

IN THE SUPREME COURT OF OHIO

ON COMPUTER-ALM

IN RE:	COREY SPEARS, A MINOR CHILD	:	CASE NO. 06-1074
		:	On appeal from the Licking
		:	County Court of Appeals,
		:	Fifth Appellate District
		:	C.A. Case No. 2005-CA-93

MERIT BRIEF OF APPELLEE STATE OF OHIO

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FEB 14 2007

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SUPREME COURT OF OHIO

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APPELLEE'S STATEMENT OF THE CASE AND FACTS

On August 9, 2005, Appellant, a juvenile, was brought before the court on two case numbers, Case Number A2005-0616 concerning two counts of Grand Theft, felonies of the 4th degree, and Case Number A2004-0329 involving a probation violation. The Court was provided a copy of the Appellant's priors, which include convictions on two Assaults, and four prior probation violations in 2004 and 2005. (See attached Exhibit 1) Thus, the Court was very familiar with the Appellant from previous appearances in other criminal matters prior to August 9, 2005.

At that hearing on August 9th, the Court first inquired as to the "Order to Appear and Explanation of Rights" (hereinafter "Rights Form") papers that the Appellant signed. Appellant acknowledged receipt, reading and understanding of the rights papers. The Court then inquired about the Appellant's understanding of the rights, which were explained in the "rights papers," to which the Appellant answered in the affirmative. The Court then inquired into the Appellant's understanding of the right to be represented by an attorney. (T.pp. 2-3.) From reading through the transcript of the hearing, the matter was discussed in some length, along with the rights papers which Appellant acknowledged receipt and understanding of his rights, which were discussed thoroughly in writing in addition to the court's colloquy.

Appellant then entered a plea of admit to the probation violation. Following that admission, the Court went on to inquire about the case involving the Grand Thefts, in which the Appellant admitted to the two charges of Grand Theft. The Court went on to explain what pleading to the two counts would mean in great detail. (T.pp. 5-7) The Appellant was then found to be a delinquent minor as to both counts. The Court committed the Appellant to the

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Department of Youth Services for a term consisting of a minimum of six months and a maximum period not to exceed his 21st birthday.

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ARGUMENT

Appellee's Response to Appellant's First Proposition of Law

Ohio Revised Code 2151.352 and the provision, "Counsel must be provided for a child not represented by the child's parent, guardian, or custodian" does not impinge upon a juvenile's right to counsel.

I. Introduction

The United States Supreme Court established the right to be represented by counsel in the adjudicatory hearing stage of juvenile delinquency proceedings in the case of In re Gault (1967), 387 U.S. 1, 87 S.Ct. 1428. The juvenile right to counsel in Ohio goes beyond the federal constitutional requirements and is governed by R.C. 2151.352, Juv.R. 4(A) and Juv.R. 29(B).

R.C. 2151.352 provides in relevant part that:

A child...is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to Chapter 120. of the Revised Code...If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them. (Emphasis added)

Juv.R. 4 provides in relevant part that:

(A) Assistance of counsel

Every party shall have the right to be represented by counsel and every child... the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding....

Juv.R. 29(B) also provides a right to counsel and states, in pertinent part:

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

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

(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;

Therefore, pursuant to R.C. 2151.352, Juv.R. 4(A) and Juv.R. 29(B), the appellant was entitled to appointed counsel provided he did not knowingly waive this right. See In re Kindred, 2004-Ohio-3647, ¶¶ 9-19.

II. The State concurs that “representation” by a child’s parent has no bearing on the child’s fundamental right to counsel.

Counsel for the Appellant incorrectly asserts that the Spears Court below equates the mother’s presence with providing legal representation. Her presence was noted in the context of the waiver of counsel, not in providing legal representation in lieu of counsel. Spears at ¶¶ 12 – 13, 58. Thus, Spears does not stand for the proposition that a parent’s presence at an adjudication is an appropriate substitute for legal representation. The right to counsel, and the waiver of counsel are very distinct.

III. R.C. 2151.352 can, and should be, construed as creating a nonwaivable right to counsel for a child not represented by his parent, guardian, or custodian.

As the Appellant correctly states in her brief, other states with similar statutory language have held that this language creates a nonwaivable right to counsel in that setting. Appellant’s Brief at 12 – 13. However, the Appellant is misplaced with the assertion that such a construction in Ohio would conflict with Juv.R. 3, which provides that “. . . rights of a child (with the exception of the right to counsel in Juv.R. 30 hearings) may be waived with the

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permission of the court.” First of all, the plain language of Juv.R. 3 provides discretion for the court in this arena. But more importantly, the nonwaivable right to counsel is not completely binding. It only applies to those settings where the child is not represented by his parent, guardian, or custodian. If one of those entities does provide representation, the child may then choose to waive counsel. See In re R.B., 166 Ohio App.3d 626, 2006-Ohio-264, ¶ 25. See also Douglas v. State (December 6, 1996), 5th Dist. No. 96 CA 44 (erroneous belief that grandmother was custodian was not a violation of right to counsel); In re Smith (2001), 142 Ohio App.3d 16 (presence of a social worker, serving in the capacity of the juvenile’s custodian nullified the automatic-appointment-of-counsel provision of the statute); and In re Estes, 2004-Ohio-5163 (juvenile’s parents satisfied the requirements of R.C. 2151.352).

Counsel alleges that the courts of appeals in Ohio have interpreted the underlying sentence in R.C. 2151.352, reaching varying results, and submits that this is problematic for the statute and the right to counsel. However, a close reading of the cases proffered, including those cited above, reveals that it is simply a fact specific variation, not a legal interpretation that has varied. For example, in In re William B., 163 Ohio App.3d 201, the court found that the mother, who was herself a victim of the juvenile, was not representing the juvenile due to the conflict and may have had adverse interests. Williams B. at ¶ 18. Furthermore, In re R.B., supra, contrary to the representations of Counsel, does not provide an inconsistent interpretation of the statute. In the context of its analysis, the Court’s reference to “some adult” clearly refers to the child’s parent, guardian or custodian language contained in the preceding sentence and in the statute.

R.B. at ¶ 25.

Counsel also submits that the Spears Court below dispensed with the possibility of construing the statute as creating a nonwaivable right. However, on this issue, Spears is not on

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point, as the juvenile's mother was present and fulfilled the representative role required by the statute. Again, in this context, the issue is one of waiver.

As such, there is no need to attempt to define "representation" or sever this particular sentence from the statute. The right to counsel is clear, subject to the right to waive, discussed below.

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Appellee's Response to Appellant's Second Proposition of Law

The Appellant's waiver of counsel was voluntarily, knowingly, and intelligently made.

I. Factual Background

In the underlying fact pattern, the Appellant was first given rights papers, which explained his right to counsel, of which he acknowledged receipt. (T.p. 2). These papers were titled "Order to Appear and Explanation of Rights" (Rights Form) and the Appellant received one each for the Probation Violation in A2004-0329 and one for the Grand Theft charges in A2005-0616. Both of these documents contained identical language and information regarding "YOUR RIGHT TO AN ATTORNEY" and "WAIVER OF ATTORNEY." Specifically, the waiver language provided that:

The undersigned have read the instructions concerning our right to an attorney and the right to a Court-appointed attorney, if applicable. Knowing and understanding these rights, we hereby waive our right to be represented by an attorney or Court-appointed attorney. We further understand that we can be represented by an attorney in the future simply by advising the Court of our intention to do so.

Rights Form at p. 2. Both the Appellant and his mother signed these documents under the WAIVER OF ATTORNEY paragraph, and also on the on the last page of the Rights Form reflecting that "the undersigned have read and understand the explanations contained herein."

Rights Form at pp. 2 and 7.

The Court went on to inquire as to the Appellant's understanding of his right to counsel:

THE COURT: I have here a set of two sets of rights papers, both of which appear to bear your signature in several places. Are those your signatures?

APPELLANT: Yes, sir.

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THE COURT: Did you read that form or have it read to you before you signed it?

APPELLANT: Yes, sir.

THE COURT: Do you understand the rights and explanations contained in that form?

APPALLANT: Yes sir.

THE COURT: Do you understand that you have the right to be represented by an attorney at today's hearing?

APPELLANT: Yes, sir.

THE COURT: If you cannot afford an attorney and you qualify under state guidelines, I will appoint an attorney to represent you. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: Do you wish to go forward with today's hearing without an attorney?

APPELLANT: Yes, sir.

THE COURT: Ms. Spears, do you agree with Corey's decision today to go forward without an attorney?

APPELLANT'S MOTHER: Yes, sir.

(T.pp. 2-3).

After the trial court completed this discussion regarding the waiver of counsel, it then continued to discuss the underlying charges and additional rights of the Appellant:

THE COURT: If you admit these charges today, Corey, that's basically the same as pleading guilty. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: As a result then we would not have an adjudicatory hearing or trial in either of these cases. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: Instead, we would proceed directly to disposition, that is, for me to decide what punishment or conditions if any that should be imposed on your. Do you understand that?

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APPELLANT: Yes, sir.

THE COURT: By entering that plea you will be---well, first of all, that disposition in your case in A2005-0616 could include a commitment to the custody of the Ohio Department of Youth Services for a period of six months or twelve months and a maximum period not to exceed age twenty-one. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: Do you understand what the Ohio Department of Youth Services is?

APPELLANT: Yes, sir.

THE COURT: What is it?

APPELLANT: Juvenile prison, sir.

THE COURT: That's correct. By entering that plea of admit, you will be waiving or giving up certain constitutionally guaranteed rights that you would otherwise enjoy. Among the rights that you will be giving up is the right to remain silent. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: You will also be giving up the right to call witnesses and to present evidence in your defense. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: And you'll be giving up the right to question and to cross-examine prosecutor's witnesses. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: Ordinarily, Corey, the State of Ohio would be required to prove these cases against you beyond a reasonable doubt. If you enter a plea of admit, however, the State of Ohio will not have to prove anything at all. Do you understand that?

APPELLANT: Yes, sir.

THE COURT: Have there been any promises or threats of any sort to cause you to enter these pleas?

APPELLANT: No, sir.

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THE COURT: Ms. Spear, do you agree with Corey's decision today to enter pleas of admission to these charges?

APPALLANT'S MOTHER: Yes, sir.

THE COURT: Then, Corey, I'll accept the pleas of admission....

(T.pp. 5-7). It is in is this context that Counsel for the Appellant asserts that the trial court "did not reflect any adherence to even the basic requirements of due process...."

II. Waiver of Counsel

It is important to note that the issue presented within is the waiver of counsel, not the validity of the pleas of admission or other due process predicates contained within Juv.R. 29(B). Thus, the Appellee will frame the issue in this context in mind.

A juvenile may waive the right to counsel in most proceedings with the permission of the court. Juv.R. 3. However, it is well established that before permitting a waiver of counsel, the trial court has a duty to make a sufficient inquiry to determine that the relinquishment is of "a fully known right" and is voluntarily, knowingly, and intelligently made. Spears at ¶ 45, Gault, 387 U.S. at 42. See also In re Royal (1999) 132 Ohio App.3d 496, 503. In making this assessment, the trial court should consider the totality of the circumstances, including factors such as the juvenile's age, emotional stability, mental capacity, and prior criminal experience. Spears at ¶ 45, Royal at 503, In re Johnson (1995), 106 Ohio App.3d 38, 41.

In the case sub judice, the juvenile was almost fourteen. No issue was demonstrated or has been raised regarding his emotional stability or mental capacity. His prior criminal experience was significant. In this context, the juvenile reviewed or read two Rights Forms that detailed his right to an attorney and the right to waive an attorney. The juvenile signed both of these Rights Forms, indicating his waiver, and also his understanding of the Rights Forms. The juvenile's mother also signed said Rights Forms. As quoted above, the trial court then engaged

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the juvenile is a dialogue via question and answer regarding the Rights Forms, his right to an attorney, and the waiver of an attorney. During this dialogue, the juvenile verbally confirmed his written waiver of counsel. His mother also agreed with his decision. (T.pp. 2 – 3).

As such, the juvenile was clearly notified of his right to counsel, both in writing and verbally. Furthermore, it is equally clear that this waiver was voluntary, knowingly, and intelligently made.

Moreover, the Appellant asserts that this finding in Spears conflicted with it's own precedent in Kindred, supra, In re Christner, 2004-Ohio-4252, and In re Poland, 2004-Ohio-5693. A closer review of those cases fails to support this assertion. In Kindred, the court found that the trial court had failed to conduct a sufficient inquiry to determine whether the juvenile was knowingly, intelligently, and voluntarily waiving her right to counsel when the court merely informed the juvenile that her application for a court appointed attorney was denied and then inquired whether the juvenile wished to proceed. Kindred at ¶ 21 – 22. In Christner, the trial court did not conduct a “dialogue” with the juvenile, simply asking the juvenile is he wished to have a lawyer, to which the juvenile responded, “No.” Christner at ¶¶ 11, 15. And contrary to the case sub judice, the juvenile in Christner did not have extensive familiarity with the juvenile court system. *Id.* at ¶ 16. Finally, in Poland, the court found a flawed waiver of counsel and admission where the juvenile was misinformed regarding his potential exposure on the DYS commitment. Additionally, the written rights waiver was not discussed with the juvenile, nor was his parent consulted, who was ultimately deemed to be in conflict with the juvenile's interests. Poland at ¶¶ 19, 24 – 25. As such, and on their face, all three of these cases are clearly distinguishable from the fact pattern in Spears.

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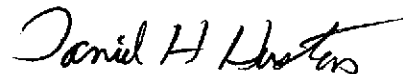
Counsel for the Appellant also spends a great deal of time attempting to compare/contrast Spears with another 5th District case of State v. Bettah, 2006-Ohio-1916. However, in Bettah, the defendant had clearly expressed a desire to be represented by counsel, had asked for additional time to obtain an attorney, but had failed to hire one or seek a court-appointed counsel. Additionally, the court had failed to engage in a dialogue with the defendant regarding the “waiver” beyond inquiring whether he was going to represent himself and whether he was ready to go to trial. *Id.* This was clearly a less than voluntary waiver.

CONCLUSION

For the reasons stated above, the Appellee respectfully urges this Court to uphold the Appellant’s underlying Grand Theft and Probation Violation convictions, and to reject the assertion that R.C. 2151.352 impinges upon the Appellant’s right to counsel, and also to reject the assertion that the Appellant’s waiver of counsel was invalid.

Respectfully submitted,

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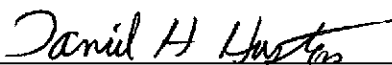
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent by regular U.S. Mail this 14th day of February 2007, to Amanda J. Powell, Counsel of Record for Corey Spears, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215.



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APPENDIX TO

MERIT BRIEF OF APPELLEE STATE OF OHIO

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In The Court Of Common Pleas, Licking County, Ohio

JUVENILE DIVISION

JUDGE
ROBERT H. HOOVER

MAGISTRATES
DOUGLAS E SASSEN
JEFFREY A. PLUNKETT

IN THE MATTER OF:

Corey Spears

CASE NO. A20040329

ALLEGED DELINQUENT/UNRULY MINOR.

ORDER TO APPEAR AND EXPLANATION OF RIGHTS

You are hereby ordered to appear in the Licking County Juvenile Court, First Floor, Licking County Courthouse, Public Square, Newark, Ohio on Aug 05 at 1:00 PM o'clock.

**FAILURE TO APPEAR MAY RESULT IN THE ISSUANCE OF A
WARRANT FOR CUSTODY ISSUED TO THE SHERIFF
FOR YOUR IMMEDIATE DETENTION.**

Court Services Dept.
Family Intervention Services
Cora Fulton-YRP
Prosecutors Office

ROBERT H. HOOVER
Judge and Ex-Officio Clerk
By: [Signature]
Deputy Clerk 740-670-5624

PLEASE BRING THIS FORM WITH YOU WHEN YOU COME TO COURT. AFTER READING THE RIGHTS EXPLANATION SET FORTH BELOW, SIGN YOUR NAME AS INDICATED AND HAVE YOUR PARENT, STEP-PARENT, OR LEGAL GUARDIAN SIGN ALSO. THE JUDGE OR MAGISTRATE WILL ASK FOR THIS FORM WHEN YOU APPEAR IN COURT AND IT WILL BECOME A PERMANENT PART OF YOUR FILE IN THIS CASE.

YOUR RIGHT TO AN ATTORNEY

You have the right to be represented by an attorney at all stages of this proceeding. If you cannot afford an attorney and you qualify under State guidelines, the Clerk will appoint an attorney to represent you at no cost to you. You should contact the Clerk's Office seven (7) days in advance of your scheduled hearing and the Clerk will advise you how to apply for a Court-appointed attorney.

If you do not wish to be represented by an attorney at your initial appearance, you must sign the waiver of attorney set forth below. If you sign the waiver but later wish to be represented by an attorney, you may notify the Court and you will be permitted to do so. If you intend to be represented by an attorney at your hearing, that attorney must be present at the time set forth above to avoid undue delay.

Judge
Robert H. Hoover
740/670-5624
Courthouse
Newark, OH 43055

YOUR RIGHTS IN COURT

Whether you are represented by an attorney or not, you have the following rights guaranteed by law unless such right(s) are waived by you in Court:

1. You have the right to remain silent.
2. You have the right to offer evidence on your behalf and the right to compel the attendance of witnesses at an adjudicatory hearing by the issuance of subpoenas. You have the right to compel the prosecuting attorney to prove its case by proof beyond a reasonable doubt.
3. You have the right to confront, question, and cross-examine witnesses presented against you.
4. You have the right to a record of the proceeding, made at public expense if you are indigent.

WAIVER OF ATTORNEY

The undersigned have read the instructions concerning our right to an attorney and the right to a Court-appointed attorney, if applicable. Knowing and understanding these rights, we hereby waive our right to be represented by an attorney or Court-appointed attorney. We further understand that we can be represented by an attorney in the future simply by advising the Court of our intention to do so.



Parent, Stepparent, or Guardian



Juvenile

WHEN YOU APPEAR IN COURT

When you appear for your initial hearing, the Judge or Magistrate will review the Complaint that has been filed in this case and ask you to enter a plea to the allegation(s) contained in the Complaint. The plea should be either **ADMIT** or **DENY**.

A plea of **ADMIT** is similar to a plea of guilty. If you admit, you are acknowledging the truth of the allegation contained in the Complaint. If you admit the allegation contained in the Complaint there will be no adjudicatory hearing, or trial. If you admit, you will be waiving the rights set forth above. If you admit, the State will be relieved of the burden of proving the allegation beyond a reasonable doubt. You will be given the opportunity to make a statement on your behalf prior to disposition.

A plea of **DENY** is similar to a plea of not guilty. If you deny the allegation contained in the Complaint, this case will be continued and scheduled for an adjudicatory hearing (trial) at a later date. At the adjudicatory hearing, the Prosecutor will present evidence against you and you will have the opportunity for cross-examination. You will also have the right to present witnesses and evidence. You will also have the right to compel the attendance of witnesses by issuance of subpoena prior to the scheduled adjudicatory hearing. If the Prosecutor proves every element of the offense beyond a reasonable doubt, you will be adjudicated delinquent or unruly and the Court will proceed directly to disposition. If the Prosecutor fails to prove every element of the offense, the Complaint will be dismissed.

Judge
Robert H. Hoover
740/670-5624
Courtthouse
Newark, OH 43055

**THERE IS NO RIGHT TO A TRIAL BY JURY IN JUVENILE COURT UNLESS
THE PROSECUTING ATTORNEY HAS REQUESTED THAT YOU BE
DEEMED A SERIOUS YOUTHFUL OFFENDER AND THAT A "BLENDED
SENTENCE" BE IMPOSED AS SET FORTH BELOW**

WARNING: If you are adjudicated delinquent or a juvenile traffic offender, that adjudication is a conviction for purposes of determining the offense level of subsequent offenses and, upon adjudication/conviction, the disposition/sentence to be imposed for such subsequent offense.

DISPOSITION: UNRULY

Disposition in Juvenile Court is similar to "sentencing" in adult court. If you are adjudicated "unruly" after entering a plea of admit or following an adjudicatory hearing, the Judge or Magistrate will proceed directly to disposition. That disposition may occur the same day or be postponed at the discretion of the Judge or Magistrate.

At disposition, the Judge or Magistrate has the following options:

1. Place you in protective custody (your own home);
2. Commit you to the temporary custody of the Licking County Department of Job and Family Services, Children's Services Division, a private child placement agency, either parent, a relative, or to a probation officer for placement in a certified foster home;
3. Award legal custody to either parent, or to any person who files a motion requesting legal custody of you;
4. Commit you to the permanent custody of Children's Services or private child placement agency, if applicable;
5. Place you in the custody of Children's Services subject to a Planned Permanent Living Arrangement;
6. Place you on community control, also know as probation, subject to certain Court-imposed restrictions;
7. Suspend or revoke your operator's license and/or your right to apply for an operator's license;
8. Suspend or revoke the registration of any vehicle in your name;
9. Commit you to a school, camp, institution, or detention facility for a period not to exceed twenty-four (24) hours or until the next business day;
10. Order that you perform a number of community service hours, not to exceed 175 hours.

If you are adjudicated an unruly child and placed on probation, or community control, and you violate the terms and conditions of such probation or community control, you can be returned to Court pursuant to a Motion for Further Hearing at which time any of the above options can be imposed.

DISPOSITION: DELINQUENT

If you are adjudicated "delinquent" after entering a plea of admit or following an adjudicatory hearing, the Judge or Magistrate will proceed directly to disposition. That

Judge
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Columbus, OH 43055

disposition may occur the same day or it may be postponed at the discretion of the Judge or Magistrate.

The Judge or Magistrate has the following options:

1. All of the options listed above for an unruly child;
2. Commit you to a school, camp, institution, or detention facility pending final disposition for a period not to exceed ninety (90) days;
3. If you are adjudicated delinquent for having committed an offense which would have been a felony of the 3rd, 4th, or 5th degree if committed by an adult, commit you to the legal custody of the Ohio Department of Youth Services for institutionalization for an indefinite term consisting of a minimum period of six (6) months and a maximum period not to exceed your 21st birthday;
4. If you are adjudicated delinquent for having committed an offense which would have been a felony of the 1st or 2nd degree if committed by an adult, commit you to the legal custody of the Ohio Department of Youth Services for institutionalization for an indefinite term consisting of a minimum period of one (1) year and a maximum period not to exceed your 21st birthday;
5. If you are adjudicated delinquent for an offense which includes a specification that a firearm was used in the commission of such offense, commit you to the custody of the Ohio Department of Youth Services for an additional term of between one (1) and three (3) years;
6. Require you to make restitution for any damages that may have resulted from the delinquent act;
7. Impose a period of curfew, house arrest, or electronically monitored house arrest;
8. Order that you perform a certain number of community service hours not to exceed 500 hours, 200 hours, or 30 hours depending on the nature of the offense;
9. Require that you obtain a high school diploma, high school equivalence certificate, vocational training, or employment;
10. Impose a fine not to exceed the amounts set forth below:

Minor Misdemeanor	\$ 50.00
4 th Degree Misdemeanor	\$ 100.00
3 rd Degree Misdemeanor	\$ 150.00
2 nd Degree Misdemeanor	\$ 200.00
1 st Degree Misdemeanor	\$ 250.00
5 th Degree Felony	\$ 300.00
4 th Degree Felony	\$ 400.00
3 rd Degree Felony	\$ 750.00
2 nd Degree Felony	\$1,000.00
1 st Degree Felony	\$1,500.00

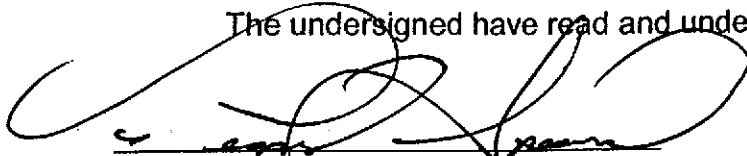
Judge
Robert H. Hoover
740/670-5624
Courthouse
Newark, OH 43055

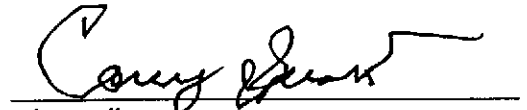
SERIOUS YOUTHFUL OFFENDER

If the offense with which you have been charged is a qualifying offense and you are of sufficient age, the prosecuting attorney can petition the Court by motion within twenty (20) days following the filing of the complaint or in the original charging document that you be deemed a "serious youthful offender". The Judge will then conduct a preliminary hearing to determine if there is probable cause to believe that the

In addition, if you are adjudicated delinquent of certain sex offenses and are required to register as a juvenile sex offender, you will be ineligible to have your record sealed pursuant to Ohio Revised Code Section 2151.358 as set forth above.

The undersigned have read and understand the explanations contained herein.


Parent, Guardian, Custodian


Juvenile

THIS SECTION IS TO BE COMPLETED BY THE PARENT(S)
OR CUSTODIAN(S) OF THE ABOVE-NAMED JUVENILE.
INFORMATION IN THIS SECTION WILL BE USED BY THE COURT
IN CONTACTING YOU OR YOUR CHILD, IF NECESSARY.

Juvenile's Full Name: COREY SPEARS
Address: 20 NORTH STREET City/State: NEWARK, OH.
Phone: (740) 345-8565 D.O.B. 8/13/91 S.S.N. 260-94-1765
School Last Attended: LINCOLN Grade: _____
Is Juvenile Employed: No If yes, where: _____
Ht: 5'6 Wt: 120 Eyes: BLU Hair: BLND Race: WHIT Sex: M
Child Currently Residing With: PEGGY SPEARS
Relationship to Child: MOTHER
Does Child Have an Operator's License: No O.L. Number: _____

FATHER'S INFORMATION:

Name: Billy Spears
DOB: 11/19/68
Address: 155 E. Main St
Newark, Oh. 43055
Employer: _____
Employer Phone: _____

MOTHER'S INFORMATION:

Name: Peggy Spears
DOB: 2/15/71
Address: 20 North Ave
Newark, Oh. 43055
Employer: Helen's Rest.
Mt Vernon Rd, Newark
Employer Phone: 266-7055

BRING THIS ENTIRE FORM TO COURT WITH YOU

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Robert H. Hoover
740/670-5624
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Newark, OH 43055

offense alleged in the complaint did occur and to determine if you are age-eligible for designation as a serious youthful offender. If the Judge finds that there is probable cause to believe that the alleged offense occurred and that you are age-eligible, your case would then be submitted to the grand jury for indictment, unless waived, and you would then be eligible to demand that your case be tried by a jury of your peers.

If you are adjudicated delinquent of the offense alleged, and thus found to be a serious youthful offender, the Judge would then impose a juvenile disposition as deemed appropriate from the options set forth above. The Judge would also impose an adult sentence required by law had the offense been committed by an adult. At the completion of the juvenile portion of the sentence, the probation department, the prosecuting attorney, or the Ohio Department of Youth Services can request that the Court make a finding that you have not been sufficiently rehabilitated as defined by law. The Judge will then conduct a hearing to determine if you have been sufficiently rehabilitated. If the Judge finds that you have been sufficiently rehabilitated, the adult portion of the sentence would then be dismissed. If the Judge finds that you have not been sufficiently rehabilitated, the adult portion of the sentence would then be imposed.

BINDOVER TO ADULT COURT

If you are charged with having committed an offense that would be a felony if committed by an adult and were over the age of thirteen (13) years at the time of the alleged offense, the State may ask the Court to certify (bindover) your case to the general (adult) division of the Common Pleas Court for you to stand trial as an adult. Before the case can be bound over, the Judge must find that probable cause exists to believe that the alleged offense did occur, that you are age-eligible for transfer to adult court, and (unless bindover is mandatory) that you would not be amenable to rehabilitation in the juvenile system. More information will be provided if applicable and counsel will be appointed to represent you if the State requests that your case be transferred to the adult division.

DECISION OF MAGISTRATE AND MAGISTRATE'S ORDER

If your case is heard by the Magistrate, a Decision of Magistrate will be issued following your hearing. Regardless of whether the Court has adopted the Decision of Magistrate, and pursuant to Juvenile Rule 40(E)(3), any party to this matter may file and serve written objections to the Decision of Magistrate within fourteen (14) days of the filing thereof. The objections must be in writing and must be specific and state with particularity the grounds thereof. The Court may then, upon due consideration, adopt, reject, or modify the Decision of Magistrate, hear additional evidence, return the Decision to the Magistrate with instructions or hear the matter itself.

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740/670-5624

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Columbus, OH 43055

Any party may request the Magistrate to provide written findings of fact and conclusions of law pursuant to Juvenile Rule (E)(2) and Civil Rule 52 within seven (7) days of the filing of the Decision of Magistrate. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in the Decision of Magistrate unless that party has timely and specifically objected to that finding or conclusion as required by Juvenile Rule 40(E)(3). Any objection to a finding of fact must be supported by a transcript of all evidence presented to the Magistrate. A

transcript is not necessary to support an objection to a conclusion of law. Requests for transcripts must be in writing and filed with the Clerk of this Court. A deposit for costs may be required prior to the preparation of any transcript.

Certain hearings before the Magistrate will result in the issuance of a Magistrate's Order. Any party may appeal an Order of Magistrate to the Judge of this Court by filing a motion to set the order aside pursuant to Juvenile Rule 40(C)(3)(b) no later than ten (10) days after the Magistrate's Order is filed stating the grounds for your objection with particularity.

RIGHT TO APPEAL

If the Judge affirms the Decision of Magistrate or enters judgment himself, you have the right to appeal to the Licking County Court of Appeals by filing a written notice of appeal with the Court with a copy delivered to the Clerk of the Court of Appeals within thirty (30) days of the filing of the Judgment Entry.

RIGHT TO EXPUNGEMENT AND SEALING OF RECORDS

If you deny the charge filed against you and the same is subsequently dismissed, either for procedural reasons or following an adjudicatory hearing, you have the right to request an expungement of the record of the case pursuant to Ohio Revised Code Section 2151.358(F). You may be asked at that time to sign a waiver of your right to bring a civil suit based upon your arrest. If you choose not to sign a waiver of your right to bring such a civil suit, a separate record of your expunged records will be kept pending expiration of the applicable civil statute of limitations

If you are adjudicated unruly following a plea of admission or following an adjudicatory hearing, you have the right to have the record of your arrest and adjudication sealed two (2) years after the date of your unconditional release from probation. If you are adjudicated delinquent following a plea of admission or following an adjudicatory hearing, you are entitled to receipt of notice of your right to request that the record of your arrest and adjudication be sealed two (2) years after the date of your unconditional discharge from probation or any commitment, whichever occurs later. Such notice is required to be delivered to your last known address. If you request that your record be sealed, a hearing will be conducted at which time the Judge or Magistrate will determine if rehabilitation has been attained to a satisfactory degree and may order the record sealed. If rehabilitation has not been attained to a satisfactory degree, the Judge or Magistrate may deny your request to seal your record.

Judge
Robert H. Hoover
740/670-5624

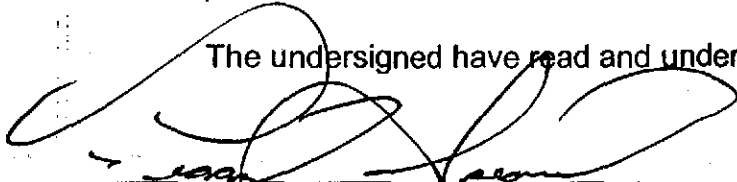
ALLEGED JUVENILE SEX OFFENDERS

If you are alleged to be a juvenile sex offender and if you were fourteen (14) years of age or older at the time of the commission of the offense and if you are adjudicated delinquent for the commission of that sex offense, you may be subject to classification as a sexual predator, an habitual sex offender, or a juvenile sex offender registrant. This means that you may be required to register as a juvenile sex offender with the sheriff in the county in which you reside for ten (10) or more years and that community notification be made in which your name and address are disclosed to the public and also to your neighbors


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Newark, OH 43055

In addition, if you are adjudicated delinquent of certain sex offenses and are required to register as a juvenile sex offender, you will be ineligible to have your record sealed pursuant to Ohio Revised Code Section 2151.358 as set forth above.

The undersigned have read and understand the explanations contained herein.



Parent, Guardian, Custodian



Juvenile

**THIS SECTION IS TO BE COMPLETED BY THE PARENT(S)
OR CUSTODIAN(S) OF THE ABOVE-NAMED JUVENILE.
INFORMATION IN THIS SECTION WILL BE USED BY THE COURT
IN CONTACTING YOU OR YOUR CHILD, IF NECESSARY.**

Juvenile's Full Name: COREY SPEARS
Address: 20 NORTH STREET City/State: NEWARK, OH.
Phone: (740) 345-8565 D.O.B. 8/13/91 S.S.N. 280-94-1765
School Last Attended: LINCOLN Grade: 8TH
Is Juvenile Employed: No If yes, where: _____
Ht: 5'8 Wt: 120 Eyes: BLU Hair: BLND Race: WHT Sex: M
Child Currently Residing With: PEGGY SPEARS
Relationship to Child: MOTHER
Does Child Have an Operator's License: No O.L. Number: _____

FATHER'S INFORMATION:

Name: Billy Spears
DOB: 11/19/68
Address: 155 E. Main St
Newark, Oh. 43055
Employer: _____
Employer Phone: _____

MOTHER'S INFORMATION:

Name: Peggy Spears
DOB: 2/15/51
Address: 20 North Ave
Newark, Oh. 43055
Employer: Helen's Rest
Mt. Vernon Rd
Employer Phone: 366-7055

BRING THIS ENTIRE FORM TO COURT WITH YOU

Judge
Robert H. Hoover
740/670-5624
Courthouse
Newark, OH 43055

In The Court Of Common Pleas, Licking County, Ohio

JUVENILE DIVISION

JUDGE
ROBERT H. HOOVER

MAGISTRATES
DOUGLAS E SASSEN
JEFFREY A. PLUNKETT

IN THE MATTER OF:

Corey Spears
ALLEGED DELINQUENT/UNRULY MINOR.

CASE NO. 20050618
16028

ORDER TO APPEAR AND EXPLANATION OF RIGHTS

You are hereby ordered to appear in the Licking County Juvenile Court, First Floor, Licking County Courthouse, Public Square, Newark, Ohio on Aug 9 05 at 10:00 o'clock.

FAILURE TO APPEAR MAY RESULT IN THE ISSUANCE OF A WARRANT FOR CUSTODY ISSUED TO THE SHERIFF FOR YOUR IMMEDIATE DETENTION.

Court Services Dept.
Family Intervention Services
Cora Fulton-YRP
Prosecutors Office

ROBERT H. HOOVER
Judge and Ex-Officio Clerk
By: [Signature]
Deputy Clerk 740-670-5624

PLEASE BRING THIS FORM WITH YOU WHEN YOU COME TO COURT. AFTER READING THE RIGHTS EXPLANATION SET FORTH BELOW, SIGN YOUR NAME AS INDICATED AND HAVE YOUR PARENT, STEP-PARENT, OR LEGAL GUARDIAN SIGN ALSO. THE JUDGE OR MAGISTRATE WILL ASK FOR THIS FORM WHEN YOU APPEAR IN COURT AND IT WILL BECOME A PERMANENT PART OF YOUR FILE IN THIS CASE.

YOUR RIGHT TO AN ATTORNEY

You have the right to be represented by an attorney at all stages of this proceeding. If you cannot afford an attorney and you qualify under State guidelines, the Clerk will appoint an attorney to represent you at no cost to you. You should contact the Clerk's Office seven (7) days in advance of your scheduled hearing and the Clerk will advise you how to apply for a Court-appointed attorney.

If you do not wish to be represented by an attorney at your initial appearance, you must sign the waiver of attorney set forth below. If you sign the waiver but later wish to be represented by an attorney, you may notify the Court and you will be permitted to do so. If you intend to be represented by an attorney at your hearing, that attorney must be present at the time set forth above to avoid undue delay.

Judge
Robert H. Hoover
740/670-5624
Courthouse
Newark, OH 43055

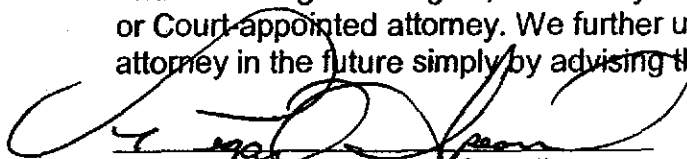
YOUR RIGHTS IN COURT

Whether you are represented by an attorney or not, you have the following rights guaranteed by law unless such right(s) are waived by you in Court:

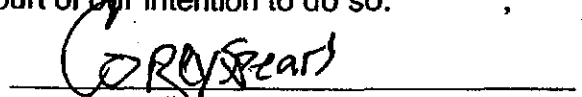
1. You have the right to remain silent.
2. You have the right to offer evidence on your behalf and the right to compel the attendance of witnesses at an adjudicatory hearing by the issuance of subpoenas. You have the right to compel the prosecuting attorney to prove its case by proof beyond a reasonable doubt.
3. You have the right to confront, question, and cross-examine witnesses presented against you.
4. You have the right to a record of the proceeding, made at public expense if you are indigent.

WAIVER OF ATTORNEY

The undersigned have read the instructions concerning our right to an attorney and the right to a Court-appointed attorney, if applicable. Knowing and understanding these rights, we hereby waive our right to be represented by an attorney or Court-appointed attorney. We further understand that we can be represented by an attorney in the future simply by advising the Court of our intention to do so.



Parent, Stepparent, or Guardian



Juvenile

WHEN YOU APPEAR IN COURT

When you appear for your initial hearing, the Judge or Magistrate will review the Complaint that has been filed in this case and ask you to enter a plea to the allegation(s) contained in the Complaint. The plea should be either **ADMIT** or **DENY**.

A plea of **ADMIT** is similar to a plea of guilty. If you admit, you are acknowledging the truth of the allegation contained in the Complaint. If you admit the allegation contained in the Complaint there will be no adjudicatory hearing, or trial. If you admit, you will be waiving the rights set forth above. If you admit, the State will be relieved of the burden of proving the allegation beyond a reasonable doubt. You will be given the opportunity to make a statement on your behalf prior to disposition.

A plea of **DENY** is similar to a plea of not guilty. If you deny the allegation contained in the Complaint, this case will be continued and scheduled for an adjudicatory hearing (trial) at a later date. At the adjudicatory hearing, the Prosecutor will present evidence against you and you will have the opportunity for cross-examination. You will also have the right to present witnesses and evidence. You will also have the right to compel the attendance of witnesses by issuance of subpoena prior to the scheduled adjudicatory hearing. If the Prosecutor proves every element of the offense beyond a reasonable doubt, you will be adjudicated delinquent or unruly and the Court will proceed directly to disposition. If the Prosecutor fails to prove every element of the offense, the Complaint will be dismissed.

Judge

Robert H. Hoover

740/670-5624

Courthouse

Newark, OH 43055

**THERE IS NO RIGHT TO A TRIAL BY JURY IN JUVENILE COURT UNLESS
THE PROSECUTING ATTORNEY HAS REQUESTED THAT YOU BE
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SENTENCE" BE IMPOSED AS SET FORTH BELOW**

WARNING: If you are adjudicated delinquent or a juvenile traffic offender, that adjudication is a conviction for purposes of determining the offense level of subsequent offenses and, upon adjudication/conviction, the disposition/sentence to be imposed for such subsequent offense.

DISPOSITION: UNRULY

Disposition in Juvenile Court is similar to "sentencing" in adult court. If you are adjudicated "unruly" after entering a plea of admit or following an adjudicatory hearing, the Judge or Magistrate will proceed directly to disposition. That disposition may occur the same day or be postponed at the discretion of the Judge or Magistrate.

At disposition, the Judge or Magistrate has the following options:

1. Place you in protective custody (your own home);
2. Commit you to the temporary custody of the Licking County Department of Job and Family Services, Children's Services Division, a private child placement agency, either parent, a relative, or to a probation officer for placement in a certified foster home;
3. Award legal custody to either parent, or to any person who files a motion requesting legal custody of you;
4. Commit you to the permanent custody of Children's Services or private child placement agency, if applicable;
5. Place you in the custody of Children's Services subject to a Planned Permanent Living Arrangement;
6. Place you on community control, also know as probation, subject to certain Court-imposed restrictions;
7. Suspend or revoke your operator's license and/or your right to apply for an operator's license;
8. Suspend or revoke the registration of any vehicle in your name;
9. Commit you to a school, camp, institution, or detention facility for a period not to exceed twenty-four (24) hours or until the next business day;
10. Order that you perform a number of community service hours, not to exceed 175 hours.

Judge
Robert H. Hoover
740/670-5624
Courtthouse
Cwart, OH 43055

If you are adjudicated an unruly child and placed on probation, or community control, and you violate the terms and conditions of such probation or community control, you can be returned to Court pursuant to a Motion for Further Hearing at which time any of the above options can be imposed.

DISPOSITION: DELINQUENT

If you are adjudicated "delinquent" after entering a plea of admit or following an adjudicatory hearing, the Judge or Magistrate will proceed directly to disposition. That

offense alleged in the complaint did occur and to determine if you are age-eligible for designation as a serious youthful offender. If the Judge finds that there is probable cause to believe that the alleged offense occurred and that you are age-eligible, your case would then be submitted to the grand jury for indictment, unless waived, and you would then be eligible to demand that your case be tried by a jury of your peers.

If you are adjudicated delinquent of the offense alleged, and thus found to be a serious youthful offender, the Judge would then impose a juvenile disposition as deemed appropriate from the options set forth above. The Judge would also impose an adult sentence required by law had the offense been committed by an adult. At the completion of the juvenile portion of the sentence, the probation department, the prosecuting attorney, or the Ohio Department of Youth Services can request that the Court make a finding that you have not been sufficiently rehabilitated as defined by law. The Judge will then conduct a hearing to determine if you have been sufficiently rehabilitated. If the Judge finds that you have been sufficiently rehabilitated, the adult portion of the sentence would then be dismissed. If the Judge finds that you have not been sufficiently rehabilitated, the adult portion of the sentence would then be imposed.

BINDOVER TO ADULT COURT

If you are charged with having committed an offense that would be a felony if committed by an adult and were over the age of thirteen (13) years at the time of the alleged offense, the State may ask the Court to certify (bindover) your case to the general (adult) division of the Common Pleas Court for you to stand trial as an adult. Before the case can be bound over, the Judge must find that probable cause exists to believe that the alleged offense did occur, that you are age-eligible for transfer to adult court, and (unless bindover is mandatory) that you would not be amenable to rehabilitation in the juvenile system. More information will be provided if applicable and counsel will be appointed to represent you if the State requests that your case be transferred to the adult division.

DECISION OF MAGISTRATE AND MAGISTRATE'S ORDER

If your case is heard by the Magistrate, a Decision of Magistrate will be issued following your hearing. Regardless of whether the Court has adopted the Decision of Magistrate, and pursuant to Juvenile Rule 40(E)(3), any party to this matter may file and serve written objections to the Decision of Magistrate within fourteen (14) days of the filing thereof. The objections must be in writing and must be specific and state with particularity the grounds thereof. The Court may then, upon due consideration, adopt, reject, or modify the Decision of Magistrate, hear additional evidence, return the Decision to the Magistrate with instructions or hear the matter itself.

Any party may request the Magistrate to provide written findings of fact and conclusions of law pursuant to Juvenile Rule (E)(2) and Civil Rule 52 within seven (7) days of the filing of the Decision of Magistrate. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in the Decision of Magistrate unless that party has timely and specifically objected to that finding or conclusion as required by Juvenile Rule 40(E)(3). Any objection to a finding of fact must be supported by a transcript of all evidence presented to the Magistrate. A

Judge
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transcript is not necessary to support an objection to a conclusion of law. Requests for transcripts must be in writing and filed with the Clerk of this Court. A deposit for costs may be required prior to the preparation of any transcript.

Certain hearings before the Magistrate will result in the issuance of a Magistrate's Order. Any party may appeal an Order of Magistrate to the Judge of this Court by filing a motion to set the order aside pursuant to Juvenile Rule 40(C)(3)(b) no later than ten (10) days after the Magistrate's Order is filed stating the grounds for your objection with particularity.

RIGHT TO APPEAL

If the Judge affirms the Decision of Magistrate or enters judgment himself, you have the right to appeal to the Licking County Court of Appeals by filing a written notice of appeal with the Court with a copy delivered to the Clerk of the Court of Appeals within thirty (30) days of the filing of the Judgment Entry.

RIGHT TO EXPUNGEMENT AND SEALING OF RECORDS

If you deny the charge filed against you and the same is subsequently dismissed, either for procedural reasons or following an adjudicatory hearing, you have the right to request an expungement of the record of the case pursuant to Ohio Revised Code Section 2151.358(F). You may be asked at that time to sign a waiver of your right to bring a civil suit based upon your arrest. If you choose not to sign a waiver of your right to bring such a civil suit, a separate record of your expunged records will be kept pending expiration of the applicable civil statute of limitations

If you are adjudicated unruly following a plea of admission or following an adjudicatory hearing, you have the right to have the record of your arrest and adjudication sealed two (2) years after the date of your unconditional release from probation. If you are adjudicated delinquent following a plea of admission or following an adjudicatory hearing, you are entitled to receipt of notice of your right to request that the record of your arrest and adjudication be sealed two (2) years after the date of your unconditional discharge from probation or any commitment, whichever occurs later. Such notice is required to be delivered to your last known address. If you request that your record be sealed, a hearing will be conducted at which time the Judge or Magistrate will determine if rehabilitation has been attained to a satisfactory degree and may order the record sealed. If rehabilitation has not been attained to a satisfactory degree, the Judge or Magistrate may deny your request to seal your record.

ALLEGED JUVENILE SEX OFFENDERS

If you are alleged to be a juvenile sex offender and if you were fourteen (14) years of age or older at the time of the commission of the offense and if you are adjudicated delinquent for the commission of that sex offense, you may be subject to classification as a sexual predator, an habitual sex offender, or a juvenile sex offender registrant. This means that you may be required to register as a juvenile sex offender with the sheriff in the county in which you reside for ten (10) or more years and that community notification be made in which your name and address are disclosed to the public and also to your neighbors

Judge

Robert H. Hoover

740/670-5624

Courthouse

Frank, OH 43055