery
 : County Court of Appeals
 MATTHEW AALIM : Second Appellate District
 :
 :
 APPELLANT :
 : C.A. Case No. 26249

MERIT BRIEF OF APPELLANT MATTHEW AALIM

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Table of Contents

	<u>Page No.</u>
Table of Authorities	iv
Statement of the Case and the Facts	1
Argument.....	2
Proposition of Law I: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16, Ohio Constitution.....	5
I. Fundamental fairness requires that every child be given an opportunity to demonstrate the capacity to change	8
II. Youth must always be considered as a mitigating factor and never as an aggravating factor	14
III. The irrebuttable presumption created by Ohio's mandatory transfer scheme is fundamentally unfair, and violates due process.....	16
IV. Recent precedent supports that children have a substantive due process right in their status as a child	19
Proposition of Law II: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to equal protection as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2, Ohio Constitution.....	20
I. Revised Code Sections 2152.10 and 2152.12 create classes of similarly situated children who are treated differently, based solely upon their ages.....	21

Table of Contents

	<u>Page No.</u>
II. Recent precedent supports that a child's status as a juvenile is a suspect class for purposes of equal protection analysis.....	22
III. The age-based distinctions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are not rationally related to the purpose of juvenile delinquency proceedings.....	23
Conclusion	26
Certificate of Service	27
Appendix:	
<i>State of Ohio v. Matthew Aalim</i> , Case No. 2015-0677 Ohio Supreme Court, Notice of Appeal Entry (May 5, 2015)	A-1
<i>State of Ohio v. Matthew Aalim</i> , Case No. 26249, Court of Appeals Second Appellate District, Entry and Opinion (March 13, 2015).....	A-4
<i>State of Ohio v. Matthew Aalim</i> , Case No. 2014 CR 00206, Court of Common Pleas, Montgomery County, Entry (May 8, 2014).....	A-15
Fourteenth Amendment, United States Constitution.....	A-18
Article 1, Section 2, Ohio Constitution.....	A-19
Article 1, Section 16, Ohio Constitution.....	A-20
R.C. 2151.01	A-21
R.C. 2152.01	A-22
R.C. 2152.02.....	A-23
R.C. 2152.10	A-27

Table of Contents

	<u>Page No.</u>
Appendix:	
R.C. 2152.12	A-28
R.C. 2152.86	A-32
R.C. 2929.11	A-35
Juv.R. 30	A-36

Table of Authorities

	<u>Page No.</u>
Cases:	
<i>Armstrong v. Manzo</i> , 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)	8
<i>Bellotti v. Baird</i> , 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979)	20
<i>Conley v. Shearer</i> , 64 Ohio St.3d 284, 595 N.E.2d 862 (1992)	20
<i>DOT v. Clayton</i> , 684 A.2d 1060, 546 Pa. 342 (Pa. 1996)	17
<i>Eddings v. Oklahoma</i> , 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)	18
<i>E.J.M. v. State</i> , No. CR-03-0915, 928 So.2d 1077 (Aug. 27, 2004)	16
<i>Fabrey v. McDonald Village Police Dep't</i> , 70 Ohio St.3d 351, 639 N.E.2d 31 (1994)	22
<i>Goldberg v. Kelly</i> , 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)	8
<i>Goss v. Lopez</i> , 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975)	8
<i>Graham v. Florida</i> , 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)	<i>passim</i>
<i>J.D.B. v. North Carolina</i> , __ U.S. __, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011)	18, 19, 22
<i>In re C.P.</i> , 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729	4, 5, 6
<i>In re C.S.</i> , 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177	2, 5
<i>In re D.H.</i> , 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209	4, 5, 9, 10
<i>In re D.W.</i> , 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894	7
<i>In re Gault</i> , 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)	2, 5
<i>In re Gault</i> , 99 Ariz. 181, 407 P.2d 760 (1965)	3

Table of Authorities

Cases:	<u>Page No.</u>
<i>In the Interest of J.B.</i> , 107 A.3d 1, 2014 Pa. LEXIS 3468 (Pa. 2014).....	17
<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)	5
<i>Joint Anti-Fascist Refugee Committee v. McGrath</i> , 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed. 817 (1951).....	8, 9
<i>Kent v. United States</i> , 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).....	<i>passim</i>
<i>Lawrence v. Texas</i> , 539 U.S. 558, 123 S.Ct 2472, 156 L.Ed.2d 508 (2003).....	19, 23
<i>Massachusetts Bd. of Retirement v. Murgia</i> , 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976)	21
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)	8
<i>McKeiver v. Pennsylvania</i> , 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971).....	5
<i>Miller v. Alabama</i> , __ U.S. __, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012);.....	<i>passim</i>
<i>Park Corp. v. Brook Park</i> , 102 Ohio St.3d 166, 2004-Ohio-2237, 807 N.E.2d 913	20
<i>Penry v. Johnson</i> , 532 U.S. 782, 121 S.Ct. 1910, 150 L.Ed.2d 9 (2001)	14
<i>Penry v. Lynaugh</i> , 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989).....	14
<i>Railway Express Agency, Inc. v. New York</i> , 336 U.S. 106, 93 L.Ed. 533, 69 S.Ct. 463 (1949).....	23
<i>Rinaldi v. Yeager</i> , 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966)	25
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)	<i>passim</i>

Table of Authorities

	<u>Page No.</u>
Cases:	
<i>Roper v. United States</i> , 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).....	<i>passim</i>
<i>Santosky v. Kramer</i> , 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).....	9
<i>Sorrell v. Thevenir</i> , 69 Ohio St.3d 415, 633 N.E.2d 504 (1994).....	20
<i>State v. Aalim</i> , 2d Dist. Montgomery No. 26249, 2015-Ohio-892	1
<i>State v. Aalim</i> , 143 Ohio St.3d 1498, 2015-Ohio-4468, 39 N.E.3d 1270.....	2
<i>State v. Carnes</i> , 12th Dist. Clermont No. CA2001-02-018, 2002-Ohio-1311	13
<i>State ex rel. Plain Dealer Publ'g Co. v. Geauga Cty. Court of Common Pleas, Juvenile Div.</i> , 90 Ohio St.3d 79, 734 N.E.2d 1214 (2000)	2
<i>State v. Long</i> , 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890.....	15
<i>State v. Thompkins</i> , 75 Ohio St.3d 558, 664 N.E.2d 926 (1996).....	22
<i>Vlandis v. Kline</i> , 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973).....	17
Constitutional Provisions:	
Fourteenth Amendment, United States Constitution.....	<i>passim</i>
Article I, Section 2, Ohio Constitution	20, 23
Article I, Section 16, Ohio Constitution	5, 20
Statutes:	
R.C. 2151.01	3

Table of Authorities

	<u>Page No.</u>
Statutes:	
R.C. 2152.01	23, 25
R.C. 2152.02	1, 14
R.C. 2152.10	<i>passim</i>
R.C. 2152.12	<i>passim</i>
R.C. 2152.13	10
R.C. 2152.86	5, 6
R.C. 2929.11	25
Rule:	
Juv.R. 30	3, 18
Other Authorities:	
Amnesty International & Human Rights Watch, <i>The Rest of Their Lives: Life Without Parole for Child Offenders in the United States</i> (2005) available at https://www.hrw.org/report/2005/10/11/rest-their-lives/life-without-parole-child-offenders-united-states	4
Barry Feld, <i>Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences</i> , 10 J. Law & Family Studies 11 (2007)	4
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Table of Authorities

Page No.

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Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist No. 12 (Dec. 1, 2003) available at <http://www.youthadvocacydepartment.org/jdn/resourcedocs/lessguilty-by-adolescence.pdf>.....24

Martin Guggenheim, *Graham v. Florida and A Juvenile's Right to Age-Appropriate Sentencing*, 47 Harv.C.R.-C.L.L.Rev. 457 (2012).....16

Nat'l Council of Juvenile & Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases: Motions to Waive Jurisdiction and Transfer to Criminal Court* (2005) available at <http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed%5b1%5d.pdf>.....11

Ohio Dep't of Rehab. & Corr., *Offender Search Detail*, <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A705662&pg=x>.....1, 14

Statement of the Case and the Facts

Because Matthew Aalim was 16 at the time he used a gun to commit robbery, the Montgomery County Juvenile Court was required to transfer his case to adult court. *State v. Aalim*, 2d Dist. Montgomery No. 26249, 2015-Ohio-892, ¶ 3. In adult court, Matthew pleaded no contest, was convicted of two counts of aggravated robbery, and was sentenced to concurrent four-year prison terms. *Id.* at ¶ 4. Matthew will be released from prison when he is 20 years of age—within the time the juvenile court would have jurisdiction over him had his case been eligible to be retained by the juvenile court. R.C. 2152.02(C)(6); see Ohio Dep't of Rehab. & Corr., *Offender Search Detail*, <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A705662&pg=x> (accessed Jan. 9, 2016).

Matthew raised challenges in the trial court and on appeal, asserting that Ohio's mandatory transfer scheme is unconstitutional because it prohibits the juvenile court from considering the mitigating factors of youth before transferring the case to adult court in violation of due process, equal protection, and the prohibition against cruel and unusual punishment. The Second District affirmed his convictions. *Op.* at ¶ 22.

The concurring opinion urged this Court to accept review of the matter, and asserted that decisions regarding transfer should be given meaningful review in every child's case, as follows:

The judicial branch is shut out of the transfer process entirely in Aalim's case. The juvenile judge's ability to exercise sound discretion is subjugated to the legislative branch. Although there may be strong policy reasons for drawing a line based upon chronological age, this ignores the fact that the "signature qualities of youth are transient" as noted in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 2467, 183 L.Ed.2d 407, 422 (2012). Whether an individual defendant has reached a stage of mental and emotional development where society must subject them to adult rules of criminal responsibility is best decided on a case by case basis by a learned juvenile judge.

Id. at ¶ 24. This Court accepted review. *State v. Aalim*, 143 Ohio St.3d 1498, 2015-Ohio-4468, 39 N.E.3d 1270.

Argument

Introduction

Appalled by the reality of children facing lengthy prison sentences and exposure to "hardened adult criminals," early juvenile justice reformers were "profoundly convinced that society's duty to the child could not be confined by the concept of justice alone." *In re Gault*, 387 U.S. 1, 16, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Accordingly, state legislatures created juvenile courts to function as "civil" not "criminal" bodies. *Id.* at 17.

Decades later, juvenile courts continue to occupy a unique place in the legal system. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919 874 N.E.2d 1177, ¶ 65. And, in Ohio, juvenile delinquency provisions are to be liberally interpreted to "protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation." *State ex rel. Plain Dealer Publ'g Co. v.*

Geauga Cty. Court of Common Pleas, Juvenile Div., 90 Ohio St.3d 79, 83, 734 N.E.2d 1214 (2000), citing R.C. 2151.01(B). Based upon the fundamental purposes of juvenile court, "it is the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.'" *Gault* at 24, quoting *In re Gault*, 99 Ariz. 181, 190, 407 P.2d 760 (1965).

But in the 1990s, driven by the fear that American children were becoming "superpredators" who would sharply increase violent crime rates, state legislatures across the country, including Ohio's, formalized their fears by making it easier, and in some cases mandatory, that children be tried as adults. See R.C. 2152.10; 2152.12; Juv.R. 30. However, this wave of superpredator children never materialized, and the leading researcher who advanced the theory recanted his original predictions ("If I knew then what I know now, I would have shouted for prevention of crimes[.]"). Elizabeth Becker, *As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets*, New York Times (Feb. 9, 2001), <http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html> (accessed Jan. 9, 2016).

Although the law has long recognized that the fundamental differences between adult and juvenile offenders support greater protections and special treatment for children, recent decisions have intensified this focus. And, even the dissent in *Graham* recognized, "that juveniles can sometimes act with the same culpability as adults," but only in "rare and unfortunate cases." *Graham v. Florida*, 560 U.S. 48, 109, 130 S.Ct. 2011,

176 L.Ed.2d 825 (2010), (Thomas, J. dissenting), citing Barry Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. Law & Family Studies 11, 69-70 (2007); Amnesty International & Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 2, 31 (2005) available at <https://www.hrw.org/report/2005/10/11/rest-their-lives/life-without-parole-child-offenders-united-states> (accessed Jan. 11, 2016). It is difficult to imagine that Matthew's case, where his sentence requires him to be released from prison when he is just 20 years of age, is one of those rare and unfortunate cases.

Matthew asks this Court to recognize that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) improperly mandate the adultification of children, and hold that courts must consider the mitigating factors of youth any time a child appears in court, including during mandatory transfer proceedings. This would ensure the "unique expertise of a juvenile court judge" in the rare and unfortunate case that the law should subject a child to criminal treatment, and allow that children who can be rehabilitated are afforded that chance. See *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 76, citing *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 59.

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

The guarantees of the Due Process Clause apply to juveniles and adults alike.

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

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

divested the juvenile court judge of the ability to “decide the appropriateness of any such penalty.” *C.P.* at ¶ 78.

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

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

This Court has considered *Kent's* application to Ohio's discretionary transfer statute set forth in R.C. 2152.12(B)(3). *In re D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 20-21. Holding that an amenability hearing could be waived by a child, this Court reasoned that an amenability hearing is a "critical stage of the juvenile proceeding [that] affects whether the juvenile faces a delinquency adjudication, or adult criminal sanctions and the label 'felon.'" *Id.* at ¶ 12, citing *Kent* at 560. Further, like a juvenile's right to counsel, "the juvenile's right to an amenability hearing before being transferred from juvenile court to adult court" is "another vital safeguard * * *." *Id.* at ¶ 17.

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

I. Fundamental fairness requires that every child be given an opportunity to demonstrate the capacity to change.

Matthew had a liberty interest in the individualized treatment available in juvenile court, which cannot be denied without the due process protections required by *Kent*. But, these protections were not provided at Matthew's transfer hearing, because juvenile court judges are prohibited from such consideration for certain defendants. This is because, in Ohio, decisions about which children's cases *must* be transferred to adult court have been made by the legislature, not juvenile court judges after meaningful review. *Op.* ¶ 24, (Donovan, J., concurring).

At a minimum, due process includes a meaningful opportunity to be heard on the matter at issue at a "hearing appropriate to the nature of the case." *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). *See also Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) ("the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'")

The vital nature of a child's liberty interest in a transfer proceeding calls for heightened procedural protections. Indeed, the United States Supreme Court has made clear that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), quoting *Joint*

Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring). And, for a child, there can be no greater loss than his status as a child; therefore, Matthew asks this Court to hold that all children be afforded the opportunity to have the juvenile court judge give the child the meaningful consideration that due process requires.

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

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

1388, 71 L.Ed.2d 599 (1982). Through this paternal role, the state maintains a stake in the rehabilitation of the juvenile offender. *D.H.* at ¶ 49.

And, this Court has placed special emphasis on the importance of the role and the expertise of the juvenile court judge in juvenile court proceedings, such as when the state has moved to invoke the adult portion of a child's SYO sentence:

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

Id. at ¶ 59.

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

Further, juvenile judges themselves agree with this principle. Specifically, the National Council of Juvenile and Family Court Judges affirms “that waiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge * * * [and that] transfer of juveniles to adult court should be rare and only after a thorough considered process.” Nat’l Council of Juvenile & Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases: Motions to Waive Jurisdiction and Transfer to Criminal Court* (2005) 102, available at <http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed%5b1%5d.pdf> (accessed Jan. 9, 2016).

In *Kent*, the United States Supreme Court recognized the need for a judge’s consideration, holding that due process required a juvenile court to consider eight factors:

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

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime * * *.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent, 383 U.S. at 566-567, 86 S.Ct. 1045, 16 L.Ed.2d 84.

The Court in *Kent* emphasized the need for a statement of reasons supporting the juvenile court's decision to transfer the child to criminal court, because "[m]eaningful review requires that the reviewing court should review[; and that the decision] should not be remitted to assumptions." *Id.* at 561. This was an important factor in the Court's decision to remand the matter to the court of appeals, because that court had determined a statement of reasons was not required: although it "indicated that 'in some cases at least' a useful purpose might be served 'by a discussion of the reasons motivating the determination,' * * * it did not conclude the absence thereof invalidated the [transfer.]" *Id.* at 560.

The process required by Ohio's Juvenile Code doesn't only allow assumptions, it requires them, even though *Kent* held that to ensure that a youth's interests in juvenile status and freedom from confinement are adequately protected, a "full investigation" is required before transfer to adult court. *Id.* at 553, fn.15. By prohibiting a "full investigation" before transfer, the mandatory transfer provisions at issue here fall woefully short of providing the meaningful consideration that *Kent* requires.

Specifically, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require only that the court determine the age of the child and whether probable cause supports that the child committed a category two offense with a gun. Thus, under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), a juvenile court is prohibited from considering any of the information required in the first, third, and fifth through eighth factors set forth in *Kent*. *Id.* at 566-567. Once a complaint is filed under the statutes, what remains is nothing more than a probable cause hearing. *See, e.g., State v. Carnes*, 12th Dist. Clermont No. CA2001-02-018, 2002-Ohio-1311, ¶ 11 ("[T]he state only must establish 'probable cause to believe' that the juvenile has committed the charged act."). Because R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) forbid the court from conducting a meaningful review of all of the facts and circumstances necessary to making a finding of such tremendous consequence, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) cannot withstand constitutional scrutiny.

II. Youth must always be considered as a mitigating factor and never as an aggravating factor.

Without question, youth is a mitigating factor. *Miller*, ___ U.S. ___, 132 S.Ct. at 2467, 183 L.Ed.2d 407; *Graham*, 560 U.S. at 77-78, 130 S.Ct. 2011, 176 L.Ed.2d 825; *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1. But, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) not only forbid the juvenile court from considering the mitigating factors of youth before transferring the case to adult court, they improperly require the court to treat age as an aggravating, rather than a mitigating factor. See *Penry v. Johnson*, 532 U.S. 782, 787, 121 S.Ct. 1910, 150 L.Ed.2d 9 (2001), quoting *Penry v. Lynaugh*, 492 U.S. 302, 323, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) (reasoning that a mitigating factor cannot be “relevant only as an aggravating factor.”).

Because Matthew was 16, the transfer of his case to adult court was mandatory. R.C. 2152.10(A)(2)(b); 2152.12(A)(1)(b). Once convicted, he was sentenced to a four-year prison term. *Op.* at ¶ 4. His sentence will expire on December 10, 2017, when he is 20 years of age. See Ohio Dep’t of Rehab. & Corr., *Offender Search Detail*, <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A705662&pg=x> (accessed Jan. 9, 2016). Had the juvenile court been permitted to determine whether to retain this matter in juvenile court, the court could have given Matthew a juvenile court disposition lasting until his 21st birthday. R.C. 2152.02(C)(6). But, whether there would be sufficient time and resources available to rehabilitate Matthew in the juvenile system

could not be considered, because R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) required that the court transfer the case upon a finding of probable cause and nothing else.

In requiring a child's age to be considered only as an aggravating factor, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate due process, because they prohibit any consideration of the mitigating factors of youth. It is true that after transfer, the criminal court must consider the mitigating factors of youth at sentencing. *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, ¶ 11-14. But, such consideration would prove too little too late in a circumstance like Matthew's, where the legislature, not a judge, has predetermined that a 16- or 17-year-old child who is charged with a category two offense with a gun is as culpable as an adult. R.C. 2152.10(A)(2)(b); 2152.12(A)(1)(b). This is a particularly egregious presumption in light of the recognized "gaps between juveniles and adults;" specifically, that "children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking.'" *Long* at ¶ 12, quoting *Roper*, 543 U.S. at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1.

In *Miller*, the Court held that "a judge or jury must have the opportunity to consider mitigating circumstances [of youth] before imposing the harshest possible penalty for juveniles." *Miller*, __ U.S. __, 132 S.Ct. at 2475, 183 L.Ed.2d 407. The Court reasoned that a juvenile court's exercise of discretion in the transfer stage would not

suffice, because the transfer decision is a different inquiry than mitigation at sentencing. *Id.* at 2474.

Justice Kagan expressed concern regarding the transfer procedure in the state of Alabama. *Id.* at 2462. Specifically, noting that although a judge for the court of appeals agreed that the transfer procedure did not permit a mental evaluation of the child before transfer, that judge “urged the State Supreme Court to revisit the question in light of transfer hearings’ importance.” *Id.* at fn.3, quoting *E.J.M. v. State*, No. CR-03-0915, 928 So.2d 1077, 1081 (Aug. 27, 2004) (unpublished memorandum) (“[A]lthough later mental evaluation as an adult affords some semblance of procedural due process, it is, in effect, too little, too late.”); *see also Miller* at 2474.

Matthew asks this Court to hold that due process requires an amenability hearing before transferring a child to criminal court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), and a statement of reasons justifying the transfer decision, which must reflect that the juvenile court judge considered the child’s age as a mitigating factor in light of *Miller* and its progeny.

III. The irrebuttable presumption created by Ohio’s mandatory transfer scheme is fundamentally unfair, and violates due process.

A legislative choice based on a categorical determination violates due process when it creates “a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act.” Martin Guggenheim, *Graham v. Florida and A Juvenile’s Right to Age-Appropriate Sentencing*, 47

Harv.C.R.-C.L.L.Rev. 457, 490-91 (2012). See also *In the Interest of J.B.*, 107 A.3d 1, 2014 Pa. LEXIS 3468 (Pa. 2014) (finding that the irrebuttable presumption created by Pennsylvania's SORNA violated the due process rights of juvenile offenders). Further, the United States Supreme Court has struck down statutes creating irrebuttable presumptions because they "have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973). An irrebuttable presumption violates due process when "the presumption is deemed not universally true and a reasonable alternative means of ascertaining" the presumed fact [is] available. *J.B.* at 15, quoting *DOT v. Clayton*, 684 A.2d 1060, 1063, 546 Pa. 342 (Pa. 1996), citing *Vlandis* at 452. Ohio's mandatory transfer statutes create an irrebuttable presumption where there are reasonable alternative means for ascertaining whether a child is amenable to rehabilitation and whether treatment in the juvenile system exists.

Revised Code sections 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) require a juvenile court to transfer a child's case to criminal court for prosecution if the child is at least 16 and there is probable cause to support that the child has committed a category two offense with a firearm. As such, the statutes presume that a 16- or 17-year-old child who commits a category two offense with a firearm is automatically as culpable as an adult who commits the same offense. But, years of juvenile justice jurisprudence has recognized that this is not universally true.

The United States Supreme Court has repeatedly recognized that children “cannot simply be viewed as miniature adults.” *J.D.B. v. North Carolina*, ___ U.S. ___, 131 S.Ct. 2394, 2397, 180 L.Ed.2d 310 (2011), citing *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). The differences between children and adults have resulted in the Supreme Court’s drawing a bright-line distinction between the punishments available for children who commit criminal offenses, even when they are transferred to criminal court for prosecution. See generally *Graham*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825; *Miller*, ___ U.S. ___, 132 S.Ct 2455, 183 L.Ed.2d 407. Accordingly, the presumption that all 16- and 17-year-old children who commit a category two offense with a firearm are as culpable as their adult counterparts is not universally true.

And, Ohio law provides a reasonable alternative means for determining whether a child’s case should be transferred to criminal court in discretionary transfer proceedings. R.C. 2152.12(B); Juv.R. 30(C). Under Ohio’s discretionary transfer statutes, juvenile courts must engage in meaningful consideration of a child’s risk and future dangerousness, which includes a physical and mental examination, a detailed inquiry into the child’s background, and a determination as to whether the child is amenable to the care and rehabilitation of the juvenile court. R.C. 2152.12(B), (C). Accordingly, Ohio’s amenability procedures provide a reasonable, alternative means for determining whether a 16- or 17-year-old child who commits a category two offense with a firearm should have his case transferred to criminal court.

Because Ohio's mandatory transfer statutes categorically declare 16- and 17-year-old children as culpable as adults, notwithstanding a reasonable alternative means for ascertaining whether a child is amenable to treatment and rehabilitation in the juvenile system, they create an irrebuttable presumption that cannot pass constitutional muster.

IV. Recent precedent supports that children have a substantive due process right in their status as a child.

The Supreme Court's decisions in *Roper*, *Graham*, *J.D.B.*, and *Miller* support the conclusion that children have a substantive due process right to have their youthfulness and its attendant characteristics to be considered as a mitigating factor at every stage of the proceedings, including transfer. Although recognizing a new substantive due process right is generally disfavored, the United States Supreme Court has done so, recognizing that "[h]istory and tradition are the starting point but not in all cases the ending point of the substantive due process inquiry." *Lawrence v. Texas*, 539 U.S. 558, 572, 123 S.Ct 2472, 156 L.Ed.2d 508 (2003).

Under strict scrutiny review, Ohio's mandatory transfer statutes would unquestionably fail, because they require a juvenile court to consider the mitigating factors of youth in an amenability hearing for some, but not all children, based solely on a child's age. Requiring a uniform amenability determination—that which is currently afforded to children under Ohio's discretionary transfer statutes—would make Ohio's transfer process constitutional. Therefore, this Court should hold that the mandatory-

transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate a child's right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution.

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

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

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

and 2152.12(A)(1)(b), which require juvenile court judges to treat older children like adults and younger children like children, can withstand constitutional scrutiny.

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

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

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

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

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

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

II. Recent precedent supports that a child's status as a juvenile is a suspect class for purposes of equal protection analysis.

The Supreme Court's decisions in *Roper*, *Graham*, *J.D.B.*, and *Miller* also support the conclusion that a child's status be considered as a mitigating factor at every stage of the proceedings, including transfer. Although recognizing a new suspect classification is generally disfavored, the United States Supreme Court has done so to prevent unequal treatment:

The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority be imposed generally.

Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.

Lawrence, 539 U.S. at 584, 123 S.Ct 2472, 156 L.Ed.2d 508, O'Connor, J., concurring, quoting *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 112-113, 93 L.Ed. 533, 69 S.Ct. 463 (1949) (Jackson, J., concurring).

Under strict scrutiny review, Ohio's mandatory transfer statutes would unquestionably fail, because they require a juvenile court to consider the mitigating factors of youth in an amenability hearing for some, but not all children, based solely on a child's age. Requiring a uniform amenability determination—that which is currently afforded to children under Ohio's discretionary transfer statutes—would make Ohio's transfer process constitutional. Therefore, this Court should hold that the mandatory-transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate a child's right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Section 2 of the Ohio Constitution.

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

"The overriding purposes for [juvenile] dispositions *** are to provide for the care, protection, and mental and physical development of children subject to this chapter." R.C. 2152.01(A). Treating all children under 18 differently from adults makes sense. The Supreme Court of the United States has recognized that even children who

are prosecuted as adults for very serious crimes are “categorically less culpable than the average criminal.” *Roper*, 543 U.S. at 567, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Graham*, 560 U.S. at 67-70, 130 S.Ct. 2011, 176 L.Ed.2d 825; see also *Miller*, ___ U.S. ___, 132 S.Ct. at 2458, 183 L.Ed.2d 407. Therefore, “juvenile offenders cannot with reliability be classified among the worst offenders.” *Roper* at 569. These findings apply generally to all children under the age of 18.

The differential treatment of children who are 16 and 17 under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) is not supported by empirical evidence, which recognizes the differences between adults and children, not between older and younger children under the age of 18. See, e.g., Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist No. 12 (Dec. 1, 2003) 8, available at https://www.law.umich.edu/centersandprograms/pcl/ljohnsonworkshop/Documents/Less_Guilty_by_Reason_of_Adolescence.pdf (accessed Jan. 9, 2016) (“[T]he developmental factors that drive adolescent decision making may predictably contribute to choices reflective of immature judgment and unformed character.”). Notwithstanding this lack of support, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) draw bright-line distinctions between children who were 16 or 17 and those who were 14 or 15 at the time of their offense.

The legislature may impose special burdens on defined classes in order to achieve permissible ends, but equal protection requires that the distinctions drawn be relevant to the purpose for which the classification is made. *Rinaldi v. Yeager*, 384 U.S. 305, 309, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966) (holding that there must be some rationality in the nature of the classes singled out). There is no evidence to support the need for disparate treatment under R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b). More importantly, the traditional penological justifications, including retribution, deterrence, incapacitation, and rehabilitation cannot be used to justify the distinctions drawn between older and younger children under 18. For example, both the juvenile and adult systems provide for incapacitation and protecting the public, and both systems can serve these aims. R.C. 2152.01(A); 2929.11(A). Further, deterrence is not a proper justification for punishing a juvenile offender, where the likelihood that a teenage offender has made the type of cost-benefit analysis that attaches the weight to the possibility of the penalty is so remote as to be virtually nonexistent. *Roper* at 572. And, research shows that youth whose cases are transferred to adult court are 34 percent more likely to recidivate than youth with similar offenses whose cases remain in juvenile court. Children's Law Ctr., Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012) 1, available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf> (accessed Jan. 9, 2016)

Because the juvenile court judge is prohibited from considering whether the aims of juvenile court could appropriately address the child under particular facts and circumstances of each case, Matthew asks this Court to hold that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which allow for similarly-situated children to receive disparate treatment without any rational basis whatsoever cannot withstand constitutional scrutiny.

Conclusion

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

Respectfully submitted,

The Office of the Ohio Public Defender

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Certificate of Service

I hereby certify that a true copy of the foregoing **Merit Brief of Appellant Matthew Aalim** was served by ordinary U.S. Mail, postage-prepaid, this 11th day of January, 2016, to Andrew T. French, Assistant Montgomery County Prosecutor, Montgomery County Prosecutor's Office, 301 West Third Street, 5th Floor, Courts Building, Dayton, Ohio 45402.

/s/ Amanda J. Powell

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Assistant State Public Defender

Counsel for Matthew Aalim

#457455

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

APPELLEE

v.

MATTHEW AALIM

APPELLANT

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: Case No. 2015-0677
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: ON APPEAL from the Montgomery
: County Court of Appeals
: Second Appellate District
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: C.A. Case No. 26249
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Appendix to

Merit Brief of Appellant Matthew Aalim



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2015 MAY -5 PM 12:05

IN THE SUPREME COURT OF OHIO

GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
18
APPELLEE

v.

MATTHEW AALIM

APPELLANT

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Case No.
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ON APPEAL from the Montgomery
:
County Court of Appeals
:
Second Appellate District
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C.A. Case No. 26249

NOTICE OF APPEAL OF MATTHEW AALIM

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Counsel for Matthew Aalim

Notice of Appeal of Appellant Matthew Aalim.

Matthew Aalim hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Entry of the Montgomery County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. 26249 on March 13, 2015. This case involves a felony offense, substantial constitutional questions, and is of public or great general interest.

Respectfully submitted,

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Certificate of Service

The undersigned counsel certifies that a copy of the foregoing **Notice of Appeal of Matthew Aalim** was served by ordinary U.S. Mail, postage-prepaid, this 27th day of April, 2015, to Andrew T. French, Assistant Montgomery County Prosecutor, Montgomery County Prosecutor's Office, 301 West Third Street, 5th Floor, Courts Building, Dayton, Ohio 45402.

/s/ Amanda J. Powell

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Assistant State Public Defender

Counsel for Matthew Aalim

#440539

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COURT OF APPEALS

2015 MAR 13 AM 8:57

GREGORY A. CRUSH
CLERK OF COURTS
MONTGOMERY CO, OHIO
36

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

MATTHEW AALIM

Defendant-Appellant

Appellate Case No. 26249

Trial Court Case No. 14-CR-206

(Criminal Appeal from
Common Pleas Court)

FINAL ENTRY

Pursuant to the opinion of this court rendered on the 13th day
of March, 2015, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery
County Court of Appeals shall immediately serve notice of this judgment upon all parties and
make a note in the docket of the mailing.

Mike Fain
MIKE FAIN, Judge

Mary E. Donovan
MARY E. DONOVAN, Judge

Michael T. Hall
MICHAEL T. HALL, Judge

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FILED
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2015 MAR 13 AM 8:57

GREGORY A. HUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
36

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

MATTHEW AALIM

Defendant-Appellant

Appellate Case No. 26249

Trial Court Case No. 14-CR-206

(Criminal Appeal from
Common Pleas Court)

.....
OPINION

Rendered on the 13th day of March, 2015.
.....

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Attorney for Plaintiff-Appellee

MICHAEL R. PENTECOST, Atty. Reg. No. 0036803, Law Office of the Public Defender,
117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

.....
FAIN, J.

{¶ 1} Defendant-appellant Matthew Aalim appeals from his conviction and
sentence on two counts of Aggravated Robbery, a felony of the first degree, in violation

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of R.C. 2911.01, a category two offense under R.C. 2152.02(CC)(1). Aalim contends that the juvenile court erred when it transferred his case to adult court based on the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b). Aalim argues that the mandatory transfer statutes violate his constitutional right to due process and equal protection and violate the prohibition against cruel and unusual punishment.

{¶ 2} In light of established precedent, we conclude that the mandatory transfer provisions of R.C. 2152.10 and R.C. 2152.12 do not violate Aalim's constitutional rights to due process or equal protection and do not constitute cruel and unusual punishment. Accordingly, the judgment of the trial court is Affirmed.

I. The Course of Proceedings

{¶ 3} On November 13, 2013, Aalim was involved in a robbery of two women by threatening them with a loaded gun and demanding their money and cell phones. A complaint was filed against Aalim in juvenile court alleging that he was delinquent by reason of committing an offense that would be considered Aggravated Robbery, if committed by an adult. The State filed a motion to transfer the case to the general division of common pleas court, to proceed with prosecuting Aalim as an adult. The juvenile court held a hearing and made three findings: that at the time of the offense Aalim was 16 years old (date of birth July 27, 1997); that the alleged act would be a felony if committed by an adult; and that there was probable cause to believe that Aalim was responsible for the commission of the felony offense. Based on these findings, the juvenile court relinquished jurisdiction and transferred the case to the general division of common pleas court.

{¶ 4} Aalim was indicted on two counts of Aggravated Robbery, with a firearm specification added to each count. The trial court overruled Aalim's motion to dismiss the indictment, in which he attacked the constitutionality of the mandatory transfer statutes for juvenile offenders accused of certain type of felonies. Aalim then entered a plea of no contest to two counts of Aggravated Robbery and the State dismissed the gun specifications. Aalim was sentenced to four years imprisonment for each of the two felony offenses, to be served concurrently. Aalim appeals, asserting three assignments of error.

II. The Mandatory Transfer Statutes Do Not Violate the Right to Due Process

{¶ 5} Aalim's First Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C. 2152.12(A)(1)(B) VIOLATES THE JUVENILE'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 16 OF THE OHIO CONSTITUTION.

{¶ 6} In his first assignment of error, Aalim contends that the mandatory transfer statutes violate his due process rights by failing to require a meaningful transfer hearing, and by failing to incorporate procedural safeguards set forth by the Supreme Court of the United States. In *Kent v. United States*, 383 U.S. 541, 86 Sup.Ct. 1045, 16 L.Ed. 2d 84 (1966), the Supreme Court held the transfer of a juvenile to adult court invalid when no hearing was held, no findings were made, and no reasons were stated for the waiver of

jurisdiction. *Id.* at 552. The Court declared that the transfer process must satisfy basic requirements of due process and fairness, as well as compliance with statutory requirements. *Id.* at 553. The Court stated, “[i]t is clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile.” *Id.* at 557.

{¶ 7} R.C. 2152.12(A) requires the juvenile court to conduct a hearing prior to waiving its exclusive jurisdiction over juveniles and transferring a case to the general division of common pleas court. For certain categories of offenses, the transfer is mandatory if the child is over the age of fourteen, while lesser offenses are subject to discretionary transfer, allowing the juvenile court to consider nine factors set forth in R.C. 2151.12 (D) to determine whether the child is amenable to care or rehabilitation in the juvenile court system. The juvenile court did not utilize these factors before transferring Aalim, because he was charged with a category two offense and was over the age of 16 at the time of the offense. The procedure followed for Aalim’s transfer does comply with the statutory requirements set forth in R.C. 2152.10(A)(2)(B) and R.C. 2152.12(A)(1)(B). We have previously reviewed this statutory scheme and found that it does comport with fundamental concepts of due process. *State v. Brookshire*, 2d Dist. Montgomery No. 25853, 2014-Ohio-1971, ¶ 30.

{¶ 8} . At we stated in *Brookshire*, “this court along with other appellate districts have already determined that the statutory provisions requiring mandatory transfer do not violate due process and equal protection rights under the Fourteenth Amendment. See, e.g., *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998); *State v. Agee*, 133 Ohio App.3d 441, 728 N.E.2d 442 (2d Dist.1999); *State v. Kelly*, 3d

Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998); *State v. Lee*, 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998); *State v. Collins*, 9th Dist. Lorain No. 97 CA 0006845, 1998 WL 289390 (June 3, 1998) (all finding that the mandatory transfer provisions in former R.C. 2151.26(B), which is now codified as R.C. 2152.12, do not violate a juvenile's constitutional rights to due process and equal protection under the law). We will continue to follow the precedent on this issue unless otherwise advised by the Supreme Court of Ohio." *Brookshire* at ¶ 30.

{¶ 9} We are not persuaded that we should overrule our holding in *Brookshire*.

{¶ 10} Aalim's First Assignment of Error is overruled.

**III. The Mandatory Transfer Statutes Do Not
Violate the Right to Equal Protection**

{¶ 11} Aalim's Second Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO
ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C.
2152.12(A)(1)(B) VIOLATES THE JUVENILE'S RIGHT TO EQUAL
PROTECTION AS GUARANTEED BY THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION AND
ARTICLE 1, SECTION 2 OF THE OHIO CONSTITUTION

{¶ 12} Aalim argues that the mandatory transfer provisions found in R.C. 2152.10 and R.C. 2152.12 create classes of similarly situated juvenile offenders who are treated differently, solely based on their age. Aalim was 16 years of age at the time of the category two offense, which mandated a transfer to adult court, but if the offense had occurred

eighteen weeks earlier, Aalim would have been entitled to an amenability hearing, because his transfer would have been discretionary, Aalim having been under the age of sixteen at the time of the offense. Aalim also argues that age-based distinctions in the mandatory transfer statutes are not rationally related to the purpose of juvenile delinquency proceedings. The State cites precedent for the proposition that treating juvenile offenders differently based on the seriousness of the offense is rationally related to the government's interest in deterring violent juvenile crime.

{¶ 13} We have previously reviewed this argument finding that the mandatory transfer process does not violate a juvenile offender's right to equal protection of the law. *State v. Anderson*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶¶ 72-75.

{¶ 14} "The standard for determining if a statute violates equal protection is 'essentially the same under state and federal law.'" *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, at ¶ 64, quoting *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 353, 639 N.E.2d 31 (1994). "Under a traditional equal protection analysis, class distinctions in legislation are permissible if they bear some rational relationship to a legitimate governmental objective." *Lane* at ¶ 64, quoting *State ex rel. Vana v. Maple Hts. City Council*, 54 Ohio St.3d 91, 92, 561 N.E.2d 909 (1990).

{¶ 15} As here, the defendant in *Lane* and the defendant in *Anderson* contended that disparate treatment based on age was not rationally related to the purpose of juvenile delinquency proceedings, but did not support this contention with any type of empirical evidence. "In the absence of such evidence, we cannot find that the distinction the legislature made is unconnected to its aims. As the court in *Lane* observed, 'the purpose of this legislation is to protect society and reduce violent crime by juveniles. * * * Contrary

to appellant's argument, juveniles who are 14 or 15 are markedly different from those who are 16 or 17 in many ways, e.g., in terms of physical development and maturity. * * * Thus, the legislature's decision to single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose.' " *Anderson* at ¶ 75, quoting *Lane* at ¶ 67.

{¶ 16} We are not persuaded that we should overrule our holding in *Anderson*.

{¶ 17} Aalim's Second Assignment of Error is overruled.

**IV. The Mandatory Transfer Statutes Do Not Violate
the Prohibition Against Cruel and Unusual Punishment**

{¶ 18} Aalim's Third Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO
ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C.
2152.12(A)(1)(B) VIOLATES THE PROHIBITION AGAINST CRUEL AND
UNUSUAL PUNISHMENT AS GUARANTEED BY THE EIGHTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND ARTICLE 1, SECTION 9 OF THE OHIO
CONSTITUTION

{¶ 19} Aalim argues that the mandatory transfer statutes violate the prohibition against cruel and unusual punishment because age is treated as an aggravating factor, not a mitigating factor, because penalties imposed on adult offenders are far more severe and the adult system does not allow the court to consider the unique characteristics of the minor's age or the circumstances surrounding the offense. The State argues that the

transfer process, by itself, is not a form of punishment.

{¶ 20} In *State v. Brookshire*, supra, at ¶¶ 31-32, we rejected a similar 8th Amendment challenge. We are not persuaded that we should overrule this holding in *Brookshire*.

{¶ 21} Aalim's Third Assignment of Error is overruled.

V. CONCLUSION

{¶ 22} All of Aalim's assignments of error having been overruled, the judgment of the trial court is Affirmed.

HALL, J., concurs.

DONOVAN, J., concurring:

{¶ 23} Although I am compelled to follow our jurisprudence on mandatory transfer, I'd urge the Ohio Supreme Court to take up the issue.

{¶ 24} The judicial branch is shut out of the transfer process entirely in Aalim's case. The juvenile judge's ability to exercise sound discretion is subjugated to the legislative branch. Although there may be strong policy reasons for drawing a line based upon chronological age, this ignores the fact that the "signature qualities of youth are transient" as noted in *Miller v. Alabama*, 567 U.S. _____, 132 S.Ct. 2455, 2467, 183 L.Ed.2d 407, 422 (2012). Whether an individual defendant has reached a stage of mental and emotional development where society must subject them to adult rules of criminal responsibility is best decided on a case by case basis by a learned juvenile judge.

Copies mailed to:

Mathias H. Heck
Andrew T. French
Michael R. Pentecost
Hon. Dennis J. Adkins

30. TERMINATION ENTRY FILED; SENTENCED TO
19081756

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Thursday, May 08, 2014 1:48:22 PM
CASE NUMBER: 2014 CR 00206 Docket ID: 19081756
GREGORY A BRUSH
CLERK OF COURTS MONTGOMERY COUNTY OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO

CASE NO. 2014 CR 00206

Plaintiff,

JUDGE DENNIS J. ADKINS

-vs-

TERMINATION ENTRY

MATTHEW AALIM

Defendant

DOB: 07/27/1997

SSN: ***-**-2478

The defendant herein having ENTERED A NO CONTEST PLEA AND HAVING BEEN FOUND GUILTY BY THE COURT TO the offense(s) of: **COUNT 1: AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) F1**, **COUNT 2: AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) F1** was on **MAY 07, 2014**, brought before the Court;

WHEREFORE, it is the JUDGMENT and SENTENCE of the Court that the defendant herein be delivered to the **CORRECTIONAL RECEPTION CENTER** there to be imprisoned and confined for a term of

COUNT 1: FOUR (4) YEARS CONCURRENT

COUNT 2: FOUR (4) YEARS CONCURRENT

The defendant is ordered to pay complete restitution to **Ashley White** for economic loss in the amount of **\$531.97**, upon which execution is hereby awarded to be paid through the Montgomery County Clerk of Courts.

Court costs to be paid in full in the amount of "to be determined by the Montgomery County Clerk of Courts."

The defendant is to receive credit for **ONE HUNDRED FORTY (140)** days spent in confinement as of the date of sentencing stated above.

The Court notifies the defendant that, as part of this sentence, on **COUNT 1: AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) F1**, the defendant **WILL** be supervised by the Parole Board for a period of **FIVE** years Post-Release Control after the defendant's release from imprisonment.

The Court notifies the defendant that, as part of this sentence, on **COUNT 2: AGGRAVATED ROBBERY (deadly weapon) - 2911.01(A)(1) F1**, the defendant **WILL** be supervised by the Parole Board for a period of **FIVE** years Post-Release Control after the defendant's release from imprisonment.

Should the defendant violate any post-release control sanction or any law, the adult parole board may impose a more restrictive sanction. The parole board may increase the length of the post-release control. The parole board could also impose up to an additional nine (9) months prison term for each violation for a total of up to fifty percent (50%) of the original sentence imposed by the court. If the violation of the sanction is a felony, in addition to being prosecuted and sentenced for the new felony, the defendant may receive from the court a prison term for the violation of the post-release control itself.

Pursuant to R.C. 2929.19(B)(2)(f), the defendant is ordered not to ingest or be injected with a drug of abuse. The defendant is ordered to submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code. The results of the drug test administered shall indicate that the defendant did not ingest and was not injected with a drug of abuse.

The Court did fully explain to defendant his appellate rights and the defendant informed the Court that said rights were understood.

BOND IS RELEASED.

JUDGE DENNIS J. ADKINS

Assistant Prosecuting Attorney: Johnna Shia

Montgomery County Sheriff's Office, Attn: Jail Records

Filed electronically with the Clerk of Court using the Electronic Criminal Filing system, which will send notification of such filing to the following: MICHAEL R PENTECOST

kj 5/8/14



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Entry: Sentenced to Institution
Case Number: 2014 CR 00206
Case Title: STATE OF OHIO vs MATTHEW AALIM

So Ordered

A handwritten signature in cursive script, appearing to read "Dan J. Adkins".

Electronically signed by dadkins on 2014-05-08 13:49:04 page 3 of 3

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.

Oh. Const. Art. I, § 2

Current through 2015 Ohio Issues 1 and 2

Page's Ohio Revised Code Annotated > CONSTITUTION OF THE STATE OF OHIO > Article I BILL OF RIGHTS

§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

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

Page's Ohio Revised Code Annotated

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Oh. Const. Art. I, § 16

Current through 2015 Ohio Issues 1 and 2

Page's Ohio Revised Code Annotated > CONSTITUTION OF THE STATE OF OHIO > Article I BILL OF RIGHTS

§ 16 Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

History

As amended September 3, 1912.

Page's Ohio Revised Code Annotated

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ORC Ann. 2151.01

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 43 (SB 161) with the exception of file 32 (HB 56) and file 34 (HB 124), file 38 (HB 237), file 39 (HB 259), file 40 (HB 340), and file 41 (SB 10).

Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2151: Juvenile Court

§ 2151.01 Construction; purpose.

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

- (A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
- (B) To provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

History

133 v H 320 (Eff 11-19-69); 148 v S 179, § 3. Eff 1-1-2002.

Page's Ohio Revised Code Annotated

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ORC Ann. 2152.01

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 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.

Page's Ohio Revised Code Annotated

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ORC Ann. 2152.02

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 43 (SB 161) with the exception of file 32 (HB 56) and file 34 (HB 124), file 38 (HB 237), file 39 (HB 259), file 40 (HB 340), and file 41 (SB 10).

Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 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.

Page's Ohio Revised Code Annotated

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ORC Ann. 2152.10

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 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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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 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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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders > Juvenile Sex Offender Registration and Notification Law

§ 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 issue 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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ORC Ann. 2929.11, Part 1 of 2

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2929: Penalties and Sentencing > Penalties for Felony

§ 2929.11 Purposes of felony sentencing; discrimination prohibited.

- (A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.
- (B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.
- (C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

History

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

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Ohio Juv. R. 30

Rules current through rule amendments received through October 22, 2015

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

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.

OHIO RULES OF COURT SERVICE

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