

**NO. 2015-1847**

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM  
EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, OHIO  
NO. 102460

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STATE OF OHIO

Plaintiff-Appellant

vs.

DARLELL ORR

Defendant-Appellee

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**MERIT BRIEF OF APPELLANT**

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Counsel for Plaintiff-Appellant

**TIMOTHY J. McGINTY**  
**CUYAHOGA COUNTY PROSECUTOR**

**DANIEL VAN (0084614)**  
Assistant Prosecuting Attorney  
The Justice Center, 8<sup>TH</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 348-4463

Counsel for Defendant-Appellee

Erika B. Cunliffe, Esq.  
Assistant Public Defender  
310 W. Lakeside Avenue, 2<sup>nd</sup> Floor  
Cleveland, OH 44113

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## STATEMENT OF THE CASE AND FACTS

This case was dismissed prior to trial and as such aside from the facts alleged in the motion to dismiss indictment and the State's brief in response to the motion to dismiss the indictment, the facts are not as fully developed as if this case proceeded to trial. This case involves a prosecution involving an untested rape kit and was prosecuted under the State of Ohio's rape kit testing initiative. While the State alleged that Orr was unknown to the victim, the depth of any familiarity was not fully developed. (See State's brief in response to motion to dismiss, filed December 23, 2014 in Cuyahoga County Case No. CR-13-574648). Orr through counsel on the other hand asserted that Orr was known to the victim. (Tr. 138).

Pertinent in this case, and what the trial court found dispositive of the motion to dismiss is that in 1993, a 14 year old victim reported that she had been raped by a male who would ultimately be identified as Darlell Orr, the Defendant/Appellee in this case. Orr was allegedly 13 years old at the time of the offense. (See State's brief in response to motion to dismiss, filed December 23, 2014 in Cuyahoga County Case No. CR-13-574648).

In a separate case, Orr was arrested on March 12, 2012 for homicide. It was during this time, while he was in county jail that a CODIS hit linked him to the 1993 rape. See *State v. Orr*, 8<sup>th</sup> Dist. Cuyahoga No. 100931, 2014-Ohio-4814, ¶2-6 (*Orr I*).

Appellee was indicted within the 20 year statute of limitations on May 23, 2013 on one count of Rape, one count of Sexual Battery, and one count of Kidnapping. On July 26, 2013 BCI confirmed that the DNA profile found on the items from the rape kit was consistent with Appellee's DNA.

The trial proceedings were repeatedly delayed because Orr refused to have counsel appointed to represent him in this case and did not answer questions to ascertain whether Orr's

waiver of counsel was knowing and intelligent. As noted by the court of appeals in *Orr I*, his conduct became disruptive. *Id.* On December 24, 2013, the trial court entered a journal entry finding that the defendant relinquished his right to self-representation. This led to an interlocutory appeal, with the Eighth District ultimately affirming the trial court's order. *Id.* at ¶12.

When the matter returned to the trial court, Appellee filed a motion to dismiss on December 3, 2014 arguing both that the State could not prosecute Appellee as an adult and argued that there was an unconstitutional pre-indictment delay. The State filed both a brief in response to the motion to dismiss and filed an alternative request to transfer the case to juvenile court. On December 23, 2014, the trial court dismissed the case. The trial court found that it would be improper for it to exercise jurisdiction without violating the ex post facto provisions of the U.S. and state constitutions and that it would be improper for the court to transfer the case to juvenile court. (Tr. 143). The trial court indicated that transferring the case to juvenile court would be a “meaningless act” because the juvenile court itself lacked jurisdiction. (Tr. 143).

The State appealed the dismissal, as a matter of right, to the Eighth District Court of Appeals raising two assignments of error, arguing first that the trial court erred in dismissing the indictments on constitutional grounds and arguing that the trial court erred in dismissing the indictment without transferring the case to juvenile court. In *State v. Orr*, 8<sup>th</sup> Dist. Cuyahoga No. 102460, 2015-Ohio-4081 (*Orr II*), the Eighth District following its decision in *State v. Webber*, 8<sup>th</sup> Dist. Cuyahoga No. 101875, 2015-Ohio-1953, held that the Appellee could not be prosecuted in the General Division of the Cuyahoga County Court of Common Pleas Court and that Appellee could

not be subject to the jurisdiction of the juvenile court<sup>1</sup> and found a violation of the Ex Post Facto Clause and Due Process Clause of the United States and Ohio Constitutions.

The State appealed, raising two propositions of law. This Court accepted jurisdiction on the first proposition of law, which addresses whether statutes that confer jurisdiction upon the General Division of the Court of Common Pleas is unconstitutional as applied to Appellee.

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<sup>1</sup> In *State v. Webber*, 8<sup>th</sup> Dist. Cuyahoga No. 101875, 2015-Ohio-1953, the Eighth District affirmed the dismissal of an indictment against the defendant who was 14 years old at the time of the offense. In addition to affirming the dismissal of the indictment from the General Division, the Eighth District citing *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203 and R.C. 2152.02(C)(6) held that *Webber* could not be prosecuted as a juvenile as the juvenile court lacked jurisdiction. The State had argued that the plain language of R.C. 2152.02(C)(6) does permit dispositions under certain circumstances after age 21, and that in the event the State was barred from prosecuting *Webber* as an adult, it should have had the opportunity to transfer the case to the juvenile court.

## LAW AND ARGUMENT

**PROPOSITION OF LAW I: R.C. 2152.02(C)(3), R.C. 2151.23(I) AND R.C. 2152.12(J) CONSIDERS A PERSON WHO COMMITTED A CRIME AS A JUVENILE BUT APPREHENDED AFTER THEIR 21<sup>ST</sup> BIRTHDAY AN ADULT SUBJECT TO PROSECUTION IN THE GENERAL DIVISION. THESE PROVISIONS DO NOT VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION OR RETROACTIVITY CLAUSE OF THE OHIO CONSTITUTION WHEN APPLIED TO A PERSON WHO COMMITTED THE CRIME OF RAPE PRIOR TO ATTAINING THE AGE OF 15.**

### **A. Statutes at Issue**

There are several statutes at issue that relate to the jurisdiction of the juvenile court with regards to crimes committed by a child.

R.C. 2152.02 (C)(2) states:

“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.”

R.C. 2152.02(C)(3) states:

“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.”

R.C. 2151.23(I) states:

“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) [mandatory transfer] and (B) [discretionary transfer] of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.”



O.R.C. 2152.12(J) states:

“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.”

A “child” is defined in R.C. 2152.02(C)(2) as, “any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age [\*\*\*] 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,” except that the definition of a child does not include, “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.” See R.C. 2152.02(C)(3). Accordingly R.C. 2152.02(C)(3) serves as an exception to the general rule in R.C. 2152.02(C)(2) that a person is a “child” irrespective of the person’s age at the time the complaint is filed or the hearing on the complaint is filed. In other words a person who commits an offense while under eighteen years of age is a “child” regardless of when the complaint or hearing on the complaint is filed except if the person is apprehended after attaining 21 years of age.

Statutes are afforded a strong presumption of constitutionality. Unconstitutionality must be proved beyond a reasonable doubt. *In re E.D.*, 9th Dist. No. 25594, 2011-Ohio-4067, ¶8 (citations omitted.)

**B. Prior decisions regarding R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J)**

This Court has stated that R.C. 2151.23(I) and R.C. 2152.12(J) “reiterate the clear legislative intent underlying R.C. 2152.02(C)(3) that once an offender reaches 21 years of age, he is to be prosecuted as an adult, regardless of his age when the acts were committed.” *State v. Warren*, 118 Ohio St.3d 200, at 205-06. In that case, the defendant was indicted in 2004 for rape offenses committed in 1988, when he was 15 years old. He was tried and convicted as an adult. The Court held that the defendant “does not demonstrate that his rights to due process and fundamental fairness were violated” by the application of the statutes that he challenged, including O.R.C. 2152.02(C)(3).

In *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, the Supreme Court of Ohio first addressed the constitutionality of the 1997 amendments to R.C. Chapter 2151, analyzing them under the Retroactivity Clause of the Ohio Constitution and the Ex Post Facto Clause of the United States Constitution. The defendant in that case, Walls, was charged with aggravated murder for an offense he committed in 1985 when he was 15, and he was not indicted until 1998 when he was 29. *Id.* at ¶ 2, 4. Walls made the argument that Appellee here puts forth: that the general division of the court of common pleas lacked subject matter jurisdiction to hear his case because the amended statutes were unconstitutionally retroactive as they violated his right to a bindover proceeding in juvenile court. *Id.* at ¶ 8.

This Court rejected Walls' jurisdictional arguments and found that the statutes requiring that he be tried as a juvenile withstood constitutional challenges. “In rejecting Walls' retroactivity argument, the court determined that the statutes did not impair any substantive rights because Walls did not have a substantive right to a juvenile bindover proceeding under prior law.” *State v. Adams*, 10<sup>th</sup> Dist. Franklin No 12AP-83, 2012-Ohio-5088 at ¶ 17.

This Court subsequently determined whether R.C. 2152.02(C)(2), 2151.23(I), and 2152.12(J) violated due process and fundamental fairness in a case where the defendant was prosecuted as an adult and sentenced to life in prison for rape when he was 15 at the time of the offense and found no constitutional error to apply the statutes to the defendant. *Warren*, supra.

Other Ohio appellate districts have similarly relied on *Walls* in rejecting constitutional challenges nearly identical to those raised by Appellee in the present case. In *State v. Scharr*, (Ohio App. 5 Dist.), 2004–Ohio–1631, the defendant argued that his adult prosecution for gross sexual imposition violated constitutional guarantees of fundamental fairness, substantive due process, and equal protection because he was 17 at the time the crimes were alleged to have been committed. The Fifth District disagreed. In rejecting the defendant's claims that R.C. 2151.23(I) violated due process and fundamental fairness, the court relied on *Walls* and held that “changing the jurisdiction from the juvenile to the general division of the common pleas court did not involve any substantive right.” *Schaar* at ¶ 27; see also *Warren* at ¶ 52 (citing *Schaar* with approval). The court also found no equal protection violation. *Id.* at ¶ 29. The court determined that there was a rational basis for R.C. 2151.23(I) in that the statute recognizes that persons who commit a crime as a juvenile but are not apprehended until after 21 are not likely to be amenable to the juvenile justice system. *Schaar* at ¶ 29.

In applying this Court’s decision in *State v. Walls*, 96 Ohio St. 3d 437, 2002-Ohio-5059, 775 N.E.2d 829 and *State v. Warren*, 118 Ohio St. 3d 200, 2008-Ohio-2011, 887 N.E.2d 1145, the Eighth District in *Webber* and *Orr II* found that application of the applicable statutes would violate the Due Process Clause and Ex Post Facto Clauses of the Ohio and United States Constitutions. *Orr II*, ¶10 since under the former R.C. 2151.26 a thirteen or fourteen year old would not have been eligible for a bindover.

### **C. Retroactivity Analysis**

Ohio's constitution prohibits laws which are unconstitutionally retroactive. Under the two-part test for determining whether a statute is unconstitutionally retroactive, there is a two part test. *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, ¶14, 772 N.E.2d 1172 citing *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 522 N.E.2d 489 (1988), paragraphs one and two of the syllabus. Under the first part of the test, it must be determined whether the General Assembly expressly intended that the statutes apply retrospectively, and under the second part of the test, it is asked whether the statute is “substantive, rendering it *unconstitutionally* retroactive, as opposed to merely remedial.” *State v. Cook*, 83 Ohio St. 3d 404, 410-11-1998 Ohio 291, 700 N.E.2d 570. This Court in *Walls* previously found that the 1997 amendments apply retrospectively. *Walls*, ¶13. As in *Walls*, this Court should reject the notion that the statute is unconstitutionally retroactive, because the juvenile statutes at issue is one of jurisdiction, and that the “[a]pplication of a new jurisdictional rule usually “takes away no substantive right by simply changes the tribunal that is to hear the case.” *Walls*, ¶14 citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994), quoting *Hallowell v. Commons*, 239 U.S. 506, 508, 36 S. Ct. 202, 60 L.Ed. 409 (1916). In *State v. Fortson*, 11<sup>th</sup> Dist. 2011-P-0031, 2012-Ohio-3118, ¶¶36-39, the Eleventh District Court of Appeals, found no fundamental right to have a case brought in juvenile court.

### **D. Ex Post Facto and Due Process**

The Eighth District's analysis intertwined both the Ex Post Facto and Due Process analysis, finding an ex post facto violation, because R.C. 2151.21(I) permitted the defendant to be prosecuted as an adult when at the time he committed his offense he was not of an age that

subjected him to bind-over as an adult. This Court in *Walls*, found that the 1997 amendments applied to a defendant charged with homicide did not violate the Ex Post Facto Clause. *Walls*, ¶

The State maintains that neither the Due Process Clause, under a pre-indictment delay claim or otherwise, or the Ex Post Facto Clause of the United States Constitution is violated in this case. This Court in *State v. White*, 132 Ohio St. 3d 344, 2012-Ohio-2583, 972 N.E.2d 534, described the following as the test for determining whether a law violates the ex post facto clause:

In *Calder v. Bull* (1798), 3 U.S. (3 Dall.) 386, 390, 1 L. Ed. 648, 3 Dall. 386, Justice Chase identified the four kinds of laws that come within the Ex Post Facto Clause:

1st. Every law that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action. 2d. Every law that *aggravates a crime*, or makes it *greater* than it was, when committed. 3d. Every law that *changes the punishment*, and inflicts a *greater punishment*, than the law annexed to the crime, when committed. 4th. Every law that alters the *legal* rules of *evidence*, and receives less, or different, testimony, than the law required at the time of the commission of the offence, *in order to convict the offender*.

(Emphasis sic.) The United States Supreme Court has adopted Justice Chase's *Calder* opinion as an authoritative definition of **ex post facto** laws. *See, e.g., Stogner v. California*, 539 U.S. 607, 611, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003); *Carmell v. Texas*, 529 U.S. 513, 525, 120 S.Ct. 1620, 146 L.Ed.2d 577 (2000).

*State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, 972 N.E.2d 534, ¶ 50

Under the *Calder* test, the offense of rape for which Appellee was charged with was an offense when he allegedly committed the offense, and the relevant juvenile statutes do not purport to create new criminal offenses. The statutes which gives jurisdiction to the General Division, under the circumstance that the juvenile was apprehended for the first time after attaining age 21, do not aggravate the crime of rape and it does not change the punishment available for rape. Finally the statutes by themselves do not alter the legal rules of evidence or the elements necessary to prove the offense for rape. Instead, as described under the retroactivity analysis, the juvenile statutes at issue is a jurisdictional rule. As such the statutes at issue, are statutes that confer

jurisdiction upon a court and do not fall within the four types of laws that are prohibited as violating the Ex Post Facto Clause by *Calder*.

In the context of a constitutional challenge to Illinois' mandatory bindover provisions, the Illinois Supreme Court in *People v. Patterson*, 2014 IL 115102, 25 N.E.3d 526 rejected the assertion that a transfer statute effectively functions as a sentencing statute, and that access to juvenile court is not a constitutional right because the juvenile system is a legislative creation and that whether a defendant is tried in juvenile court or an adult criminal court is purely a matter of procedure. *Patterson*, ¶104. The basic rule is that "there is no constitutional right to be tried as a juvenile." *State v. Jose C.*, 16 Conn. L. Rpt., 1996 WL 165549, 3 (Mar. 21, 1996) (collecting cases). Along the same lines, the label or status as a "juvenile" a fundamental right. *United States v. Quinones*, 516 F.2d 1309 (1<sup>st</sup> Cir. 1975). In fact, this juvenile status is granted by the legislature. It is not a constitutional right. *Woodward v. Wainwright*, 556 F.2d 781, 784 (5<sup>th</sup> Cir. 1977).

The State maintains that the statutory provisions that confer jurisdiction in the General Division of the Cuyahoga County Court of Common Pleas is not a matter implicated by the Ex Post Facto clause, as it is primarily one that involves a procedural matter or the procedures in which the case is adjudicated. The jurisdiction of a court is not a matter implicated by the Ex Post Facto provisions, as it is a procedural matter. See *Duncan v. State*, 152 U.S. 377, 382-83, 14 S. Ct. 570, 572 38 L. Ed. 485 (1894) (the prescribing of different modes of procedure and the abolition of courts and creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds the person accused of crime, are not considered within the constitutional inhibition against ex post facto laws." *Duncan*, syllabus). It has been said that "procedural" refers to changes in the procedures by which a criminal case is adjudicated as

opposed to substantive changes in the law.” *Beazell v. Ohio*, 269 U.S. 167, at 171 (1925). See also, *Collins v. Youngblood*, 497 U.S. 37 at 45 (1990). As such neither the Ex Post Facto Clause nor is the Due Process Clause are violated by conferring jurisdiction upon the General Division of the Court of Common Pleas to adjudicate the charges of Rape, Sexual Battery and Kidnapping.

### **CONCLUSION**

In total, the Eighth District’s decision in *State v. Orr*, 8<sup>th</sup> Dist. Cuyahoga No. 102460, 2015-Ohio-4081 (*Orr II*), places Darllel Orr in legal limbo by holding that prosecuting him in the General Division of the Cuyahoga County Court of Common Pleas violates the Ex Post Facto Clause of the United States Constitution and the Due Process Clause and that Juvenile Division has no authority to consider the charges against Orr. With respect to the Ex Post Facto challenge, R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J), which provides that Orr is no longer a “child” for purposes of juvenile court jurisdiction, were enacted as procedural amendments, changing the manner in which the case is to be heard. As such the analysis falls outside of *Calder v. Bull* (1798), 3 U.S. (3 Dall.) 386, 390, 1 L. Ed. 648, 3 Dall. 386 and does not violate the Ex Post Facto Clause of the United States Constitution or the Due Process Clause. The Eighth District’s decision should be reversed and the matter remanded to the trial court for further proceedings.

Respectfully submitted,

**TIMOTHY MCGINTY**  
Cuyahoga County Prosecutor

/s/ Daniel Van \_\_\_\_\_  
**DANIEL VAN (0084614)**  
Assistant Prosecuting Attorney  
Cuyahoga County Prosecutor’s Office  
The Justice Center, Courts Tower  
1200 Ontario St.  
Cleveland, Ohio 44113  
(216) 443-7800

**CERTIFICATE OF SERVICE**

A copy of the foregoing Merit Brief of Appellant was sent by regular electronic service to Erika Cunliffe, ecunliffe@cuyahogacounty.us on this 31<sup>st</sup> day of May, 2016.

/s/ Daniel Van  
**DANIEL VAN (0084614)**  
Assistant Prosecuting Attorney



IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	
	)	Case No.
Plaintiff-Appellant,	)	
	)	On Appeal from Cuyahoga
vs.	)	County Court of Appeals
	)	Eighth Appellate District
DARLELL ORR,	)	
	)	C.A. Case No. 102460
Defendant-Appellee.	)	

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**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

---

Erika Cunliffe  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113

Timothy J. McGinty (#0024626)  
Cuyahoga County Prosecutor

Daniel T. Van (#0084614)  
Assistant County Prosecutor  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800

COUNSEL FOR DARLELL ORR

COUNSEL FOR STATE OF OHIO

**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

Appellant State of Ohio hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in *State v. Orr*, 8th Dist. No. 102460, 2015-Ohio-4081, and journalized on October 1, 2015.

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

Respectfully submitted,

TIMOTHY J. MCGINTY  
CUYAHOGA COUNTY PROSECUTOR

/S/ Daniel T. Van  
Daniel T. Van (#0084614)  
Assistant County Prosecutor  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

COUNSEL FOR STATE OF OHIO

**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Appeal of Appellant State of Ohio was forwarded by regular U.S. mail or electronic service this 16<sup>th</sup> day of November, 2015, to Kristopher A. Haines, 250 E. Broad Street, Suite 1400, Columbus, Ohio 43215, Erika Cunliffe, 310 Lakeside Ave., Suite 200, Cleveland, Ohio 44113, and Jim Foley by electronic mail at [service@opd.ohio.gov](mailto:service@opd.ohio.gov)

/S/ Daniel T. Van  
Daniel T. Van (#0084614)  
Assistant Prosecuting Attorney

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102460

---

**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**DARLELL ORR**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-574648-A

**BEFORE:** Keough, P.J., E.A. Gallagher, J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** October 1, 2015

**ATTORNEYS FOR APPELLANT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: Daniel T. Van  
Assistant Prosecuting Attorney  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

Robert L. Tobik  
Cuyahoga County Public Defender  
By: Erika B. Cunliffe  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} Plaintiff-appellant, state of Ohio, appeals from the trial court's decision dismissing without prejudice the indictment against defendant-appellee, Darlell Orr. For the reasons that follow, we affirm.

{¶2} In 2013, Orr was named in a three count indictment charging him with rape, sexual battery, and kidnapping. The charges stemmed from an incident that allegedly occurred in June 1993, when Orr was 13 years old. The indictment arose after the contents of the victim's 1993 rape kit were subject to DNA testing in April 2013.

{¶3} In December 2014, Orr moved to dismiss the indictment contending the prosecution violated his rights to due process, speedy trial, and that the application of the current laws in effect violate the prohibition against ex post facto laws under both the United States and Ohio Constitutions. According to Orr, had he been charged contemporaneously with the alleged incidents, he would have been subject to the exclusive jurisdiction of the juvenile court. In fact, the law in effect at the time of the incident precluded Orr's prosecution as an adult. Accordingly, Orr argued that as applied in his case, current R.C. 2152.02(C)(3) and 2152.12(J) create a substantial violation of his rights to due process of law and a fair sentencing hearing under Sections 10 and 16 of Article I of the Ohio Constitution and the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. The state opposed Orr's motion.

{¶4} Following a hearing, the trial court granted the motion and dismissed the indictment without prejudice against Orr. The court, in concluding that the state could not properly pursue the prosecution in either the adult or juvenile court, stated

[A]t the time of the alleged incident, the State did not want to punish 13-year-olds in adult court; that there — they were not subject to bindover and, for that reason, jurisdiction in this general division is inappropriate.

Without violating the ex post facto provisions of our U.S. and state constitutions, it would be improper for this Court then to also submit it back to juvenile court as the defendant is now not less than 21 years of age. So, it would be an act, a meaningless act, to send it back to the juvenile division because they lack jurisdiction  
\* \* \*

{¶5} The state now appeals, raising two assignments of error, both challenging the trial court's dismissal of the indictment.

{¶6} This court recently addressed the same issues raised in this appeal under similar facts in *State v. Webber*, 8th Dist. Cuyahoga No. 101875, 2015-Ohio-1953, where this court determined that the trial court properly dismissed Webber's motion to dismiss.<sup>1</sup>

{¶7} In *Webber*, the state indicted Webber for offenses that occurred in 1993 when he was 14 years old. The charges were brought after the victim's rape kit was submitted for DNA analysis, which implicated Webber. Webber

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<sup>1</sup>The state appealed this decision to the Ohio Supreme Court. *State v. Webber*, 2015-1119. The jurisdiction memorandums have been filed; the court has not accepted jurisdiction as of the date of this opinion.

moved to dismiss the indictment arguing that prosecuting him as an adult for crimes allegedly committed when he was 14 years old, violated the Due Process and the Ex Post Facto Clauses of the Ohio and United States Constitutions.

{¶8} This court determined that “[u]nder the law in effect at the time of the alleged offenses, Webber was not eligible to be bound over to the general division of the common pleas court for trial as an adult” because he was 14 years of age at the time of the alleged offenses. *Id.* at ¶ 11. Under the law at the time, a person under the age of 15 could not be subjected to prosecution as an adult in the general division of the common pleas court. *Id.* at ¶ 10.

Thus, Webber’s only concern would have been a juvenile adjudication. There was no possibility he could be tried as an adult, and this was not a matter of speculation. Further, he had no notice he could be tried as an adult. As the trial court aptly recognized at the hearing in this matter, at the time the underlying criminal conduct occurred, “the legislature did not intend to punish delinquents under the age of 15 in Common Pleas Court.” Additionally, application of the amended statutes would clearly impose a greater penalty than the juvenile law in effect at the time of the alleged conduct and impair Webber’s substantive rights.

*Id.* at ¶ 11.

{¶9} Accordingly, this court concluded that application of the current versions of R.C. 2152.02(C)(3) and 2152.12(J) to Webber would violate the Due Process and Ex Post Facto Clauses of the Ohio and United States Constitutions.

*Id.* at ¶ 11.



{¶10} In this case, Orr was 13 years old at the time the alleged offenses occurred. Therefore, just like Webber, Orr could not have been tried as an adult under the law in effect at the time of the offense and thus, any application of current laws would violate the Due Process and Ex Post Facto Clauses of the Ohio and United States Constitutions. On the authority of *Webber*, we affirm the trial court's decision. The state's first assignment of error is overruled.

{¶11} The state's second assignment of error contends that the trial court erred in dismissing the indictment without first transferring the case to juvenile court. The trial court determined that the juvenile court lacked jurisdiction over Orr because he was over the age of 21. We agree. See *Webber* at ¶ 13, citing *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203 ("juvenile courts have jurisdiction over adjudicated delinquents until they are 21 years old. The obvious flip side of that statement is that juvenile courts do not have jurisdiction over adjudicated delinquents once they are 21 years old"). Accordingly, the state's second assignment of error is overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

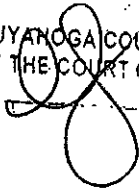
A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

*Kathleen Ann Keough*  
KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
MARY EILEEN KILBANE, J., CONCUR

FILED AND JOURNALIZED  
PER APP.R. 22(C)

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### Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

### Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II

### EXECUTIVE DEPARTMENT

#### Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or

Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes; then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

#### Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments,

**USCS Const. Amend. 14, USCS Const. Amend. 14, § 1**

Current through PL 114-156, approved 5/16/16

**United States Code Service - Constitution of the United States > CONSTITUTION OF THE UNITED STATES OF AMERICA > AMENDMENTS > AMENDMENT 14****Sec. 1. [Citizens of the United States.]**

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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.

UNITED STATES CODE SERVICE  
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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.**

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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**

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As amended September 3, 1912.

Page's Ohio Revised Code Annotated

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**Oh. Const. Art. II, § 28**

Current through 2015 Ohio Issues 1 and 2

**Page's Ohio Revised Code Annotated > CONSTITUTION OF THE STATE OF OHIO > Article II LEGISLATIVE****§ 28 Retroactive *laws*.**

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The general assembly shall have no power to pass retroactive *laws*, or *laws* impairing the obligation of contracts; but may, by general *laws*, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the *laws* of this state.

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**ORC Ann. 2152.02**

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 60 (SB 264) excluding file 57 (SB 182) and file 58 (HB 233).

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

**§ 2152.02 Definitions.**

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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

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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.



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- (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:

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- (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

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

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**ORC Ann. 2151.23**

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 60 (SB 264) excluding file 57 (SB 182) and file 58 (HB 233).

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

**§ 2151.23 Jurisdiction of juvenile court.**

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- (A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:
- (1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant;
  - (2) Subject to divisions (G), (K), and (V) of section 2301.03 of the Revised Code, to determine the custody of any child not a ward of another court of this state;
  - (3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;
  - (4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code;
  - (5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;
  - (6) To hear and determine all criminal cases in which an adult is charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of section 2919.23, or section 2919.24 of the Revised Code, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of section 2919.23, or section 2919.24 of the Revised Code;
  - (7) Under the interstate compact on juveniles in section 2151.56 of the Revised Code;
  - (8) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;
  - (9) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code;
  - (10) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code;
  - (11) Subject to divisions (G), (K), and (V) of section 2301.03 of the Revised Code, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code;
  - (12) Concerning an action commenced under section 121.38 of the Revised Code;
  - (13) To hear and determine violations of section 3321.38 of the Revised Code;

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- (14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child;
  - (15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code regarding a child who has been adjudicated a delinquent child and to refer the duties conferred upon the juvenile court judge under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code to magistrates appointed by the juvenile court judge in accordance with Juvenile Rule 40;
  - (16) To hear and determine a petition for a protection order against a child under section 2151.34 or 3113.31 of the Revised Code and to enforce a protection order issued or a consent agreement approved under either section against a child until a date certain but not later than the date the child attains nineteen years of age.
- (B) Except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, the juvenile court has original jurisdiction under the Revised Code:
- (1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;
  - (2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.18 of the Revised Code;
  - (3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code;
  - (4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state;
  - (5) To hear and determine an action commenced under section 3111.28 of the Revised Code;
  - (6) To hear and determine a motion filed under section 3119.961 of the Revised Code;
  - (7) To receive filings under section 3109.74 of the Revised Code, and to hear and determine actions arising under sections 3109.51 to 3109.80 of the Revised Code.
  - (8) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction pursuant to section 3127.32 of the Revised Code;
  - (9) To grant any relief normally available under the laws of this state to enforce a child custody determination made by a court of another state and registered in accordance with section 3127.35 of the Revised Code.
- (C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas with all the papers filed in the action to the juvenile court for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.
- (D) The juvenile court, except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children.

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- (E) The juvenile court, except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if the child comes within the jurisdiction of the juvenile court as defined by this section.
- (F)
- (1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04 and 3127.01 to 3127.53 of the Revised Code and, as applicable, sections 5103.20 to 5103.22 or 5103.23 to 5103.237 of the Revised Code.
  - (2) The juvenile court shall exercise its jurisdiction in child support matters in accordance with section 3109.05 of the Revised Code.
- (G) Any juvenile court that makes or modifies an order for child support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.
- (H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code, except as provided in section 2152.121 of the Revised Code, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, subject to section 2152.121 of the Revised Code, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.
- (I) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.
- (J) In exercising its exclusive original jurisdiction under division (A)(16) of this section with respect to any proceedings brought under section 2151.34 or 3113.31 of the Revised Code in which the respondent is a child, the juvenile court retains all dispositional powers consistent with existing rules of juvenile procedure and may also exercise its discretion to adjudicate proceedings as provided in sections 2151.34 and 3113.31 of the Revised Code, including the issuance of protection orders or the approval of consent agreements under those sections.

## History

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133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06; 152 v S 10, § 1, eff. 1-1-08; 152 v H 214, § 5, eff. 5-14-08; 153 v H 10, § 1, eff. 6-17-10; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2014 SB 43, § 1, eff. Sept. 17, 2014.

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**ORC Ann. 2152.12**

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 60 (SB 264) excluding file 57 (SB 182) and file 58 (HB 233).

**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.**

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(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:

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- (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.



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- (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.

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- (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

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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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(E) The juvenile court has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if such child comes within the jurisdiction of the court as defined by this section.

(F)(1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04, 3109.21 to 3109.36, and 5103.20 to 5103.28 of the Revised Code.

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

(G)(1) Each order for child support made or modified by a juvenile court on or after December 31, 1993, shall include as part of the order a general provision, as described in division (A)(1) of section 3113.21 of the Revised Code, requiring the withholding or deduction of wages or assets of the obligor under the order as described in division (D) of section 3113.21 of the Revised Code, or another type of appropriate requirement as described in division (D)(6), (D)(7), or (H) of that section, to ensure that withholding or deduction from the wages or assets of the obligor is available from the commencement of the support order for collection of the support and of any arrearages that occur; a statement requiring all parties to the order to notify the child support enforcement agency in writing of their current mailing address, their current residence address, and any changes in either address; and a notice that the requirement to notify the child support enforcement agency of all changes in either address continues until further notice from the court. Any juvenile court that makes or modifies an order for child support on or after April 12, 1990, shall comply with sections 3113.21 to 3113.219 of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(2) Notwithstanding section 3109.01 of the Revised Code, if a juvenile court issues a child support order under this chapter, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school. Any parent ordered to pay support under a child support order issued under this chapter shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates.

**HISTORY:** 1993 H 173, eff. 12-31-93  
1993 S 21; 1992 S 10; 1990 S 3, H 514, S 258, H 591;  
1988 S 89; 1986 H 428, H 509, H 476; 1984 H 614;  
1983 H 93; 1982 H 515; 1981 H 1; 1977 S 135; 1976 H  
244; 1975 H 85; 1970 H 931; 1969 H 320

#### 2151.231 Action for child support order

The parent, guardian, or custodian of a child may bring an action in a juvenile court under this section requesting the court to issue an order requiring a parent of the child to

pay an amount for the support of the child without regard to the marital status of the child's parents.

**HISTORY:** 1992 S 10, eff. 7-15-92

#### 2151.24 Separate room for hearings

The board of county commissioners shall provide a special room not used for the trial of criminal or adult cases, when available, for the hearing of the cases of dependent, neglected, abused, and delinquent children.

**HISTORY:** 1975 H 85, eff. 11-28-75  
1953 H 1; GC 1639-14

### PRACTICE AND PROCEDURE

#### 2151.25 Transfer to juvenile court

When a child is arrested under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, proceedings regarding such child shall be initially in the juvenile court in accordance with this chapter. If the child is taken before a judge of a county court, mayor, judge of the municipal court, or judge of the court of common pleas other than a juvenile court, such judge of a county court, mayor, judge of the municipal court, or judge of the court of common pleas shall transfer the case to the juvenile court, whereupon proceedings shall be in accordance with this chapter. Upon such transfer all further proceedings under the charge, complaint, information, or indictment shall be discontinued in the court of said judge of a county court, mayor, municipal judge, or judge of the court of common pleas other than a juvenile court, and the case relating to such child shall thenceforth be within the exclusive jurisdiction of the juvenile court.

**HISTORY:** 1975 H 205, eff. 1-1-76  
1969 H 320; 129 v 582; 1953 H 1; GC 1639-29

#### 2151.26 Relinquishment of jurisdiction for purpose of criminal prosecution

(A)(1) Except as provided in division (A)(2) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would constitute a felony if committed by an adult, the court at a hearing may transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, after making the following determinations:

(a) The child was fifteen years of age or older at the time of the conduct charged;

(b) There is probable cause to believe that the child committed the act alleged;

(c) After an investigation, including a mental and physical examination of the child made by a public or private agency or a person qualified to make the examination, and after consideration of all relevant information and factors, including any fact required to be considered by division (B)(2) of this section, that there are reasonable grounds to believe that:

(i) He is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children;

(ii) The safety of the community may require that he be placed under legal restraint, including, if necessary, for the period extending beyond his majority.

(2) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would constitute aggravated murder or murder if committed by an adult, the court at a hearing shall transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, if the court determines at the hearing that both of the following apply:

(a) There is probable cause to believe that the child committed the alleged act.

(b) The child previously has been adjudicated a delinquent child for the commission of an act that would constitute aggravated murder or murder if committed by an adult.

(B)(1) The court, when determining whether to transfer a case pursuant to division (A)(1) of this section, shall determine if the victim of the delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the act and whether the act alleged, if actually committed, would be an offense of violence, as defined in section 2901.01 of the Revised Code, if committed by an adult. Regardless of whether or not the child knew the age of the victim, if the court determines that the victim was sixty-five years of age or older or permanently and totally disabled, that fact shall be considered by the court in favor of transfer, but shall not control the decision of the court. Additionally, if the court determines that the act alleged, if actually committed, would be an offense of violence, as defined in section 2901.01 of the Revised Code, if committed by an adult, that fact shall be considered by the court in favor of transfer, but shall not control the decision of the court.

(2)(a) As used in division (B)(2)(b) of this section, "foreign jurisdiction" means any state other than this state, any foreign country or nation, or any province, territory, or other political subdivision of any foreign country or nation.

(b) The court, when determining whether to transfer a case pursuant to division (A)(1) of this section, shall determine whether the child is domiciled in this state or in a foreign jurisdiction and, if the child is domiciled in a foreign jurisdiction, whether the law of that foreign jurisdiction would subject him to criminal prosecution as an adult for the alleged act without the need for any transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court if that act had been committed in that foreign jurisdiction. If the court determines that the child is domiciled in a foreign jurisdiction and that, if the alleged act had been committed in that foreign jurisdiction, the law of that foreign jurisdiction would subject him to criminal prosecution as an adult for that act without the need for any transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court, the court shall consider that fact, along with all other relevant information and factors, in determining whether there are reasonable grounds to believe that the child is not amenable to care or rehabilitation or further care or rehabilitation, as described in division (A)(1)(c)(i) of this section, and whether there are reasonable grounds to believe that the safety of the community may require that the child be placed under legal restraint, as described in division (A)(1)(c)(ii) of this section.

(C) The child may waive the examination required by division (A)(1)(c) of this section, if the court finds the waiver competently and intelligently made. Refusal to sub-

mit to a mental and physical examination by the child constitutes waiver of the examination.

(D) Notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) of this section shall be given to the child's parents, guardian, or other custodian and his counsel at least three days prior to the hearing.

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

(F) Upon such transfer, the juvenile court shall state the reasons for the transfer and order the child to enter into a recognizance with good and sufficient surety for his appearance before the appropriate court for any disposition that the court is authorized to make for a like act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint.

(G) Any child whose case is transferred for criminal prosecution pursuant to this section and who subsequently is convicted in that case thereafter shall be prosecuted as an adult in the appropriate court for any future act that he is alleged to have committed that if committed by an adult would constitute the offense of murder or aggravated murder, or would constitute an aggravated felony of the first or second degree or a felony of the first or second degree.

HISTORY: 1991 H 27, eff. 10-10-91

1986 H 499; 1983 S 210; 1981 H 440; 1978 S 119; 1971 S 325; 1969 H 320

### 2151.27 Complaint

(A) Any person having knowledge of a child who appears to be a juvenile traffic offender or to be a delinquent, unruly, abused, neglected, or dependent child, may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement, or in which the traffic offense, delinquency, unruliness, abuse, neglect, or dependency allegedly occurred. If an alleged abused, neglected, or dependent child is taken into custody pursuant to division (D) of section 2151.31 of the Revised Code, or is taken into custody pursuant to division (A) of section 2151.31 of the Revised Code without the filing of a complaint and placed into shelter care pursuant to division (C) of section 2151.31 of the Revised Code, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child was taken into custody. The sworn complaint may be upon information and belief, and in addition to the allegation that the child is a delinquent, unruly, abused, neglected, or dependent child or a juvenile traffic offender, the complaint shall allege the particular facts upon which the allegation that the child is a delinquent, unruly, abused, neglected, or dependent or a juvenile traffic offender is based.

(B) If a child, before arriving at the age of allegedly commits an act for which he may be a delinquent child, unruly child, or a juvenile and if the specific complaint alleging the act hearing on that specific complaint is not held