IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2017-87
Plaintiff-Appellee,	:	
	:	On Appeal from the Hamilton
v.	:	County Court of Appeals, First
	:	Appellate District, Case No. C-150752
ANTHONY CARNES,	:	
	:	
Defendant-Appellant.	:	

ANTHONY CARNES'S MERIT BRIEF

JOSEPH DETERS #0012084
Hamilton County Prosecutor

SCOTT HEENAN #0075734
Asst. Prosecutor

230 East 9th Street – Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
(513) 946-3021 – Fax

COUNSEL FOR STATE OF OHIO

OFFICE OF THE
OHIO PUBLIC DEFENDER

PETER GALYARDT #0085439
Asst. Ohio Public Defender

250 East Broad Street – Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
peter.galyardt@opd.ohio.gov

COUNSEL FOR ANTHONY CARNES

JUVENILE LAW CENTER,
AMICUS CURIAE

RIYA SHAH
1315 Walnut Street – Suite 400
Philadelphia, Pennsylvania 19107
(215) 625-0551
(215) 625-2808 – Fax
rshah@jlc.org

WINSTON & STRAWN LLP

SAMUEL PARK
JOHN DROSICK
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600
(312) 558-5700 – Fax
spark@winston.com
jdrosick@winston.com

COUNSEL FOR
JUVENILE LAW CENTER

BUCKEYE FIREARMS ASSOCIATION,
AMICUS CURIAE

RONALD LEMIEUX #0093536
Buckeye Firearms Association Attorney

38109 Euclid Avenue
Willoughby, Ohio 44094
(440) 946-5297
(440) 946-0644 – Fax
ronlemieuxesq@gmail.com

COUNSEL FOR
BUCKEYE FIREARMS ASSOCIATION

TABLE OF CONTENTS

Page No.

TABLE OF CONTENTS

Page No.

APPENDIX: (cont'd)

TABLE OF AUTHORITIES

Page No.

CASES:

TABLE OF AUTHORITIES

Page No.

CASES: (cont'd)

CONSTITUTIONAL PROVISIONS:

TABLE OF AUTHORITIES

Page No.

CONSTITUTIONAL PROVISIONS: (cont'd)

STATUTES:

TABLE OF AUTHORITIES

Page No.

RULES:

INTRODUCTION

Because children are not adults, Ohio created a unique juvenile-justice system with fundamentally different purposes, goals, and processes from those of the adult system. One major distinction is that there is traditionally no right to a jury trial in the juvenile system. Consistent with the purposes, goals, and processes of the juvenile system, and applying various legal and constitutional principles, this Court has molded protections for children that are not available to adults. Those protections impact subsequent conduct when the overriding principles demand. In essence, those who have engaged in youthful indiscretions are to be rehabilitated, and when they become adults their childhood conduct does not follow them. Simply put, juvenile adjudications are not criminal convictions and should not be viewed as such. This conclusion is reinforced by the fact that Ohio's juvenile system uses two different approaches, one mandatory and one discretionary, to transfer its most severe offenders into the adult system, and has a process to include an adult sentence with a juvenile rehabilitation for the next most serious level of offenders. In line with that approach, this Court has prohibited juvenile adjudications from increasing punishment for subsequent adult conduct. Given that framework, it is incongruous for such adjudications to be permitted to turn what would otherwise be lawful conduct into a crime. Thus, a juvenile adjudication should not be deemed to meet an element of an offense charged against an adult.

STATEMENT OF THE CASE AND FACTS

Anthony Carnes moved to dismiss his weapon-under-disability charge because his disability was his 1994 juvenile adjudication,[1] and that disability was an element of the offense he allegedly committed as an adult. *See State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019, ¶ 2. The trial court denied his request, and that denial was upheld on appeal. *Id.*; *see also id.* at ¶ 14-16. Solely because of his indiscretion as a 17-year old, Mr. Carnes—now 40 years old—is currently serving a two-and-a-half-year prison sentence for possessing a legal item. *Id.* at ¶ 2. In other words, but for the conduct that he committed nearly 20 years prior as a child, Mr. Carnes did not commit a crime as an adult. *See id.*

ARGUMENT

The decision below, which permits a juvenile adjudication to meet an element of an offense charged for conduct committed as an adult, is incompatible with both Ohio's juvenile-justice system and this Court's precedent on that system.

PROPOSITION OF LAW

Juvenile adjudications cannot satisfy elements of an offense committed as an adult. Fifth, Sixth, and Fourteenth Amendments, United States Constitution; Article I, Sections 5 and 16, Ohio Constitution. *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448; *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156; *Alleyne v. United States*, 570 U.S. ___, 133 S.Ct. 2151,

[1] The adjudication was for the equivalent of felonious assault, which was charged based upon a fight between teenagers at a mall during which Mr. Carnes punched someone in the mouth, resulting in damaged teeth. *See State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019, ¶ 2; *see also* Trial Tr. 299-303.

186 L.Ed.2d 314 (2013); *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

Because "a juvenile adjudication is not a conviction of a crime and should not be treated as one," it cannot properly serve as an element of an offense charged against an adult.[2] *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 38.

I. Children are not adults.

There is a massive movement in the law recognizing what science and experience teach—that children are, and must be treated, different than adults. *See* Juvenile Law Center Amicus Brief; *see also Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127; *Hand*, 2016-Ohio-5504; *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156; *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890; *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729.

---

[2] This Court's decision is profoundly rationale and sound when considered in the context of the hierarchy of juvenile offenders in Ohio. There are four categories of such offenders: (1) those who *must* be transferred to the adult system (mandatory bindover), (2) those who *may* be transferred to the adult system (discretionary bindover), (3) those who stay in the juvenile system but receive an adult sentence that may be later invoked based upon institutional conduct (serious youthful offenders), and (4) those who remain solely in the juvenile system. *See infra*, at fn. 5. The *Hand* decision applies only to those that fit into category 4, either initially at the charging stage, or through juvenile-court-amenability determinations (category 2) and subsequent appropriate offender behavior in an institutional setting (category 3), that allows the juvenile to qualify for category 4 based upon merit (amenability or favorable conduct in an institution).

II. Ohio created a unique juvenile-justice system with fundamentally different purposes and goals from those of the adult system.

This Court has highlighted the drastic differences between Ohio's juvenile-justice system and its adult system. *See In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 177, ¶ 65-75; *see also* Juvenile Law Center Amicus Brief. "The juvenile system's purpose [is] 'to combine flexible decision-making with individualized intervention to treat and rehabilitate offenders rather than punish offenses.'" (Citation omitted.) *Hand*, 2016-Ohio-5504, at ¶ 35. To accomplish that overriding purpose, Ohio's juvenile system "eschew[s] traditional, objective criminal standards and retributive notions of justice," and remains "'an uneasy partnership of law and social work.'" (Citations omitted.) *In re C.S.* at ¶ 66, 75. In other words, its end result is a true *alternative* to criminal conviction—one with the purpose of molding a child's development and future not through punishment, but rather treatment and intervention. *See In re Caldwell*, 76 Ohio St.3d 156, 157, 666 N.E.2d 1367 (1996). That is so because children are simply not as culpable for their actions as adults. *See generally Graham*, *Miller*, *Moore*, *Hand*. As such, the juvenile system is fundamentally "designed to shield children from stigmatization based upon the bad acts of their youth." *In re C.P.*, 2012-Ohio-1446, ¶ 63. From that foundation comes the system's keystone of fundamental fairness,[3] which is an

[3] This foundation creates what some may perceive to be a paradox: the diminished procedural safeguards of the juvenile-justice system, necessary to facilitate the primary purpose of rehabilitation through treatment and intervention within the juvenile system, result in unfairness if a rehabilitated juvenile's youthful conduct is later attempted to be used against them in the punitive adult system. *See Hand*, 2016-Ohio-5504, at ¶ 35, 38; *see also Bode*, 2015-Ohio-1519, at syllabus.

"uncertain" prerequisite "as opaque as its importance is lofty." (Citation omitted.) *See id*. at ¶ 80; *see also Hand* at ¶ 37. Consequently, the specific circumstances at issue wholly control. *See In re C.P.* at ¶ 80; *see also Hand* at ¶ 12.

Given these foundations, juvenile adjudications should not be deemed to meet elements of an offense charged against an adult because, in this context, the adult conduct in question was legal but for the youthful indiscretion. That reality grounds these situations in Ohio's juvenile-justice system.[4] And that system, which aims to wipe the slate clean, does not support the retention of future consequences attached to a distant juvenile adjudication. *See In re Caldwell* at 157. If it did, then youthful indiscretions, in effect, would lie in wait to negatively impact a rehabilitated youth's life years later, which this Court has expressly identified as inappropriate. *See id*. Indeed, harboring such resentments is entirely inconsistent with the core tenets of the system.[5] *See In Re C.P.* at ¶ 63; *see also In re C.S.*, 2007-Ohio-4919, at ¶ 65-75, 80. For that reason, this Court has required the juvenile system's rehabilitative emphasis to extend beyond the age of majority when appropriate. *See In re C.P.* at ¶ 85; *see also Hand* at ¶ 38.

---

[4] Importantly, that system does not provide the right to a jury trial because of its focus on rehabilitation rather than punishment. *Hand* at ¶ 36.

[5] This is especially true because Ohio's juvenile system has three built-in mechanisms—mandatory bindover, discretionary bindover, and serious-youthful-offender blended sentences—to bridge the most egregious and dangerous juvenile offenders to the adult system. *See generally* R.C. 2152.10; R.C. 2152.11; R.C. 2152.12; R.C. 2152.13; R.C. 2152.14; Juv.R. 30; *see also State v. Aalim*, 150 Ohio St.3d 463, 2016-Ohio-8278, ___ N.E.3d ___, ¶ 7 (*Aalim I)*; *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, ___ N.E.3d ___, ¶ 38 (*Aalim II*); *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11-12, 15.

III. This Court's decisions in *Bode* and *Hand*, grounded in fundamental fairness, demand that juvenile adjudications cannot satisfy elements of an offense committed as an adult.

This Court has consistently limited the use of juvenile adjudications in adult prosecutions. In *Bode*, this Court held that a juvenile adjudication cannot enhance a penalty for criminal conduct committed as an adult "when the adjudication carried the possibility of confinement," "was uncounseled," and "there was no effective waiver of the right to counsel." *Bode* at syllabus. In *Hand*, this Court held that a juvenile adjudication, without regard to whether it was counseled or uncounseled, may not be used to enhance the degree of or the sentence for a subsequent adult criminal offense, because it is "fundamentally unfair to allow juvenile adjudications that result from * * * less formal proceedings to be characterized as criminal convictions that may later enhance adult punishment." *Hand* at ¶ 35.

In theory and practice, the appropriate considerations applied to the elements-of-a-crime analysis implicated here are even stronger than those identified in the enhanced-punishment context in *Bode* and *Hand*. The Supreme Court of the United States has ruled that "[t]he touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense." *Alleyne v. United States*, 570 U.S. ___, 133 S.Ct. 2151, 2158, 186 L.Ed.2d 314 (2013), quoting *United States v. O'Brien*, 560 U.S. 218, 130 S.Ct. 2169, 176 L.Ed.2d 979 (2010). And this Court has expressly held that "a juvenile adjudication is not a conviction of a crime and should not be

treated as one." *Hand* at ¶ 38. Under those circumstances, it is incongruous to permit juvenile adjudications to constitute an "essential predicate" for a crime committed as an adult where the juvenile adjudication produces "a loss of liberty itself," but to prohibit said adjudication from enhancing punishment for a crime committed as an adult, as occurred in *Hand*. *See Carnes*, 2016-Ohio-8019, at ¶ 19 (Cunningham, P.J., dissenting).[6] That baseline objection is comparable to that of the dissenting opinion in the court of appeals' decision in *Hand*. There, the dissent highlighted the following concerns surrounding an approach that equates a juvenile adjudication with a criminal conviction:

> (1) the different purposes of a juvenile adjudication and the juvenile-justice system as a whole, (2) the prevalence of pleas in the juvenile system, (3) the lack of a jury trial in juvenile proceedings, (4) the difficulty juveniles face to

[6] Numerous other judges around Ohio have also dissented using the same rationale and adding to it to varying degrees. In short, the dissenting judges highlight: (1) the incompatible nature of prohibiting enhanced punishment due to a juvenile adjudication but permitting legal conduct to be transformed into illegal conduct based upon one, (2) the juvenile system versus adult system distinctions, (3) the fact that there is no potential for a jury trial in the juvenile system, and (4) the fact that there is no constitutional distinction between facts to prove an enhanced punishment vis-à-vis those to prove an element. *See State v. McCray*, 1st Dist. Hamilton No. C-160272, 2017-Ohio-2996, ¶ 72 (Zayas, P.J., dissenting in part) (same rationale as Judge Cunningham in *Carnes*); *State v. Jackson*, 2d Dist. Montgomery No. 27351, 2017-Ohio-4197, ¶ 12-13 (Donovan, J., dissenting) (same rationale as Judge Cunningham in *Carnes* with a notable emphasis on the juvenile vs. adult conduct distinction); *State v. Boyer*, 2d Dist. Clark No. 2016-CA-63, 2017-Ohio-4199, ¶ 17-18 (Donovan, J., dissenting) (same as *Jackson*); *State v. Williams*, 10th Dist. Franklin No. 16AP-540, 2017-Ohio-5598, ¶ 66-69 (Horton, J., dissenting in part) (applying *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Alleyne*, 133 S.Ct. 2151, to find no constitutional "distinction between facts that enhance punishment and those that prove an element of an offense"); *State v. Brown*, 10th Dist. Franklin No. 16AP-753, 2017-Ohio-7134, ¶ 56-59 (Horton, J., dissenting in part) (same as *Williams*).

> meaningfully participate in a process they do not fully understand and do not control, and (5) the lack of zealous advocacy in juvenile proceedings.

(Citations omitted.) *State v. Hand*, 2d Dist. Montgomery No. 25840, 2014-Ohio-3838, ¶ 11 (Donovan, J., dissenting). Ultimately, this Court found those concerns dispositive when it explicitly held that juvenile adjudications are not criminal convictions. *See Hand*, 2016-Ohio-5504, at ¶ 38.

IV. Ohio's Constitution can offer greater protection and should here if the federal Constitution does not require the application of *Bode* and *Hand*.

Because the Ohio Constitution is a "document of independent force," this Court has full "autonomy under [it] to afford [Ohioans] greater rights than those secured by the federal Constitution." *Arnold v. Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993), paragraph one of the syllabus; *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 20. Simply stated, the federal Constitution operates solely as "a floor below which [Ohio] court decisions may not fall." *Arnold* at paragraph one of the syllabus. Thus, this Court has interpreted the Ohio Constitution to offer greater protection than that of the federal Constitution when necessary. *See Bode*, 2015-Ohio-1519, at ¶ 23, 28-29; *see also Mole* at ¶ 23; *In re A.G.*, 148 Ohio St.3d 118, 2016-Ohio-3306, 69 N.E.3d 646, ¶ 11-13; *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, ¶ 23; *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶ 48; *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, syllabus. For all of the reasons detailed in Parts I-

III,[7] if the federal Constitution does not prohibit the use of juvenile adjudications to satisfy elements of an offense committed as an adult, greater protection is necessary here. *See Bode* at ¶ 23, 28-29; *see also Hand*, 2016-Ohio-5504, at ¶ 38; *State v. Morgan*, Slip Opinion No. 2017-Ohio-7565, ¶ 62-70, (O'Connor, C.J., dissenting).

V. The civil-based statutory disabilities, and constitutional applications solely within an adult context, are false equivalencies.

A. The civil-based statutory disabilities.

It is false to suggest that the juvenile-adjudication disability predicates in R.C. 2923.13(A) are more akin to the purely civil disability predicates delineated in that section. *See Boyer*, 2017-Ohio-4199, ¶ 10. The plain language of the statute disproves such a claim. Juvenile adjudications are referenced twice in R.C. 2923.13(A), and both times they are directly equated with an adult felony conviction. *See* R.C. 2923.13(A)(2) (establishing a disability for a juvenile who "has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence"); *see also* R.C. 2923.13(A)(3) (establishing a disability for a juvenile who "has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse"). Moreover, even if the equivalency somehow holds, none of the other identified civil-based statutory

[7] Two warrant reinforcement: (1) the fundamental-fairness focus of this state's juvenile system that does not offer trial by jury, and (2) the incongruity of prohibiting enhanced punishment because of a juvenile adjudication, but permitting legal conduct to be criminalized because of one.

disabilities flow out of Ohio's juvenile-justice system, and none are equated to adult criminal conduct in definition. *See* R.C. 2923.13(A)(4) and (5).

B. *Lewis v. United States*, 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980).

Any constitutional refusal to apply *Bode* and *Hand* to elements of offenses—like the decision below—would rest in large part on *Lewis* and its rationale. *See Carnes*, 2016-Ohio-8019, at ¶ 13-14. But all of the criminal conduct in *Lewis* was committed as an adult. *See Lewis* at 56-57, 66-67. Thus, its holding—that the reliability and constitutionality of an adult conviction that institutes a firearm disability is not constitutionally significant under the federal Constitution—is of no value here.[8] Adult predicate conduct and the adult criminal-justice system are not at issue in this case. Rather, Ohio's juvenile-justice system, with its focus on fundamental fairness with no possibility of trial by jury[9] and its desire to rehabilitate retrospectively and relieve prospectively, is the salient consideration here. *See generally Hand*, 2016-Ohio-5504, at ¶ 35, 37-38. That consideration removes juvenile-predicate conduct from the desire of disability

---

[8] It is noteworthy, as this Court has stressed, that "the jury-trial right is not primarily focused on the reliability of the jury's conclusions drawn from the facts, but rather on preventing the state from drawing conclusions from the facts without using a jury." *Hand*, 2016-Ohio-5504, at ¶ 33.

[9] Additional distinguishing features of Ohio's juvenile system are worth mentioning. *See* Juvenile Law Center Amicus Brief. In this context, at minimum, three are significant. First, the different counsel-waiver standard. *See In re C.S.*, 2007-Ohio-4919, at paragraphs three, four, five, and six of the syllabus. Second, parents must receive notice. *See generally* Juv.R. 7(F)(1) and (G); Juv.R. 30(D). And, third, *guardian ad litem* requirements. *See generally Morgan*, 2017-Ohio-7565, ¶ 2; R.C. 2151.281(A)(1); Juv.R. 4(B)(1).

prohibitions "to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." (Citations omitted.) *Lewis* at 63; *see also* R.C. 2923.13(A). Indeed, by definition, rehabilitated juveniles no longer qualify under that blanket concern.[10] *See In re Caldwell*, 76 Ohio St.3d at 157; *see also In re C.P.*, 2012-Ohio-1446, at ¶ 63.

VI. Because the statutory-relief mechanism is not accompanied by adequate notice, it is not particularly effective, let alone dispositive of the issue herein.

It is true that a statute allows for one to apply to the court of common pleas for relief from a disability. *See* R.C. 2923.14; *see also Boyer*, 2017-Ohio-4199, at ¶ 14. Importantly, the potential relief is both fully discretionary and subject to prosecutor objections. *See* R.C. 2923.14(C) and (D); *see also State v. Lerch*, 4th Dist. Washington No. 15-CA-39, 2016-Ohio-2791, ¶ 12, 20-22. Regardless, research shows that there is no notice of this plausible relief at any stage of Ohio's juvenile-justice system. Not through the courts. Not through the Ohio Department of Youth Services. Nowhere. *See generally* Juv.R. 29; R.C. 5139.18; R.C. 5139.38; R.C. 5139.50; R.C. 5139.51; R.C. 5139.52; R.C. 5139.56. Accordingly, nothing about the relief mechanism satisfies the purposes, goals, and processes—especially fundamental fairness—of the juvenile system. As such, it should not operate as an influential, let alone dispositive, factor in this case.

---

[10] This is particularly true here, where Mr. Carnes's criminal conduct as a juvenile was a mere fist fight, the garden-variety, stereotypical indiscretion attributable to youth. *See* Trial Tr. 299-303; *see also* fn. 5, *supra* (describing how Ohio's system transfers the most dangerous juvenile offenders to the adult system, and includes an adult sentence for the next most serious level of juvenile offenders).

CONCLUSION

A juvenile adjudication must not be deemed to meet an element of an offense charged against an adult. As set forth above, this Court's precedent leads inexorably to that conclusion.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER

/s/Peter Galyardt
PETER GALYARDT #0085439
Asst. Ohio Public Defender

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
peter.galyardt@opd.ohio.gov

COUNSEL FOR ANTHONY CARNES

CERTIFICATION OF SERVICE

A copy of this **Merit Brief** was forwarded by regular U.S. mail to Scott Heenan, Asst. Prosecutor, Hamilton County Prosecutor's Office, 230 East 9th Street, Suite 4000, Cincinnati, Ohio 45202, Riya Shah, Juvenile Law Center, 1315 Walnut Street, Suite 400, Philadelphia, Pennsylvania 19107, Samuel Park and John Drosick, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, Illinois 60601, and Ronald Lemieux, Buckeye Firearms Association Attorney, 38109 Euclid Avenue, Willoughby, Ohio 44094, on this 28th day of November, 2017.

/s/Peter Galyardt
PETER GALYARDT #0085439
Asst. Ohio Public Defender

COUNSEL FOR ANTHONY CARNES

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2017-87
Plaintiff-Appellee,	:	
	:	On Appeal from the Hamilton
v.	:	County Court of Appeals, First
	:	Appellate District, Case No. C-150752
ANTHONY CARNES,	:	
	:	
Defendant-Appellant.	:	

APPENDIX TO

ANTHONY CARNES'S MERIT BRIEF

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Plaintiff-Appellee, vs. ANTHONY CARNES, Defendant-Appellant.	: : : : : : : : :	Case No. On Appeal from the Hamilton County Court of Appeals First Appellate District C.A. Case No. C-150752

APPELLANT ANTHONY CARNES'S NOTICE OF APPEAL

JOSEPH DETERS #0012084
Hamilton County Prosecutor

SCOTT HEENAN #0075734
Assistant Prosecutor
(COUNSEL OF RECORD)

230 East 9th Street
Suite 4000
Cincinnati, Ohio 45202
(513) 946-3000
(513) 946-3105 – Fax

COUNSEL FOR STATE OF OHIO

OFFICE OF THE OHIO PUBLIC DEFENDER

PETER GALYARDT #0085439
Assistant State Public Defender
(COUNSEL OF RECORD)

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
E-mail: peter.galyardt@opd.ohio.gov

COUNSEL FOR ANTHONY CARNES

APPELLANT ANTHONY CARNES'S NOTICE OF APPEAL

Appellant, Anthony Carnes, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First Appellate District, entered in Court of Appeals Case No. C-150752, on December 7, 2016.

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

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

/s/Peter Galyardt
PETER GALYARDT #0085439
Assistant State Public Defender
(COUNSEL OF RECORD)

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
E-mail: peter.galyardt@opd.ohio.gov

COUNSEL FOR ANTHONY CARNES

CERTIFICATE OF SERVICE

A copy of this **Notice of Appeal** was sent by regular U.S. mail to Scott Heenan, Assistant Prosecutor, Hamilton County Prosecutor's Office, 230 East 9th Street, Suite 4000, Cincinnati, Ohio 45202, on this 18th day of January, 2017.

/s/Peter Galyardt
PETER GALYARDT #0085439
Assistant State Public Defender
(COUNSEL OF RECORD)

COUNSEL FOR ANTHONY CARNES

#477226

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-150752 TRIAL NO. B-1301227
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
ANTHONY CARNES,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs are taxed under App. R. 24.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on December 7, 2016 per Order of the Court.

By: _____
Presiding Judge

ENTERED
DEC 07 2016

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-150752 TRIAL NO. B-1301227
Plaintiff-Appellee,	:	
vs.	:	*OPINION.*
ANTHONY CARNES,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 7, 2016

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Edward Felson, for Defendant-Appellant.

STAUTBERG, Judge.

{¶1} The main issue presented in this appeal is whether a prior uncounseled juvenile adjudication that carried the possibility of confinement and that was obtained without an effective waiver of counsel can later be used by the state to prove the "disability" element in R.C. 2923.13(A)(2). The answer is yes.

{¶2} Defendant-appellant Anthony Carnes was indicted for having a weapon while under a disability ("WUD"), in violation of R.C. 2923.13(A)(2). Carnes's "disability" was a 1994 juvenile adjudication for an offense that would have constituted felonious assault had Carnes been an adult. Prior to trial, Carnes moved the court to dismiss his indictment. He argued that his adjudication could not be used by the state to prove the disability element of the WUD charge because Carnes had not been represented by counsel at his adjudication and because, according to Carnes, his waiver of counsel had been invalid. Along with his motion to dismiss, Carnes submitted to the court the certified record of his 1994 juvenile court proceedings. The trial court overruled Carnes's motion on the ground that Carnes's waiver of counsel had been valid. Carnes was later found guilty. The trial court sentenced him to 30 months' incarceration and costs. This appeal followed.

The Propriety of Carnes's Motion to Dismiss His Indictment

{¶3} At the outset, we must determine whether Carnes properly raised his argument in the trial court. The state contends that, regardless of the merits of Carnes's appeal, Carnes's motion to dismiss was properly denied because his motion went beyond the indictment itself, and relied upon the record from his 1994 juvenile court proceedings. The state cites our opinion in *State v. Scott*, 174 Ohio App.3d 446, 2007-Ohio-7065, 882 N.E.2d 500 (1st Dist.), in support of its position.

{¶4} In *Scott*, codefendants Varian Scott and Corey Troupe moved to dismiss their indictment on the grounds that the state could not prove that Scott and Troupe had trafficked in cocaine, and also could not prove the accompanying major

drug offender specifications. The defendants and the state stipulated to the fact that the "drugs" at issue did not contain cocaine. The trial court granted Scott and Troupe's motion. We reversed. We held that a motion to dismiss an indictment that challenged the sufficiency of the state's case was not a proper pretrial motion. *Scott* at ¶ 11. Our holding was based on our application of Crim.R. 12(C), which provides that "[p]rior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue." Scott and Troupe's motion challenged the sufficiency of the state's evidence—a "general issue" to be determined at trial. *Scott* at ¶ 8-9. We therefore held that the motion was improper under Crim.R. 12, and that the court should not have considered any evidence when ruling on the motion. *Scott* at ¶ 8-10; *see State v. Moore*, 1st Dist. Hamilton No. C-130170, 2013-Ohio-5613; *State v. Hoskins*, 1st Dist. Hamilton No. C-090710, 2010-Ohio-2454; *State v. Love*, 1st Dist. Hamilton No. C-080184, 2008-Ohio-6833. In *Scott*, we further held that Scott and Troupe's motion was improper as it was akin to a motion for summary judgment, which is not provided for in the Rules of Criminal Procedure. *Scott* at ¶ 9.

{¶5} *Scott* does not apply in this case. Here, Carnes was collaterally attacking the adjudication that formed the "disability" element of his WUD charge. Whether Carnes had validly waived his right to counsel in 1994 was not a "general issue for trial" on his WUD charge. And the Ohio Supreme Court has held that "Crim.R. 12 permits a court to consider evidence beyond the face of an indictment when ruling on a pretrial motion to dismiss an indictment if the matter is capable of determination without trial of the general issue." *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 3; *see* Crim.R. 12(F) (allowing the court to consider affidavits, testimony, and exhibits); *State v. Knox*, 8th Dist. Cuyahoga Nos. 103662 and 103664, 2016-Ohio-5519, ¶ 13-17 (where a motion to dismiss an

indictment does not require a trial of the general issue, a trial court may consider evidence beyond the four corners of the indictment).

{¶6} Because Carnes's pretrial motion to dismiss his indictment was capable of determination without trial of the general issue, the trial court properly considered evidence aside from the indictment itself when ruling on the motion.

The Merits of Carnes's Motion

{¶7} In one assignment of error, Carnes contends that the trial court erred in failing to dismiss his indictment. We review this argument de novo. *State v. Thompson*, 1st Dist. Hamilton No. C-130053, 2013-Ohio-2647, ¶ 4.

{¶8} Carnes argues that the state should have been precluded from using his uncounseled 1994 juvenile adjudication to prove the "disability" element of his WUD charge because, according to Carnes, he had not validly waived his right to counsel in the 1994 case. We need not reach the issue of whether there was a valid waiver, however, because Carnes's motion failed as a matter of law.

{¶9} Carnes relies in large part on *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, in support of his argument that his motion to dismiss should have been granted. In *Bode*, the Ohio Supreme Court held that "an adjudication of delinquency may not be used under R.C. 4511.19(G)(1)(d) to enhance the penalty for a later offense when the adjudication carried the possibility of confinement, the adjudication was uncounseled, and there was no effective waiver of the right to counsel." *Id.* at syllabus. Carnes essentially argues that *Bode* should be extended to prohibit the use of an uncounseled adjudication obtained without a valid waiver to prove any element of a crime, not just one that enhances punishment. I do not read *Bode* so broadly.

{¶10} The underpinnings of the *Bode* decision can be traced to the protections afforded to criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution. In *Argersinger v. Hamlin*, 407 U.S.

25, 37, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), the United States Supreme Court held that the Sixth Amendment right to counsel, as applicable to the states through the Fourteenth Amendment, included a guarantee that, "absent a knowing and intelligent waiver [of the right to counsel], no person may be imprisoned for any offense * * * unless he was represented by counsel at his trial." The *Argersinger* Court reasoned that unless a defendant had "the guiding hand of counsel," his trial may not have had sufficient guarantees of fairness to support the severe sanction of imprisonment. *Id.* at 36-40. A few years later, in *Scott v. Illinois*, 440 U.S. 367, 373-374, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), the Court held that the Sixth and Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the state afforded him the right to counsel. Citing *Argersinger* and *Scott*, in *Baldasar v. Illinois*, 446 U.S. 222, 226, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980), Justice Marshall, writing for a plurality of the Court, determined that "a conviction which is invalid for purposes of imposing a sentence of imprisonment for the offense itself remains invalid for purposes of increasing a term of imprisonment for a subsequent conviction." *Id.* at 228. The Supreme Court later overruled *Baldasar*, but held that an uncounseled prior conviction could be used to enhance a penalty only if the conviction was valid under *Scott*. *See Nichols v. United States*, 511 U.S. 738, 749, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994). In *Nichols*, Justice Souter in his separate concurrence opined that an uncounseled conviction without a valid waiver of counsel was not reliable enough to support the severe sanction of imprisonment. *Id.* at 750 (Souter, J., concurring in judgment).

{¶11} Based on this line of cases, the Ohio Supreme Court has held similarly. *See State v. Brandon*, 45 Ohio St.3d 85, 87, 543 N.E.2d 501 (1989) (holding that a trial court could not use a prior uncounseled conviction, obtained without a valid waiver, to enhance the penalty of a later criminal offense.) In *State v. Brooke*, 113

Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 9, the Ohio Supreme Court explicitly recognized that "there is a limited right to collaterally attack a conviction when the state proposes to use the past conviction to enhance the penalty of a later criminal offense," and it reaffirmed that an uncounseled conviction without a valid waiver could not later be used to enhance the penalty for another crime. In *Bode*, the Ohio Supreme Court held that *Brooke* extended to juvenile adjudications. *Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, at ¶ 1.

{¶12} The holdings in *Brandon*, *Brooks*, and *Bode* are narrow and consistent—namely that an uncounseled conviction or adjudication obtained without a valid waiver of the right to counsel cannot be used to *enhance a penalty* for a later crime. Ultimately, these cases turn on the fairness of imposing the severe sanction of imprisonment where the trial leading to the underlying conviction and the resulting reliability of that conviction are constitutionally infirm due to a violation of the right to counsel. An uncounseled conviction obtained without a valid waiver is not infirm for all uses, however.

{¶13} In *Lewis v. United States*, 445 U.S. 55, 67-68, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), the United States Supreme Court held that it was constitutionally permissible to use a prior uncounseled felony conviction obtained without a valid waiver to impose a firearm disability under a federal statute that made it illegal for a felon to possess a firearm. The Court acknowledged that, under the Sixth Amendment, an uncounseled conviction could not be used for certain purposes such as sentencing or penalty enhancement, but reasoned that those cases turned on the unreliability of the past uncounseled convictions. *Id.* The reliability of the underlying felony in *Lewis* was immaterial because, the Court determined, it was the mere fact of the conviction that imposed the firearm disability. *Id.* The Court reasoned that "Congress could rationally conclude that any felony conviction, even

an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm." *Id.* at 66.

{¶14} Likewise, in this case, the mere fact of Carnes's 1994 adjudication imposed a disability that made it illegal under R.C. 2923.13(A)(2) for Carnes to possess a firearm in Ohio. The reliability of Carnes's adjudication is immaterial for purposes of that statute. Therefore, the case law that Carnes cites in support of his position on appeal does not apply. Put another way, because Carnes's 1994 adjudication was not a penalty-enhancing element of his DUS charge, *Bode* does not prohibit its use as an element of that charge.

{¶15} The dissent relies on *State v. Hand*, __ Ohio St.3d __, 2016-Ohio-5504, __ N.E.3d __, for its position that Carnes's adjudication should be off-limits for purposes of establishing the disability element of the WUD charge. *Hand* does not apply in this case. Its holding is limited to banning the use of a juvenile adjudication to enhance punishment. It is therefore not relevant to the issue raised in this appeal.

{¶16} Carnes's sole assignment of error is overruled. The trial court's judgment is affirmed.

Judgment affirmed.

DEWINE, J., concurs in judgment only.
CUNNINGHAM, P.J., dissents.

CUNNINGHAM, P.J., dissenting.

{¶17} I respectfully dissent. While I disagree with the lead opinion's assertion that the Ohio Supreme Court's pronouncements on the use of juvenile adjudications in subsequent criminal prosecutions have been "narrow," I agree that they have been "consistent." The court has consistently limited their use in adult prosecutions.

{¶18} Only four months after releasing *Bode*, in *Hand*, the court reiterated that "a juvenile adjudication is not a conviction of a crime and should not be treated as one." *See id.* at ¶ 38 and ¶ 14 et seq. It held that a juvenile adjudication, without regard to whether it was counseled or uncounseled, may not be used to enhance the degree of or the sentence for a subsequent adult criminal offense. *See id.* at paragraph one of the syllabus. The basis of the court's decision was its belief that it is "fundamentally unfair to allow juvenile adjudications that result from * * * less formal proceedings to be characterized as criminal convictions that may later enhance adult punishment." *Id.* at ¶ 35.

{¶19} This fundamental unfairness, sufficient to deny a defendant due process of law, is even more apparent when a juvenile adjudication is the essential predicate for a criminal proceeding, where its use results not just in a longer sentence but in a loss of liberty itself. If juvenile adjudications are not reliable enough to enhance a criminal sentence, surely they are not sufficiently reliable to alone sustain proof beyond a reasonable doubt of an element of a crime. I would sustain the assignment of error on that basis.

Please note:

This court has recorded its own entry this date.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

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

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

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

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

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

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

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

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 5 RIGHT OF TRIAL BY JURY

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 16 REDRESS FOR INJURY; DUE PROCESS

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

ORC Ann. 2151.281

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

§ 2151.281 Guardian ad litem.

(A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:

(1) The child has no parent, guardian, or legal custodian.

(2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.

(B)

(1) Except as provided in division (K) of this section, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to *section 2151.414 of the Revised Code*. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

(2) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged dependent child if any of the following applies:

(a) The parent of the child appears to be mentally incompetent or is under eighteen years of age.

(b) There is a conflict of interest between the child and the child's parents, guardian, or custodian.

(c) The court believes that the parent of the child is not capable of representing the best interest of the child.

(3) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court may appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of the child in any other proceeding concerning an alleged dependent child.

(4) The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against any person who is required by division (A)(1) or (4) of *section 2151.421 of the Revised Code* to file a report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred if that person knows, or has reasonable cause to suspect or believe based on facts that would cause a reasonable person in a similar position to suspect or believe, as applicable, that the child for whom the guardian ad litem is appointed is the subject of child abuse or child neglect and does not file the required report and if the child suffers any injury or harm as a result of the child

abuse or child neglect that is known or reasonably suspected or believed to have occurred or suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent.

(D) The court shall require the guardian ad litem to faithfully discharge the guardian ad litem's duties and, upon the guardian ad litem's failure to faithfully discharge the guardian ad litem's duties, shall discharge the guardian ad litem and appoint another guardian ad litem. The court may fix the compensation for the service of the guardian ad litem, which compensation shall be paid from the treasury of the county, subject to rules adopted by the supreme court.

(E) A parent who is eighteen years of age or older and not mentally incompetent shall be deemed sui juris for the purpose of any proceeding relative to a child of the parent who is alleged or adjudicated to be an abused, neglected, or dependent child.

(F) In any case in which a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of that parent shall be summoned to appear at any hearing respecting the child, who is alleged or adjudicated to be an abused, neglected, or dependent child.

(G) Except as provided in division (K) of this section, in any case in which a guardian ad litem is to be appointed for an alleged or adjudicated abused, neglected, or dependent child or in any case involving an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with *section 5103.15 of the Revised Code*, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;

(2) All dispositional orders relative to the child have terminated;

(3) The legal custody of the child is granted to a relative of the child, or to another person;

(4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;

(5) The child reaches the age of eighteen if the child does not have a developmental disability or physical impairment or the child reaches the age of twenty-one if the child has a developmental disability or physical impairment;

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is

not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child in accordance with rules adopted by the supreme court.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)

(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

(K) A guardian ad litem shall not be appointed for a child who is under six months of age in any proceeding in which a private child placing agency is seeking permanent custody of the child or seeking approval of a voluntary permanent custody surrender agreement for the sole purpose of the adoption of the child.

History

133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 140 v S 321 (Eff 4-9-85); 141 v H 529 (Eff 3-11-87); 142 v S 89 (Eff 1-1-89); *146 v H 274* (Eff 8-8-96); *146 v H 419* (Eff 9-18-96); *148 v H 471*. Eff 7-1-2000; *151 v S 17*, § 1, eff. 8-3-06; *151 v S 238*, § 1, eff. 9-21-06; *2014 HB 213*, § 1, eff. Sept. 17, 2014; *2016 HB 158*, § 1, effective Oct 12, 2016.

End of Document

ORC Ann. 2152.10

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

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

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

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

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

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

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

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

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

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

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

History

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

ORC Ann. 2152.11

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

§ 2152.11 Range of dispositions of child adjudicated to be delinquent.

(A) A child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under this section if the child was not transferred under section 2152.12 of the Revised Code. If the complaint, indictment, or information charging the act includes one or more of the following factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition under this section;

(1) The act charged against the child would be an offense of violence if committed by an adult.

(2) During the commission of the act charged, the child used a firearm, displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm.

(3) The child previously was admitted to a department of youth services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult.

(B) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (B)(1) and (2) of this section do not apply.

(C) If a child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (C)(1) and (2) of this section do not apply.

(D) If a child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was sixteen or seventeen years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section;

(2) Discretionary SYO, if any of the following applies:

(a) The act was committed when the child was sixteen or seventeen years of age, and division (D)(1) of this section does not apply.

(b) The act was committed when the child was fourteen or fifteen years of age.

(c) The act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section.

(d) The act was committed when the child was ten or eleven years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section.

(3) Traditional juvenile, if divisions (D)(1) and (2) of this section do not apply.

(E) If a child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was fourteen, fifteen, sixteen, or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (E)(1) and (2) of this section do not apply.

(F) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was fourteen or fifteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (F)(1) and (2) of this section do not apply.

(G) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for whichever of the following dispositions is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(2) Traditional juvenile, if division (G)(1) of this section does not apply.

(H) The following table describes the dispositions that a juvenile court may impose on a delinquent child:

OFFENSE CATEGORY	**AGE**	**AGE**	**AGE**	**AGE**
(Enhancement factors)	**16 & 17**	**14 & 15**	**12 & 13**	**10 & 11**
Murder/aggravated murder	N/A	MSYO, TJ	DSYO, TJ	DSYO, TJ
Attempted murder/attempted aggravated murder	N/A	MSYO, TJ	DSYO, TJ	DSYO, TJ
F1 (Enhanced by offense of violence factor and either disposition firearm factor or previous DYS admission factor)	MSYO, TJ	DSYO, TJ	DSYO, TJ	DSYO, TJ
F1 (Enhanced by any single or other combination of enhancement factors)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ

OFFENSE CATEGORY (Enhancement factors)	AGE 16 & 17	AGE 14 & 15	AGE 12 & 13	AGE 10 & 11
F1 (Not enhanced)	DSYO, TJ	DSYO, TJ	TJ	TJ
F2 (Enhanced by any enhancement factor)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ
F2 (Not enhanced)	DSYO, TJ	DSYO, TJ	TJ	TJ
F3 (Enhanced by any enhancement factor)	DSYO, TJ	DSYO, TJ	TJ	TJ
F3 (Not enhanced)	DSYO, TJ	TJ	TJ	TJ
F4 (Enhanced by any enhancement factor)	DSYO, TJ	TJ	TJ	TJ
F4 (Not enhanced)	TJ	TJ	TJ	TJ
F5 (Enhanced by any enhancement factor)	DSYO, TJ	TJ	TJ	TJ
F5 (Not enhanced)	TJ	TJ	TJ	TJ

(I) The table in division (H) of this section is for illustrative purposes only. If the table conflicts with any provision of divisions (A) to (G) of this section, divisions (A) to (G) of this section shall control.

(J) Key for table in division (H) of this section:

(1) "Any enhancement factor" applies when the criteria described in division (A)(1), (2), or (3) of this section apply.

(2) The "disposition firearm factor" applies when the criteria described in division (A)(2) of this section apply.

(3) "DSYO" refers to discretionary serious youthful offender disposition.

(4) "F1" refers to an act that would be a felony of the first degree if committed by an adult.

(5) "F2" refers to an act that would be a felony of the second degree if committed by an adult.

(6) "F3" refers to an act that would be a felony of the third degree if committed by an adult.

(7) "F4" refers to an act that would be a felony of the fourth degree if committed by an adult.

(8) "F5" refers to an act that would be a felony of the fifth degree if committed by an adult.

(9) "MSYO" refers to mandatory serious youthful offender disposition.

(10) The "offense of violence factor" applies when the criteria described in division (A)(1) of this section apply.

(11) The "previous DYS admission factor" applies when the criteria described in division (A)(3) of this section apply.

(12) "TJ" refers to traditional juvenile.

History

148 v S 179, § 3. Eff 1-1-2002.

End of Document

ORC Ann. 2152.12

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

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

(A)

(1)

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

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

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

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

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

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

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

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

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

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is

convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with *section 2152.121 of the Revised Code*.

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

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

(2) There is probable cause to believe that the child committed the act charged.

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

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

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

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of *section 2923.12 of the Revised Code*, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

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

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

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

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

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

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or intellectual disability.

(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, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

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

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

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

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

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

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

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further

proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of *section 2151.23 of the Revised Code*.

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

History

RC § 2151.26, 133 v H 320 (Eff 11-19-69); 134 v S 325 (Eff 1-14-72); 137 v S 119 (Eff 8-30-78); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 141 v H 499 (Eff 3-11-87); *144 v H 27* (Eff 10-10-91); 146 v H 1 (Eff 1-1-96); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 124* (Eff 3-31-97); RC § 2152.12, *148 v S 179*, § 3. Eff 1-1-2002; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012; *2016 HB 158*, § 1, effective Oct 12, 2016.

End of Document

ORC Ann. 2152.13

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

§ 2152.13 Serious youthful offender dispositional sentence.

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

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

(1) Obtaining an indictment of the child as a serious youthful offender;

(2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;

(3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;

(4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:

(a) The date of the child's first juvenile court hearing regarding the complaint;

(b) The date the juvenile court determines not to transfer the case under *section 2152.12 of the Revised Code*.

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

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

(C)

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

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

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

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

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

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

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

(D)

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

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

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

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

(2)

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

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

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

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

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

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

History

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

End of Document

ORC Ann. 2152.14

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

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

§ 2152.14 Motion to invoke adult portion of dispositional sentence.

(A)

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

(a) The person is at least fourteen years of age.

(b) The person is in the institutional custody, or an escapee from the custody, of the department of youth services.

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

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

(a) The person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(b) The person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

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

(1) The person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(2) The person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim.

(C) If the prosecuting attorney declines a request to file a motion that was made by the department of youth services or the supervising probation department under division (A) or (B) of this section or fails to act on a request made under either division by the department within a reasonable time, the department of youth

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

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

(E)

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

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

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

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

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

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

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

History

148 v S 179, § 3 (Eff 1-1-2002); *149 v H 393*. Eff 7-5-2002; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2016 HB 158*, § 1, effective Oct 12, 2016.

End of Document

ORC Ann. 2923.13

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2923: Conspiracy, Attempt, and Complicity; Weapons Control; Corrupt Activity > Miscellaneous

§ 2923.13 Having weapons while under disability.

(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) The person is a fugitive from justice.

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

(3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

(4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

(5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to court order" and "patient" have the same meanings as in *section 5122.01 of the Revised Code*.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.

(C) For the purposes of this section, "under operation of law or legal process" shall not itself include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.

History

134 v H 511 (Eff 1-1-74); *146 v S 2*. Eff 7-1-96; *150 v H 12*, § 1, eff. 4-8-04; *2011 HB 54*, § 1, eff. Sept. 30, 2011; *2014 SB 43*, § 1, eff. Sept. 17, 2014; *2014 HB 234*, § 1, effective March 23, 2015.

End of Document

ORC Ann. 2923.14

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2923: Conspiracy, Attempt, and Complicity; Weapons Control; Corrupt Activity > Miscellaneous

§ 2923.14 Relief from disability.

(A)

(1) Except as otherwise provided in division (A)(2) of this section, any person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.

(2) Division (A)(1) of this section does not apply to a person who has been convicted of or pleaded guilty to a violation of *section 2923.132 of the Revised Code* or to a person who, two or more times, has been convicted of or pleaded guilty to a felony and a specification of the type described in *section 2941.141*, *2941.144*, *2941.145*, *2941.146*, *2941.1412*, or *2941.1424 of the Revised Code*.

(B) The application shall recite the following:

(1) All indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and any release granted under a community control sanction, post-release control sanction, or parole, any partial or conditional pardon granted, or other disposition of each case, or, if the disability is based upon a factor other than an indictment, a conviction, or an adjudication, the factor upon which the disability is based and all details related to that factor;

(2) Facts showing the applicant to be a fit subject for relief under this section.

(C) A copy of the application shall be served on the county prosecutor. The county prosecutor shall cause the matter to be investigated and shall raise before the court any objections to granting relief that the investigation reveals.

(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(1) One of the following applies:

(a) If the disability is based upon an indictment, a conviction, or an adjudication, the applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance.

(b) If the disability is based upon a factor other than an indictment, a conviction, or an adjudication, that factor no longer is applicable to the applicant.

(2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

(E) Costs of the proceeding shall be charged as in other civil cases, and taxed to the applicant.

(F) Relief from disability granted pursuant to this section restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, and is subject to the following conditions:

(1) Applies only with respect to indictments, convictions, or adjudications, or to the other factor, recited in the application as the basis for the applicant's disability;

(2) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;

(3) May be revoked by the court at any time for good cause shown and upon notice to the applicant;

(4) Is automatically void upon commission by the applicant of any offense set forth in division (A)(2) or (3) of *section 2923.13 of the Revised Code*, or upon the applicant's becoming one of the class of persons named in division (A)(1), (4), or (5) of that section.

(G) As used in this section:

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

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

History

134 v H 511. Eff 1-1-74; *149 v H 490*, § 1, eff. 1-1-04; *2011 HB 54*, § 1, eff. Sept. 30, 2011; *2016 SB 97*, § 1, effective Sep 12, 2016.

End of Document

ORC Ann. 5139.18

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5139: Youth Services

§ 5139.18 Supervision of children released from institutions; apprehension of violators.

(A) Except with respect to children who are granted a judicial release to court supervision pursuant to division (B) or (D) of section 2152.22 of the Revised Code, the department of youth services is responsible for locating homes or jobs for children released from its institutions, for supervision of children released from its institutions, and for providing or arranging for the provision to those children of appropriate services that are required to facilitate their satisfactory community adjustment. Regional administrators through their staff of parole officers shall supervise children paroled or released to community supervision in a manner that insures as nearly as possible the children's rehabilitation and that provides maximum protection to the general public.

(B) The department of youth services shall exercise general supervision over all children who have been released on placement from any of its institutions other than children who are granted a judicial release to court supervision pursuant to division (B) or (D) of section 2152.22 of the Revised Code. The director of youth services, with the consent and approval of the board of county commissioners of any county, may contract with the public children services agency of that county, the department of probation of that county established pursuant to section 2301.27 of the Revised Code, or the probation department or service established pursuant to sections 2151.01 to 2151.54 of the Revised Code for the provision of direct supervision and control over and the provision of supportive assistance to all children who have been released on placement into that county from any of its institutions, or, with the consent of the juvenile judge or the administrative judge of the juvenile court of any county, contract with any other public agency, institution, or organization that is qualified to provide the care and supervision that is required under the terms and conditions of the child's treatment plan for the provision of direct supervision and control over and the provision of supportive assistance to all children who have been released on placement into that county from any of its institutions.

(C) A juvenile parole officer shall furnish to a child placed on community control under the parole officer's supervision a statement of the conditions of parole and shall instruct the child regarding them. The parole officer shall keep informed concerning the conduct and condition of a child under the parole officer's supervision and shall report on the child's conduct to the judge as the judge directs. A parole officer shall use all suitable methods to aid a child on community control and to improve the child's conduct and condition. A parole officer shall keep full and accurate records of work done for children under the parole officer's supervision.

(D) In accordance with division (D) of section 2151.14 of the Revised Code, a court may issue an order requiring boards of education, governing bodies of chartered nonpublic schools, public children services agencies, private child placing agencies, probation departments, law enforcement agencies, and prosecuting attorneys that have records related to the child in question to provide copies of one or more specified records, or specified information in one or more specified records, that the individual or entity has with respect to the child to the department of youth services when the department has custody of the child or is performing any services for the child that are required by the juvenile court or by statute, and the

department requests the records in accordance with division (D)(3)(a) of *section 2151.14 of the Revised Code*.

(E) Whenever any placement official has reasonable cause to believe that any child released by a court pursuant to *section 2152.22 of the Revised Code* has violated the conditions of the child's placement, the official may request, in writing, from the committing court or transferee court a custodial order, and, upon reasonable and probable cause, the court may order any sheriff, deputy sheriff, constable, or police officer to apprehend the child. A child so apprehended may be confined in the detention facility of the county in which the child is apprehended until further order of the court. If a child who was released on supervised release by the release authority of the department of youth services or a child who was granted a judicial release to department of youth services supervision violates the conditions of the supervised release or judicial release, *section 5139.52 of the Revised Code* applies with respect to that child.

History

130 v 1226 (Eff 10-7-63); 130 v 1227 (Eff 3-10-64); 132 v H 367 (Eff 9-14-67); 135 v H 760 (Eff 8-22-73); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); *145 v H 152* (Eff 7-1-93); *147 v H 408* (Eff 10-1-97); 147 v H 1 (Eff 7-1-98); *147 v H 526* (Eff 9-1-98); *148 v S 179*, § 3. Eff 1-1-2002; *152 v H 130*, § 1, eff. 4-7-09; *2011 HB 86*, § 1, eff. Sept. 30, 2011.

End of Document

ORC Ann. 5139.38

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5139: Youth Services > Regulations

§ 5139.38 Transfer to community facility for treatment prior to release.

Within ninety days prior to the expiration of the prescribed minimum period of institutionalization of a felony delinquent committed to the department of youth services and with prior approval of the committing court, the department may transfer the felony delinquent to a community facility on supervised release as described in *section 5139.18 of the Revised Code*. For purposes of transfers under this section, both of the following apply:

(A) The community facility may be a community corrections facility that has received a grant pursuant to *section 5139.36 of the Revised Code*, a community residential program with which the department has contracted for purposes of this section, or another private entity with which the department has contracted for purposes of this section. Division (E) of *section 5139.36 of the Revised Code* does not apply in connection with a transfer of a felony delinquent that is made to a community corrections facility pursuant to this section.

(B) During the period in which the felony delinquent is in the community facility, the felony delinquent shall remain in the custody of the department.

History

145 v H 152 (Eff 7-1-93); *145 v H 715* (Eff 7-22-94); 147 v H 1. Eff 7-1-98; *152 v H 130*, § 1, eff. 4-7-09.

End of Document

ORC Ann. 5139.50

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5139: Youth Services > Release or Discharge

§ 5139.50 Release authority created; duties generally; policies.

(A) The release authority of the department of youth services is hereby created as a bureau in the department. The release authority shall consist of a minimum of three, but not more than five, members who are appointed by the director of youth services and who have the qualifications specified in division (B) of this section. The members of the release authority shall devote their full time to the duties of the release authority and shall neither seek nor hold other public office. The members shall be in the unclassified civil service.

(B) A person appointed as a member of the release authority shall have a bachelor's degree from an accredited college or university or equivalent relevant experience and shall have the skills, training, or experience necessary to analyze issues of law, administration, and public policy. The membership of the release authority shall represent, insofar as practicable, the diversity found in the children in the legal custody of the department of youth services.

In appointing the members, the director shall ensure that the appointments include all of the following:

(1) At least one member who has five or more years of experience in criminal justice, juvenile justice, or an equivalent relevant profession;

(2) At least one member who has experience in victim services or advocacy or who has been a victim of a crime or is a family member of a victim;

(3) At least one member who has experience in direct care services to delinquent children.

(C) Members shall be appointed for four-year terms. At the conclusion of a term, a member shall hold office until the appointment and qualification of the member's successor. The director shall fill a vacancy occurring before the expiration of a term for the remainder of that term and, if a member is on extended leave or disability status for more than thirty work days, may appoint an interim member to fulfill the duties of that member. A member may be reappointed. A member may be removed for good cause by the director.

(D) The director of youth services shall designate as chairperson of the release authority one of the members who has experience in criminal justice, juvenile justice, or an equivalent relevant profession. The chairperson shall be a managing officer of the department, shall supervise the members of the board and the other staff in the bureau, and shall perform all duties and functions necessary to ensure that the release authority discharges its responsibilities. The chairperson shall serve as the official spokesperson for the release authority.

(E) The release authority shall do all of the following:

(1) Serve as the final and sole authority for making decisions, in the interests of public safety and the children involved, regarding the release and discharge of all children committed to the legal custody of the department of youth services, except children placed by a juvenile court on judicial release to court supervision or on judicial release to department of youth services supervision, children who have not

completed a prescribed minimum period of time or prescribed period of time in a secure facility, or children who are required to remain in a secure facility until they attain twenty-one years of age;

(2) Establish written policies and procedures for conducting reviews of the status for all youth in the custody of the department, setting or modifying dates of release and discharge, specifying the duration, terms, and conditions of release to be carried out in supervised release subject to the addition of additional consistent terms and conditions by a court in accordance with *section 5139.51 of the Revised Code*, and giving a child notice of all reviews;

(3) Maintain records of its official actions, decisions, orders, and hearing summaries and make the records accessible in accordance with division (D) of *section 5139.05 of the Revised Code*;

(4) Cooperate with public and private agencies, communities, private groups, and individuals for the development and improvement of its services;

(5) Collect, develop, and maintain statistical information regarding its services and decisions;

(6) Submit to the director an annual report that includes a description of the operations of the release authority, an evaluation of its effectiveness, recommendations for statutory, budgetary, or other changes necessary to improve its effectiveness, and any other information required by the director.

(F) The release authority may do any of the following:

(1) Conduct inquiries, investigations, and reviews and hold hearings and other proceedings necessary to properly discharge its responsibilities;

(2) Issue subpoenas, enforceable in a court of law, to compel a person to appear, give testimony, or produce documentary information or other tangible items relating to a matter under inquiry, investigation, review, or hearing;

(3) Administer oaths and receive testimony of persons under oath;

(4) Request assistance, services, and information from a public agency to enable the authority to discharge its responsibilities and receive the assistance, services, and information from the public agency in a reasonable period of time;

(5) Request from a public agency or any other entity that provides or has provided services to a child committed to the department's legal custody information to enable the release authority to properly discharge its responsibilities with respect to that child and receive the information from the public agency or other entity in a reasonable period of time.

(G) The release authority may delegate responsibilities to hearing officers or other designated staff under the release authority's auspices. However, the release authority shall not delegate its authority to make final decisions regarding policy or the release of a child.

The release authority shall adopt a written policy and procedures governing appeals of its release and discharge decisions.

(H) The legal staff of the department of youth services shall provide assistance to the release authority in the formulation of policy and in its handling of individual cases.

History

147 v H 1 (Eff 1-1-98); *147 v H 526* (Eff 9-1-98); *148 v H 283* (Eff 9-29-99); *148 v S 179*, § 3 (Eff 1-1-2002); *149 v H 393*. Eff 7-5-2002; *151 v H 530*, § 101.01, eff. 6-30-06; *152 v H 130*, § 1, eff. 4-7-09; *2015 HB 64*, § 101.01, effective Sep 29, 2015.

ORC Ann. 5139.51

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5139: Youth Services > Release or Discharge

§ 5139.51 Supervised release or discharge; requirements for release.

(A) The release authority of the department of youth services shall not release a child who is in the custody of the department of youth services from institutional care or institutional care in a secure facility and shall not discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of twenty-one years of age, whichever is applicable under the order of commitment, other than as is provided in *section 2152.22 of the Revised Code*. The release authority may conduct periodic reviews of the case of each child who is in the custody of the department and who is eligible for supervised release or discharge after completing the minimum period of time or period of time in an institution prescribed by the committing court. At least thirty days prior to conducting a periodic review of the case of a child who was committed to the department regarding the possibility of supervised release or discharge and at least thirty days prior to conducting a release review, a release hearing, or a discharge review under division (E) of this section, the release authority shall give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. If a child is on supervised release and has had the child's parole revoked, and if, upon release, there is insufficient time to provide the notices otherwise required by this division, the release authority, at least ten days prior to the child's release, shall provide reasonable notice of the child's release to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. The court or prosecuting attorney may submit to the release authority written comments regarding, or written objections to, the supervised release or discharge of that child. Additionally, if the child was committed for an act that is a category one or category two offense, the court or prosecuting attorney orally may communicate to a representative of the release authority comments regarding, or objections to, the supervised release or discharge of the child or, if a hearing is held regarding the possible release or discharge of the child, may communicate those comments at the hearing. In conducting the review of the child's case regarding the possibility of supervised release or discharge, the release authority shall consider any comments and objections so submitted or communicated by the court or prosecutor and any statements or comments submitted or communicated under *section 5139.56 of the Revised Code* by a victim of an act for which the child was committed to the legal custody of the department or by the victim's representative of a victim of an act of that type.

The release authority shall determine the date on which a child may be placed on supervised release or discharged. If the release authority believes that a child should be placed on supervised release, it shall comply with division (B) of this section. If the release authority believes that a child should be discharged, it shall comply with division (C) or (E) of this section. If the release authority denies the supervised release or discharge of a child, it shall provide the child with a written record of the reasons for the decision.

(B)

(1) When the release authority decides to place a child on supervised release, consistent with division (D) of this section, the department shall prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released from an institution on supervised release and, at

least thirty days prior to the release of the child on the supervised release, shall send to the committing court and the juvenile court of the county in which the child will be placed a copy of the supervised release plan and the terms and conditions of release. The juvenile court of the county in which the child will be placed, within fifteen days after its receipt of the copy of the supervised release plan, may add to the supervised release plan any additional consistent terms and conditions it considers appropriate, provided that the court may not add any term or condition that decreases the level or degree of supervision specified by the release authority in the plan, that substantially increases the financial burden of supervision that will be experienced by the department of youth services, or that alters the placement specified by the plan.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed does not add to the supervised release plan any additional terms and conditions, the court shall enter the supervised release plan in its journal within that fifteen-day period and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan. The journalized plan shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed adds to the supervised release plan any additional terms and conditions, the court shall enter the supervised release plan and the additional terms and conditions in its journal and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan and additional terms and conditions. The journalized supervised release plan and additional terms and conditions added by the court that satisfy the criteria described in this division shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed neither enters in its journal the supervised release plan nor enters in its journal the supervised release plan plus additional terms and conditions added by the court, the court and the department of youth services may attempt to resolve any differences regarding the plan within three days. If a resolution is not reached within that three-day period, thereafter, the supervised release plan shall be enforceable to the same extent as if the court actually had entered the supervised release plan in its journal.

(2) When the release authority receives from the court a copy of the journalized supervised release plan and, if applicable, a copy of the journalized additional terms and conditions added by the court, the release authority shall keep the original copy or copies in the child's file and shall provide a copy of each document to the child, the employee of the department who is assigned to supervise and assist the child while on release, and the committing court.

(C) If a child who is in the custody of the department of youth services was committed pursuant to division (A)(1)(b), (c), (d), or (e) of *section 2152.16 of the Revised Code* and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under those divisions and if the release authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the release authority, without approval of the court that committed the child, may discharge the child from the department's custody and control without placing the child on supervised release. Additionally, the release authority may discharge a child in the department's custody without the child being placed on supervised release if the child is removed from the jurisdiction of this state by a court order of a court of this state, another state, or the United States, or by any agency of this state, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law. At least fifteen days before the scheduled date of discharge of the child without the child being placed on supervised release, the department shall notify the committing court, in writing, that it is going to discharge the child and of the reason for the discharge. Upon discharge of the child without the child being placed on supervised release, the department immediately shall certify the discharge in writing and shall transmit the certificate of discharge to the committing court.

(D) In addition to requirements that are reasonably related to the child's prior pattern of criminal or delinquent behavior and the prevention of further criminal or delinquent behavior, the release authority shall specify the following requirements for each child whom it releases:

(1) The child shall observe the law.

(2) The child shall maintain appropriate contact, as specified in the written supervised release plan for that child.

(3) The child shall not change residence unless the child seeks prior approval for the change from the employee of the department assigned to supervise and assist the child, provides that employee, at the time the child seeks the prior approval for the change, with appropriate information regarding the new residence address at which the child wishes to reside, and obtains the prior approval of that employee for the change.

(E) The period of a child's supervised release may extend from the date of release from an institution until the child attains twenty-one years of age. If the period of supervised release extends beyond one year after the date of release, the child may request in writing that the release authority conduct a discharge review after the expiration of the one-year period or the minimum period or period. If the child so requests, the release authority shall conduct a discharge review and give the child its decision in writing. The release authority shall not grant a discharge prior to the discharge date if it finds good cause for retaining the child in the custody of the department until the discharge date. A child may request an additional discharge review six months after the date of a previous discharge review decision, but not more than once during any six-month period after the date of a previous discharge review decision.

(F) At least two weeks before the release authority places on supervised release or discharge a child who was committed to the legal custody of the department, the release authority shall provide notice of the release or discharge as follows:

(1) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing an act that is a category one or category two offense, the release authority shall notify, by the specified deadline, all of the following of the release or discharge:

(a) The prosecuting attorney of the county in which the child was adjudicated a delinquent child and committed to the custody of the department;

(b) Whichever of the following is applicable:

(i) If upon the supervised release or discharge the child will reside in a municipal corporation, the chief of police or other chief law enforcement officer of that municipal corporation;

(ii) If upon the supervised release or discharge the child will reside in an unincorporated area of a county, the sheriff of that county.

(2) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing any act, the release authority shall notify, by the specified deadline, each victim of the act for which the child was committed to the legal custody of the department who, pursuant to *section 5139.56 of the Revised Code*, has requested to be notified of the placement of the child on supervised release or the discharge of the child, provided that, if any victim has designated a person pursuant to that section to act on the victim's behalf as a victim's representative, the notification required by this division shall be provided to that victim's representative.

History

147 v H 1 (Eff 7-1-98); *147 v H 526* (Eff 9-1-98); *148 v H 283* (Eff 9-29-99); *148 v S 179*, § 3. Eff 1-1-2002.

ORC Ann. 5139.52

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 25 (SB 3) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5139: Youth Services > Release or Discharge

§ 5139.52 Hearing on alleged violation; apprehension of violators.

(A) At any time during a child's supervised release or during the period of a child's judicial release to department of youth services supervision, if the regional administrator or the employee of the department assigned to supervise and assist the child has reasonable grounds to believe that the child has violated a term or condition of the supervised release or judicial release, the administrator or employee may request a court to issue a summons that requires the child to appear for a hearing to answer charges of the alleged violation. The summons shall contain a brief statement of the alleged violation, including the date and place of the violation, and shall require the child to appear for a hearing before the court at a specific date, time, and place.

(B)

(1) At any time while a child is on supervised release or during the period of a child's judicial release to department of youth services supervision, a regional administrator or a designee of a regional administrator, upon application of the employee of the department assigned to supervise and assist the child as described in this division, may issue, or cause to be issued, an order of apprehension for the arrest of the child for the alleged violation of a term or condition of the child's supervised release or judicial release. An application requesting an order of apprehension shall set forth that, in the good faith judgment of the employee of the department assigned to supervise and assist the child making the application, there is reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the child's supervised release or judicial release, shall state the basis for that belief, and shall request that the child be taken to an appropriate place of secure detention pending a probable cause determination. As an alternative to an order of apprehension for the child, a regional administrator or the employee of the department assigned to supervise and assist the child may request a court to issue a warrant for the arrest of the child.

Subject to the provision of prior notice required by division (D)(1) of this section, if a regional administrator or a designee of a regional administrator issues, in writing, an order of apprehension for the arrest of a child, a staff member of the department of youth services who has been designated pursuant to division (A)(1) of *section 5139.53 of the Revised Code* as being authorized to arrest and who has received the training described in division (B)(1) of that section, or a peace officer, as defined in *section 2935.01 of the Revised Code*, may arrest the child, without a warrant, and place the child in secure detention in accordance with this section.

If a child is on supervised release or judicial release to department of youth services supervision, any peace officer, as defined in *section 2935.01 of the Revised Code*, may arrest the child without a warrant or order of apprehension if the peace officer has reasonable grounds to believe that the child has violated or is violating any of the following that has been prescribed by the release authority or department of youth services relative to the child:

(a) A condition that prohibits the child's ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance, all as defined in *section 2923.11 of the Revised Code*;

(b) A condition that prohibits the child from being within a specified structure or geographic area;

(c) A condition that confines the child to a residence, facility, or other structure;

(d) A condition that prohibits the child from contacting or communicating with any specified individual;

(e) A condition that prohibits the child from associating with a specified individual;

(f) Any other rule, term, or condition governing the conduct of the child that has been prescribed by the release authority.

(2) Subject to the provision of prior notice required by division (D)(1) of this section, a staff member of the department of youth services who is designated by the director pursuant to division (A)(1) of *section 5139.53 of the Revised Code* and who has received the training described in division (B)(1) of that section, a peace officer, as defined in *section 2935.01 of the Revised Code*, or any other officer with the power to arrest may execute a warrant or order of apprehension issued under division (B)(1) of this section and take the child into secure custody.

(C) A staff member of the department of youth services who is designated by the director of youth services pursuant to division (A)(1) of *section 5139.53 of the Revised Code* and who has received the training described in division (B)(1) of that section, a peace officer, as defined in *section 2935.01 of the Revised Code*, or any other officer with the power to arrest may arrest without a warrant or order of apprehension and take into secure custody a child in the legal custody of the department, if the staff member, peace officer, or other officer has reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the supervised release or judicial release in any of the following manners:

(1) The child committed or is committing an offense or delinquent act in the presence of the staff member, peace officer, or other officer.

(2) There is probable cause to believe that the child violated a term or condition of supervised release or judicial release and that the child is leaving or is about to leave the state.

(3) The child failed to appear before the release authority pursuant to a summons for a modification or failed to appear for a scheduled court hearing.

(4) The arrest of the child is necessary to prevent physical harm to another person or to the child.

(D)

(1) Except as otherwise provided in this division, prior to arresting a child under this section, either in relation to an order of apprehension or a warrant for arrest or in any other manner authorized by this section, a staff member or employee of the department of youth services shall provide notice of the anticipated arrest to each county, municipal, or township law enforcement agency with jurisdiction over the place at which the staff member or employee anticipates making the arrest. A staff member or employee is not required to provide the notice described in this division prior to making an arrest in any emergency situation or circumstance described under division (C) of this section.

(2) If a child is arrested under this section and if it is known that the child is on supervised release or judicial release to department of youth services supervision, a juvenile court, local juvenile detention facility, or jail shall notify the appropriate department of youth services regional office that the child has been arrested and shall provide to the regional office or to an employee of the department of youth services a copy of the arrest information pertaining to the arrest.

(3) Nothing in this section limits the power to make an arrest that is granted to specified peace officers under *section 2935.03 of the Revised Code*, to any person under *section 2935.04 of the Revised Code*, or to any other specified category of persons by any other provision of the Revised Code, or the power to take a child into custody that is granted pursuant to *section 2151.31 of the Revised Code*.

(E) If a child who is on supervised release or who is under a period of judicial release to department of youth services supervision is arrested under an order of apprehension, under a warrant, or without a warrant as

described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, all of the following apply:

(1) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody, the juvenile court, in making its determinations at a detention hearing as to whether to hold the child in secure custody up to seventy-two hours so that a motion to revoke the child's supervised release or judicial release may be filed, may consider, in addition to all other evidence and information considered, the circumstances of the child's arrest and, if the arrest was pursuant to an order of apprehension, the order and the application for the order.

(2) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody and if the child has not otherwise been released prior to the expiration of that seventy-two-hour period, the child shall be released upon the expiration of that seventy-two-hour period.

(3) If the person is eighteen, nineteen, or twenty years of age, the person may be confined in secure detention in the jail of the county in which the person is taken into custody. If the person is under eighteen years of age, the person may be confined in secure detention in the nearest juvenile detention facility.

(4) If a motion to revoke the child's supervised release or judicial release is filed after the child has been taken into secure custody and the court decides at the detention hearing to release the child from secure custody, the court may release the child on the same terms and conditions that are currently in effect regarding the child's supervised release or judicial release, pending revocation or subsequent modification.

(F) If a child who is on supervised release is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, and if a motion to revoke the child's supervised release is filed, the juvenile court of the county in which the child is placed promptly shall schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If a child is released on supervised release and the juvenile court of the county in which the child is placed otherwise has reason to believe that the child has not complied with the terms and conditions of the supervised release, the court of the county in which the child is placed, in its discretion, may schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child did not violate any term or condition of the child's supervised release, the child shall be released from custody, if the child is in custody at that time, and shall continue on supervised release under the terms and conditions that were in effect at the time of the child's arrest, subject to subsequent revocation or modification. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release, reinstate the original order of commitment of the child, and order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of ninety days, the department shall not reduce the minimum ninety-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum ninety-day period, the child is not eligible for judicial release or early release during the minimum ninety-day period of institutionalization, and the period of institutionalization shall be served concurrently with any other commitment to the department of youth services. If the court orders the child to be returned to a department of youth services institution, the time during which the child was confined pursuant to division (B) of *section 2152.18 of the Revised Code* and the time during which the child was held in a secure department facility prior to the child's release shall

be considered as time served in fulfilling the original order of commitment but shall not reduce the minimum ninety-day period of institutionalization.

This division does not apply regarding a child who is under a period of judicial release to department of youth services supervision. Division (E) of *section 2152.22 of the Revised Code* applies in relation to a child who is under a period of judicial release to department of youth services supervision.

(G) The department of youth services shall assess and provide appropriate programming for a child who is returned to a department of youth services institution under this section.

History

147 v H 1 (Eff 7-1-98); *147 v H 526* (Eff 9-1-98); *148 v S 179*, § 3. Eff 1-1-2002; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2014 SB 143*, § 1, eff. Sept. 19, 2014.

End of Document

Ohio Juv. R. 4

Rules current through rule amendments received through September 28, 2017

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

Rule 4. Assistance of counsel; Guardian ad litem

(A) Assistance of counsel. Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

(B) Guardian ad litem; when appointed. The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

(1) The child has no parents, guardian, or legal custodian;

(2) The interests of the child and the interests of the parent may conflict;

(3) The parent is under eighteen years of age or appears to be mentally incompetent;

(4) The court believes that the parent of the child is not capable of representing the best interest of the child.

(5) Any proceeding involves allegations of abuse or neglect, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.

(6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with *section 5103.15 of the Revised Code*, and thereafter there is a request for extension of the voluntary agreement.

(7) The proceeding is a removal action.

(8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

(C) Guardian ad litem as counsel.

(1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist[s].

(2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.

(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.

(D) Appearance of attorneys. An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) Notice to guardian ad litem. The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) Withdrawal of counsel or guardian ad litem. An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) Costs. The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

History

Amended, eff 7-1-76; 7-1-94; 7-1-95; 7-1-98.

End of Document

Ohio Juv. R. 7

Rules current through rule amendments received through September 28, 2017

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

Rule 7. Detention and shelter care

(A) Detention: standards. A child taken into custody shall not be placed in detention or shelter care prior to final disposition unless any of the following apply:

(1) Detention or shelter care is required:

(a) to protect the child from immediate or threatened physical or emotional harm; or

(b) to protect the person or property of others from immediate or threatened physical or emotional harm.

(2) The child may abscond or be removed from the jurisdiction of the court;

(3) The child has no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to the court when required;

(4) An order for placement of the child in detention or shelter care has been made by the court;

(5) Confinement is authorized by statute.

(B) Priorities in placement prior to hearing.A person taking a child into custody shall, with all reasonable speed, do either of the following:

(1) Release the child to a parent, guardian, or other custodian;

(2) Where detention or shelter care appears to be required under the standards of division (A) of this rule, bring the child to the court or deliver the child to a place of detention or shelter care designated by the court.

(C) Initial procedure upon detention. Any person who delivers a child to a shelter or detention facility shall give the admissions officer at the facility a signed report stating why the child was taken into custody and why the child was not released to a parent, guardian or custodian, and shall assist the admissions officer, if necessary, in notifying the parent pursuant to division (E)(3) of this rule.

(D) Admission. The admissions officer in a shelter or detention facility, upon receipt of a child, shall review the report submitted pursuant to division (C) of this rule, make such further investigation as is feasible and do either of the following:

(1) Release the child to the care of a parent, guardian or custodian;

(2) Where detention or shelter care is required under the standards of division (A) of this rule, admit the child to the facility or place the child in some appropriate facility.

(E) Procedure after admission. When a child has been admitted to detention or shelter care the admissions officer shall do all of the following:

(1) Prepare a report stating the time the child was brought to the facility and the reasons the child was admitted;

(2) Advise the child of the right to telephone parents and counsel immediately and at reasonable times thereafter and the time, place, and purpose of the detention hearing;

(3) Use reasonable diligence to contact the child's parent, guardian, or custodian and advise that person of all of the following:

(a) The place of and reasons for detention;

(b) The time the child may be visited;

(c) The time, place, and purpose of the detention hearing;

(d) The right to counsel and appointed counsel in the case of indigency.

(F) Detention hearing.

(1) Hearing: time; notice. When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and to the parents, guardian, or other custodian, if that person or those persons can be found.

(2) Hearing: advisement of rights. Prior to the hearing, the court shall inform the parties of the right to counsel and to appointed counsel if indigent and the child's right to remain silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

(3) Hearing procedure. The court may consider any evidence, including the reports filed by the person who brought the child to the facility and the admissions officer, without regard to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter care is required under division (A) of this rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse, neglect, or dependency is alleged, the court shall determine whether there are any appropriate relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate relative as the temporary custodian of the child. The court shall make a reasonable efforts determination in accordance with *Juv.R. 27(B)(1)*.

(G) Rehearing. If a parent, guardian, or custodian did not receive notice of the initial hearing and did not appear or waive appearance at the hearing, the court shall rehear the matter promptly. After a child is placed in shelter care or detention care, any party and the guardian ad litem of the child may file a motion with the court requesting that the child be released from detention or shelter care. Upon the filing of the motion, the court shall hold a hearing within seventy-two hours.

(H) Separation from adults. No child shall be placed in or committed to any prison, jail, lockup, or any other place where the child can come in contact or communication with any adult convicted of crime, under arrest, or charged with crime.

(I) Physical examination. The supervisor of a shelter or detention facility may provide for a physical examination of a child placed in the shelter or facility.

(J) Telephone and visitation rights.A child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter.

The child may be visited at reasonable visiting hours by the child's parents and adult members of the family, the child's pastor, and the child's teachers. The child may be visited by the child's attorney at any time.

History

Amended, eff 7-1-94; 7-1-01.

Ohio Juv. R. 29

Rules current through rule amendments received through September 28, 2017

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

Rule 29. Adjudicatory hearing

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

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

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

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

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

(B) Advisement and findings at the commencement of the hearing. At the beginning of the hearing, the court shall do all of the following:

(1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;

(2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under *Juv.R. 30* where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;

(3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;

(4) Appoint counsel for any unrepresented party under *Juv.R. 4(A)* who does not waive the right to counsel;

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

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

(D) Initial procedure upon entry of an admission. The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

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

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

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

(E) Initial procedure upon entry of a denial. If a party denies the allegations, the court shall:

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

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

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

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

(F) Procedure upon determination of the issues. Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to *Civ.R. 52*.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in *Juv.R. 27(B)(1)* and to relative placement in accordance with *Juv.R. 7(F)(3)*.

History

Amended, eff 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-04.

End of Document

Ohio Juv. R. 30

Rules current through rule amendments received through September 28, 2017

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

Rule 30. Relinquishment of jurisdiction for purposes of criminal prosecution

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

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

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

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

(E) Retention of jurisdiction. If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

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

(G) Order of transfer. The order of transfer shall state the reasons for transfer.

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

History

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

End of Document