IN THE SUPREME COURT OF OHIO

IN RE: D.S., adjudicated delinquent child	:	Case No. 2014-0607
	:	On Appeal from the Licking County Court of Appeals Fifth Appellate District
	:	C.A. Case No. 13CA58

REPLY BRIEF OF APPELLANT D.S.

MICHAEL DEWINE #0009181
Attorney General of Ohio

ERIC E. MURPHY #0083284
State Solicitor

30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
(614) 466-5087 – Fax
Eric.Murphy@ohioattorneygeneral.gov

COUNSEL FOR THE STATE OF OHIO

The Office of the Ohio Public Defender

BROOKE M. BURNS #0080256
Assistant State Public Defender

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

COUNSEL FOR D.S.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.

CASES:

TABLE OF AUTHORITIES

Page No.

CASES CONT'D:

STATUTES:

TABLE OF AUTHORITIES

Page No.

STATUTES CONT'D:

RULES:

STATEMENT OF THE CASE AND FACTS

D.S. rests on the Statement of the Case and Facts presented in his Merit Brief.

ARGUMENT

Introduction

The State's repeated assertions that the General Assembly grants juvenile courts "the authority to hold a sex offender classification hearing either before or after any period of confinement," suggests that D.S. has asked this Court to reinterpret the timing provisions of R.C. 2152.83(B). *Answer Brief* at 1, 2, 5, 6, 7, 10. He has not. D.S. has not alleged that the directives of that statute are ambiguous, or asked this Court to reconsider its decision in *In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653. *See Merit Brief* at 3-16. Instead, he has asked this Court to determine whether R.C. 2152.83(B) is constitutional; and, whether a juvenile court may hold a post-dispositional evidentiary hearing when the trial record does not reflect that a child was age-eligible for classification as a juvenile sex offender registrant. *Merit Brief* at 3-16.

The State also submits that the procedures in R.C. 2152.83(B) benefit a juvenile offender and provide him with increased due process protections by giving the juvenile court the time and opportunity to consider a greater range of information when making a determination about the child's classification as a sex offender registrant. *Answer Brief* at 1, 6, 7, 26. But, whether the timing of the hearing benefits a child is not constitutionally significant to the questions before this Court. Instead, this Court must determine whether the carryover of a punitive sanction into adulthood for a child whose case is retained in juvenile court is constitutional, given the lack of procedural protections in Ohio's juvenile registration statutes. *Merit Brief* at 16-27. For the reasons that follow and those contained in the merit brief, D.S. respectfully requests that this Court adopt his propositions of law.

FIRST PROPOSITION OF LAW

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

The State asserts that at D.S.'s June 17, 2013 sex offender classification hearing, the juvenile court simply "made a determination" that D.S. was 14 at the time of his offense, as permitted by R.C. 2152.83(B). *Answer Brief* at 8. This is not true. Instead, immediately prior to his classification hearing, the juvenile court held a post-dispositional evidentiary hearing and permitted the State to produce additional evidence about D.S.'s offense which allowed the court to find that he was 14 at the time of the act—a fact that was missing from the record at trial. *Merit Brief* at 1; (S-10-43). Thus, the juvenile court reopened the adjudicatory phase of the proceedings in order for the State to prove a fact necessary to impose an additional punishment on D.S. This Court has found the same action in an adult case to be unlawful. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, syllabus.

The parties agree that R.C. 2152.83(B) can only be applied to a child who was 14 or 15 years old at the time he committed a sexually oriented offense. *Merit Brief* at 9; *Answer Brief* at 7. But, whether a court can find that child age-eligible for classification as a sex offender registrant based on facts already in the record is a different question from whether the court can hold a post-dispositional evidentiary hearing to prove facts that are absent from the record in order to make that determination. The latter inquiry is not authorized by R.C. 2152.83(B).

The State asserts that nothing in R.C. 2152.83 or 2152.191 requires courts to make a determination of the juvenile's age at the time of his offense at his adjudicatory hearing. *Answer Brief* at 8. But, neither statute permits the court to hear evidence surrounding the offense in order to establish the child's age for the first time at classification. *See Myers v. City of Toledo*,

110 Ohio St.3d 218, 222, 2006-Ohio-4353, 852 N.E.2d 1176, ¶ 24 ("The canon expression unius est exclusion alterius tells us that the express inclusion of one thing implies the exclusion of the other."). Instead, the plain language of the statute presumes that the fact of the child's age at the time of his offense is established before the classification hearing, not at the hearing. R.C. 2152.83(B)(1).

As noted in D.S.'s merit brief, a child's age at the time of his offense is a condition precedent to the court's being able to conduct a sex offender classification hearing at all. R.C. 2152.83(B)(1). *Merit Brief* at 4. Specifically, R.C. 2152.83(B) provides that a juvenile court "may conduct * * * a hearing for the purposes described in division (B)(2) *if all of the following apply*:" 1) the child was adjudicated delinquent of a sexually oriented offense or child-victim oriented offense that is committed on or after January 1, 2002; 2) the child was 14 or 15 years old at the time of the offense; and, 3) the court was not required to classify the child under R.C. 2152.82 or 2152.86. (Emphasis added.) R.C. 2152.83(B)(1).

Before issuing an order classifying a child as a juvenile offender registrant, the juvenile court is required to "consider *all relevant* factors," under R.C. 2152.83(D), which include the nature of the offense; the child's remorse; the public interest and safety; the factors in 2950.11 and 2929.12; and, the results of the child's treatment. (Emphasis added.) R.C. 2152.83(D). The State asserts that, because "the offender's age" is the factor stated in R.C. 2950.11(K), the General Assembly intended for courts to be able to hear evidence to establish a child's age at his classification hearing if that evidence is absent from the record. *Answer Brief* at 12. But, a closer look at that statute reveals the State's flawed reasoning.

Revised Code Section 2950.11(K) applies to a juvenile court's "determination under division (H)(1) of this section as to whether to suspend the community notification requirement

under this section[.]" R.C. 2950.11(K). Thus, R.C. 2950.11(K) is not a factor for a court to consider at a child's classification hearing under R.C. 2152.83(B). Rather, it is a factor for a court to consider when a sex offender registrant has petitioned the court to review its prior order imposing community notification. R.C. 2950.11(H)(1). Therefore, it is relevant to a court's determination pursuant to R.C. 2152.84, 2152.85, or 2950.11(H), not R.C. 2152.83(B). And, even if it had been a relevant factor for the court to consider, R.C. 2950.11 does not authorize courts to hold post-dispositional evidentiary hearings for the purpose of establishing a child's age at the time of the offense.

The State contends that because a child's age at the time of his offense is not required to prove the child delinquent, age does not need to be proven at trial in order for the child to be eligible for classification as a juvenile sex offender registrant. *Answer Brief* at 12-13, citing *In re Anthony D.G.*, 6th Dist. Sandusky No. S-07-009, 2008-Ohio-598, ¶ 16 and *In re C.T.*, 2d Dist. Montgomery No. 24036, 2010-Ohio-5887, ¶ 19. But, the cases on which the State relies are inapposite here. Both *Anthony D.G.* and *C.T.* concern whether the State's failure to offer evidence of a child's age at trial undermines the juvenile court's personal jurisdiction over the child. *Anthony D.G.* at ¶ 16; *C.T.* at ¶ 5, 15. But, neither case concerns a court's jurisdiction to hold post-dispositional evidentiary hearings to establish additional facts about the child's offense. *Anthony D.G.* at ¶ 16; *C.T.* at ¶ 5, 15.

Regardless of whether a child's age at the time of his offense is proven at trial, the juvenile court's order finding the child delinquent is final and not subject to reopening. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 19. Accordingly, a juvenile court is without authority to conduct a post-dispositional evidentiary hearing to elicit proof of a child's age at the time of his offense when those facts were not

established at trial. *Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, paragraph one of the syllabus.

The State argues that *Raber* is not applicable to juvenile registration cases because the trial court in *Raber* "determined at the first hearing that Raber could not be classified as an offender;" and that the state "affirmatively lost" that issue at trial. *Answer Brief* at 11. This is not true. The trial court in *Raber* did not find that he could not be classified because the sexual conduct between him and his girlfriend was consensual. *Raber* at ¶ 3, 8, 19, 20. Instead, the trial court failed to include any finding regarding consent in its order. *Id.* at ¶ 19. This failure made Raber not eligible for registration. *Id.* at ¶ 20.

The same result is required here because the juvenile court did not make a finding concerning D.S.'s age at trial or disposition. (S-3). Thus, while not fatal to his adjudication, the juvenile court's failure made D.S. ineligible for classification as a juvenile sex offender registrant. The juvenile court acted without authority when it allowed D.S.'s case to be reopened to consider evidence surrounding his offense in order to find him age-eligible for classification as a juvenile offender registrant; and, in so doing it also violated D.S.'s right to be protected from multiple punishments for the same offense.

SECOND PROPOSITION OF LAW

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

The State agrees that the Double Jeopardy Clause protects a defendant against multiple punishments for the same offense "when a sentence is increased after a defendant has a legitimate expectation of finality," and "when a court imposes multiple punishments that exceed the total punishment intended by the legislature." *Answer Brief* at 13, citing *State v. Jones*, 491

U.S. 376, 394, 109 S.Ct. 2522, 105 L.Ed.2d 322 (1989) and *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, ¶ 10. Yet, in an attempt to shield the juvenile registration statutes from double jeopardy protections, the State asserts that this Court did not find Ohio's entire classification scheme to be punitive; and, that even if it did, that the General Assembly's clear intent to impose multiple successive punishments on juvenile sex offenders is reflected in the timing directives of R.C. 2152.83(B). *Answer Brief* at 14-17. Neither claim has merit.

The State suggests that this Court only found "certain classification requirements" to be punitive in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 and *In re C.P.* 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. *Answer Brief* at 14. Specifically, the State claims, in error, that this Court found only the automatic and mandatory portions of Ohio's registration statutes to be punitive. *Answer Brief* at 14. However, in *Williams*, this Court found, "Following the enactment of S.B. 10, all doubt has been removed: R.C. Chapter 2950 is punitive." *Williams* at ¶ 15, citing *State v. Cook*, 83 Ohio St.3d 404, 418, 1998-Ohio-291, 700 N.E.2d 570. Noting that Ohio's registration scheme had changed "dramatically since this Court described the registration process * * * as an inconvenience 'comparable to renewing a driver's license,'" this Court concluded that "no one change compels our conclusion that S.B. 10 is punitive. It is a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional." (Internal citations omitted.) *Williams* at ¶ 13; 20. Considered in aggregate, all the changes enacted by S.B. 10 compelled this Court to find that "imposing the current registration requirements on a sex offender whose crime was committed prior to the enactment of S.B. 10 is punitive." *Id.* at ¶ 20. Thus, this Court declared the entire scheme to be punitive, not just the mandatory or automatic provisions of it. *C.P.* at ¶ 11.

This Court applied *Williams* to all juvenile cases where children with pre-2008 adjudications for sexually oriented offenses were given S.B. 10 classifications, including discretionary registrants. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291, syllabus (reversed the judgment of the court of appeals and remanded for application of *Williams*); *In re cases held for D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288 (reversed and remanded the cases of the 13 juvenile offender registrants whose cases were being held for *D.J.S.*); *In re A.R.*, 5th Dist. Licking No. 08CA17, 2008-Ohio-6581, ¶ 1 (applying *Williams* to the case of a discretionary registrant); *In re Smith*, 3d Dist. Allen No. 1-07-58, 2008-Ohio-3234, ¶ 11 (applying *Williams* to the case of a discretionary registrant); and *In re Bruce S.*, 134 Ohio St.3d 477, 2012-Ohio-5969, 983 N.E.2d 350, ¶ 12 (applied *Williams* to the case of a juvenile offender registrant whose offense occurred between the date S.B. 10 was enacted and the date it went into effect).

The State also asserts that even if all registration under S.B. 10 is punitive, D.S. had a lowered expectation of finality in his disposition because "[s]entences carry less of an expectation of finality than acquittals or convictions;" and, a sentence does not have "a degree of finality that prevents its later increase." *Answer Brief* at 15, citing *Monge v. California*, 524 U.S. 721, 730, 118 S.Ct. 2246, 141 L.Ed.2d 615 and *United States v. DiFrancesco*, 449 U.S. 117, 134, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980).

Contrary to the State's claims, a defendant's lowered expectation of finality in his sentence is limited to instances where the sentence is appealed. In *Monge* and *DiFrancesco*, the United States Supreme Court found that "it is a 'well-established part of our constitutional jurisprudence' that the guarantee against double jeopardy neither prevents the prosecution from seeking review of a sentence nor restricts the lengths of a sentence imposed upon retrial after a

defendant's successful appeal." *Monge* at 730, quoting *DiFranscesco* at 137. This Court has recognized a similar limitation to a defendant's expectation of finality. *State v. Roberts*, 119 Ohio St.3d 294, 2008-Ohio-3835, 893 N.E.2d 818, ¶ 14 ("there [is] no absolute constitutional bar to the imposition of a more severe sentence on reconviction after a defendant's successful appeal of the original judgment of conviction."), citing *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656. This is not the circumstance of the present case.

When a juvenile court enters a child's disposition following his adjudication, that disposition is final. R.C. 2505.02(B). A court may not reopen the case to impose further dispositional punishment. *In re Echols*, 190 Ohio App.3d 85, 2010-Ohio-4072, 940 N.E.2d 990 (3d.Dist.) (vacating a juvenile's commitment to DYS when the record reflected that he had already been given a valid disposition on that case) citing *In re Sekulich*, 65 Ohio St.2d 13, 15, 417 N.E.2d 1014 (1981). Thus, unless the child or the state appeals, the child has a legitimate expectation of finality in the court's disposition of his case. *Roberts* at ¶ 16, citing *DiFrancesco*, 449 U.S. at 136, 101 S.Ct. 426, 66 L.Ed.2d 328. The timing of a child's classification hearing under R.C. 2152.83(B) is not the equivalent of an appeal of his disposition that would limit his expectation of finality; as such, the State's assertion is lost here.

The State repeatedly alleges that "the legislature plainly intended that juvenile sex offenders could be subject to both confinement and to registration." *Answer Brief* at 17. This is true—the legislature intended for children to be subject to registration upon release from a secure facility. *I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653, ¶ 12-13. But, for the State to prevail in its argument, this Court would have to find that the legislature also intended for the child's registration to be punishment. As set forth in D.S.'s merit brief, the General Assembly did not draft R.C. 2152.83(B) to impose punishment on juvenile offenders. *Merit Brief* at 15.

Instead, the legislature enacted S.B. 10 to be a civil and remedial classification scheme. R.C. 2950.02(B); *Cook*, 83 Ohio St.3d at 417, 700 N.E.2d 570 ("the statute [was] absolutely devoid of any language indicating an intent to punish."). The State's contention that the General Assembly intended for R.C. 2152.83(B) to impose multiple successive punishments against a child for the same offense cannot be true, because it is impossible for the legislature to have intended for the statute to function the way the State suggests when the legislature's non-punitive intent predates this Court's decision in *Williams*. R.C. 2950.01(B); *Cook* at 417.

The State also attempts to illustrate the legislature's intent to impose multiple punishments by likening the bifurcated process outlined in R.C. 2152.83(B) to the invocation of the adult portion of a serious youthful offender's ("SYO") sentence or to the revocation of a defendant's community control. *Answer Brief* at 8. Specifically, the State argues that the SYO invocation and community control revocation procedures require the court to consider new facts before imposing additional punishments for the same offense, and that "there is nothing remarkable about a statute here that separates the sentencing decision and produces two different hearings." *Answer Brief* at 8-9, citing *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203, *State v. Fraley*, 105 Ohio St.3d 13, 2004-Ohio-7110, 821 N.E.2d 995, ¶ 17, and *State v. John*, 11th Dist. Geauga No. 2012G3097, 2013-Ohio-871, ¶ 28. The State's analogy fails.

Unlike a child's sex offender classification hearing, before an SYO may have his adult sentence invoked or an adult may have his community control revoked, the delinquent child or defendant must commit a new violation or offense. R.C. 2152.14; 2929.15. The resulting penalty for that new infraction is not an additional punishment on the underlying charge; it is a sanction on the new violation. In each of the cases the State cites, the procedure for imposing a subsequent punishment was triggered by a new offense or violation.

For example, in *Fraley*, this Court examined whether R.C. 2929.19(B)(5) required a judge to notify a defendant at his initial sentencing hearing of the specific prison term that could be imposed if he violated the terms of his community control. *Fraley* at ¶ 8. While this Court took no issue with the defendant receiving a prison term at a subsequent hearing, the defendant's term was a direct result of his committing a new violation, not an additional punishment for his underlying offense. *Id.* at ¶ 15. In *John*, the Eleventh District Court of Appeals considered whether a trial court abused its discretion by imposing a maximum sentence for the defendant's community control violation, and found that R.C. 2929.15(B)(1)(c) authorizes courts to impose a prison term on an offender if he violates a law or the terms of his community control. *Id.* at ¶ 23.

Because the second punishment in those circumstances requires a triggering event, such as a violation of supervisory conditions or a new criminal offense, those proceedings do not constitute multiple punishments for the same offense. *State v. McMullen*, 6 Ohio St.3d 244, 245-246, 452 N.E.2d 1292, (1983). As this Court found in *McMullen*, "a violation of probation, which [is] the basis for [an] increased sentence, [is] a separate and distinct act and does not constitute multiple punishments for the same offense. * * * A defendant has no legitimate expectation of finality in the original sentence when it is subject to his compliance with the terms of his probation." *Id.* The same rationale distinguishes the issues in this case from the procedures in SYO invocation or community control revocation hearings. R.C. 2152.83(B) does not concern a penalty for a new violation or child's failure to comply with court-ordered supervision or with the juvenile portion of an SYO disposition; therefore, the second punishment that occurs apart from his disposition must be found to be in violation of the Double Jeopardy Clause. *Pearce*, 395 U.S. at 717-718, 89 S.Ct. 2072, 23 L.Ed.2d 656; *Ex Parte Lange*, 85 U.S. 163, 168, 173, 21 L.Ed. 872 (1874). If classification as a sex offender registrant under

S.B. 10 were not punitive, the State would be correct—splitting the child's disposition would not violate double jeopardy. But, because registration is punitive, the child cannot be constitutionally classified at any time other than at disposition. *Pearce* at 717-718.

THIRD PROPOSITION OF LAW

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

The State urges this Court to find that the presence of discretion in a juvenile court's initial classification determination is sufficient to fulfill all due process implications associated with a punitive sanction extending beyond the jurisdiction of the juvenile court. *Answer Brief* at 19. But this suggestion ignores the fact that Ohio has a long-standing history of not permitting a child whose case remains in the juvenile system to receive an adult sanction for that case, absent sufficient due process protections employed to ensure that the adult sanction is not imposed without giving the juvenile system the opportunity to try and sufficiently rehabilitate the child. R.C. 2152.14(D); 2152.12(B),(C).

There is no constitutional right to be treated as a juvenile; but, Ohio has created a system of juvenile justice in which adult treatment and sentencing is reserved for exceptional circumstances; those circumstances require additional due process protections before a juvenile offender is punished as an adult for an offense that occurred when he was a child. R.C. 2152.14; 2152.10; 2152.12; *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 18, 31; *see also State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 48.

As set forth in the merit brief, the procedural protections outlined in Ohio's SYO and transfer statutes are lacking from Ohio's registration statutes. *Merit Brief* at 24-26. For example, before a juvenile with an SYO disposition can have the adult portion of his sentence invoked, the

court must hold a hearing and find by clear and convincing evidence that the child is "unlikely to be rehabilitated during the remaining period of juvenile jurisdiction." R.C. 2152.14(D); *D.H.* at ¶ 31. Ohio's juvenile registration statutes contain no such requirement. Instead, R.C. 2152.83(E) provides only that a juvenile's classification order "remain in effect for the period of time specified in [R.C. 2950.07], subject to modification or termination of the order under [R.C. 2152.84 and 2152.85 * * *] and that child's attainment of eighteen or twenty-one years of age does not affect or terminate the order[.]" Unlike R.C. 2152.14, the juvenile court is not required to find that its registration order in a child's case remain in effect beyond the juvenile's 21st birthday because the child was not sufficiently rehabilitated during the juvenile court's jurisdiction over his case. R.C. 2152.83(E). And, the child is not required to have committed a triggering event before this carryover occurs. *Id.*

Similarly, before a juvenile court can transfer a child subject to discretionary transfer to criminal court, the juvenile court must comply with R.C. 2152.12(B)-(E) and Juv.R. 30(C), which require a thorough investigation into the child's background and a determination concerning the child's amenability to treatment and rehabilitation in the juvenile system. *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 10 (finding that the amenability proceedings are a "vital safeguard" grounded in constitutional protections.). No such finding is required before a child's status as a juvenile offender registrant extends beyond the age jurisdiction of the juvenile court. R.C. 2152.83(E).

In addition, contrary to the State's assertion, this Court's holding in *C.P.* does not imply that the extension of a juvenile offender's registration duties beyond the age jurisdiction of the juvenile court is constitutional. *See Answer Brief* at 25. In *C.P.*, this Court considered the constitutionality of R.C. 2152.86, which concerned the automatic and mandatory imposition of a

tier III classification for a juvenile offender who was 15 years old at the time of his offense. *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 2. C.P. did not ask this Court to determine whether the extension of his registration duties beyond the age jurisdiction of the juvenile court was constitutional. *Id.* at ¶ 1. As such, this Court did not render a decision on that point. *See Miner v. Witt*, 82 Ohio St. 237, 238, 92 N.E. 21 (1910) ("The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions[.]").

Further, contrary to the State's claim, adopting D.S.'s third proposition of law here would not render Ohio's SYO statutes invalid. *Answer Brief* at 25. This Court has held that Ohio's SYO statutes withstand constitutional scrutiny because R.C. 2152.14 requires the juvenile court to engage in a number of procedural safeguards before invoking a child's suspended adult sentence. *D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, at ¶ 38. A child with an SYO disposition will not serve his adult punishment if he successfully completes his juvenile disposition. R.C. 2152.14. He only serves the adult portion of his sentence if he violates the rules of the institution of commitment, or engages in conduct that creates a substantial risk to the safety of the institution, community, or the victim, and if the court makes statutorily required findings prior to invocation of that consequence. R.C. 2152.14(A)(2)(a),(b). This is not the case for a child who is classified as a juvenile offender registrant. R.C. 2152.83(E).

Although the juvenile registration statutes provide children with multiple opportunities to have their classifications reviewed, a child classified as a juvenile sex offender registrant will automatically continue registering as an adult. R.C. 2152.83; 2152.84; 2152.85. Unlike Ohio's SYO statutes, Ohio's juvenile registration statutes do not require the court to consider whether the child is likely to pose a continued threat to reoffend as an adult or that a period of registration

beyond the age jurisdiction of the juvenile court is required for a specific child before the juvenile's status as a registrant continues into adulthood. R.C. 2152.83; 2152.84; 2152.85. Ohio's juvenile registration and notification scheme is unique in that there is no other statute in the juvenile code that creates this presumption. As such, it is also uniquely unconstitutional.

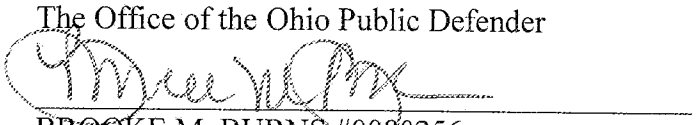
Finally, the State addresses one of the arguments raised in the Amicus Brief and submits that D.S. cannot advance a right-to-reputation argument because he did not argue that below. *Answer Brief* at 28. *Black's Law Dictionary* defines "amicus curiae" as: "A person who is not a party to a lawsuit but who petitions the court to file a brief in the action because that person has a strong interest in the subject matter." *Derolph v. State*, 94 Ohio St.3d 40, 760 N.E.2d 351 (2001) (Cook, J., dissenting). The arguments raised by the Amici are not additional claims, but are submitted in support of D.S.'s propositions of law. As such, the Amici may present their arguments in support of their position that the extension of a child's classification as a juvenile sex offender registration is unconstitutional. D.S. argued in his merit brief that R.C. 2950.081 was harmful because it makes a juvenile offender registrant's status available to the general public through a public records request. *Merit Brief* at 21. Accordingly, the Amici are not prohibited from urging this Court to consider the damage that such public access causes.

CONCLUSION

For the reasons presented herein and in his merit brief, D.S. urges this Court to adopt his propositions of law.

Respectfully submitted,

The Office of the Ohio Public Defender



BROOKE M. BURNS #0080256
Assistant State Public Defender

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

COUNSEL FOR D.S.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY BRIEF OF MINOR CHILD-APPELLANT, D.S. was forwarded by regular U.S. Mail to the office of Eric Murphy, State Solicitor, Attorney General of Ohio, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, this 24th day of November, 2014.

BROOKE M. BURNS #0080256
Assistant State Public Defender

COUNSEL FOR D.S.

#430519

IN THE SUPREME COURT OF OHIO

IN RE: D.S. A delinquent child.	:	Case No. 2014-0607
	:	On Appeal from the Licking County Court of Appeals Fifth Appellate District
	:	C.A. Case No. 13CA58

APPENDIX TO REPLY BRIEF OF APPELLANT D.S.

Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 140 (SB 143)

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

ORC Ann. 2152.191 (2014)

§ 2152.191. Children subject to sex offender registration and notification law

If a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, both of the following apply:

(A) Sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code apply to the child and the adjudication.

(B) In addition to any order of disposition it makes of the child under this chapter, the court may make any determination, adjudication, or order authorized under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code and shall make any determination, adjudication, or order required under those sections and that chapter.

HISTORY:

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

Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 140 (SB 143)

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

ORC Ann. 2929.15 (2014)

§ 2929.15. Community control sanctions

(A) (1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to *section 2929.16*, *2929.17*, or *2929.18 of the Revised Code*. If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of *section 2929.18 of the Revised Code*, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with *sections 2929.16* and *2929.17 of the Revised Code*. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under *section 2929.16* or *2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under *section 2929.17 of the Revised Code*, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug

of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to *section 2929.16*, *2929.17*, or *2929.18 of the Revised Code*, the court shall place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under *section 2301.27 of the Revised Code*, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to *section 2929.16*, *2929.17*, or *2929.18 of the Revised Code*, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(3) If an offender who is eligible for community control sanctions under this section admits to being drug addicted or the court has reason to believe that the offender is drug addicted, and if the offense for which the offender is being sentenced was related to the addiction, the court may require that the offender be assessed by a properly credentialed professional within a specified period of time and shall require the professional to file a written assessment of the offender with the court. If a court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after consideration of the written assessment, if available at the time of sentencing, and recommendations of the professional and other treatment and recovery support services providers.

(4) If an assessment completed pursuant to division (A)(3) of this section indicates that the offender is addicted to drugs or alcohol, the court may include in any community control sanction imposed for a violation of *section 2925.02*, *2925.03*, *2925.04*, *2925.05*, *2925.06*, *2925.11*, *2925.13*, *2925.22*, *2925.23*, *2925.36*, or *2925.37 of the Revised Code* a requirement that the offender participate in a treatment and recovery support services program certified under *section 5119.36 of the Revised Code* or offered by another properly credentialed community addiction services provider.

(B) (1) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator one or more of the following penalties:

(a) A longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section;

(b) A more restrictive sanction under *section 2929.16*, *2929.17*, or *2929.18 of the Revised Code*;

(c) A prison term on the offender pursuant to *section 2929.14 of the Revised Code*.

(2) The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(2) of *section 2929.19 of the Revised Code*. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to *section 2929.16*, *2929.17*, or *2929.18 of the Revised Code* in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D) (1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under *section 341.26*, *753.33*, or *5120.63 of the Revised Code*.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to *section 341.26, 753.33,* or *5120.63 of the Revised Code* shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to *section 5120.63 of the Revised Code*. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349. Eff 9-22-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 152 v H 130, § 1, eff. 4-7-09; 153 v H 338, § 1, eff. 9-17-10; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 140 (SB 143)

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

ORC Ann. 2929.19 (2014)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to *section 2953.07* or *2953.08 of the Revised Code*. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with *section 2930.14 of the Revised Code*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to *section 2951.03 of the Revised Code* or *Criminal Rule 32.2*, and any victim impact statement made pursuant to *section 2947.051 of the Revised Code*.

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) Notify the offender that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code*. If a court imposes a sentence including a prison term of a type described in division (B)(2)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(c) of this section that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of *section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(c) of this section and failed to notify the offender pursuant to division (B)(2)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(c) of this section. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(d) of this section and failed to notify the offender pursuant to division (B)(2)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code*, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(e) of this section that the parole board may impose a prison term as described in division (B)(2)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code* or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of *section 2967.28 of the Revised Code*, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(2)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in *section 341.26*, *753.33*, or *5120.63 of the Revised Code*, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(g) (i) Determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under *section 2967.191 of the Revised Code*. The court's calculation shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

(ii) In making a determination under division (B)(2)(g)(i) of this section, the court shall consider the arguments of the parties and conduct a hearing if one is requested.

(iii) The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under division (B)(2)(g)(i) of this section. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion. If the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay. *Sections 2931.15* and *2953.21 of the Revised Code* do not apply to a motion made under this section.

(iv) An inaccurate determination under division (B)(2)(g)(i) of this section is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

(3) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of *section 2950.03 of the Revised Code* if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under *section 2971.03 of the Revised Code* for a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of *section 2907.02 of the Revised Code*.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418*, *2941.1419*, or *2941.1420 of the Revised Code*.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(3)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (E) of *section 2929.14 of the Revised Code*, the court shall impose sentence on the offender as described in that division.

(4) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to *section 2929.14 of the Revised Code*.

(5) Before imposing a financial sanction under *section 2929.18 of the Revised Code* or a fine under *section 2929.32 of the Revised Code*, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(6) If the sentencing court sentences the offender to a sanction of confinement pursuant to *section 2929.14* or *2929.16 of the Revised Code* that is to be served in a local detention facility, as defined in *section 2929.36 of the Revised Code*, and if the local detention facility is covered by a policy adopted pursuant to *section 307.93*, *341.14*, *341.19*, *341.21*, *341.23*, *753.02*, *753.04*, *753.16*, *2301.56*, or *2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to *section 2929.37 of the Revised Code* for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(6)(a)(i) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code*, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(6)(a)(ii) of this section.

(7) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(2)(a) of this section or to include in the sentencing entry any information required by division (B)(2)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandato-

ry, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C) (1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose additional sanctions as specified in *sections 2929.15*, *2929.16*, *2929.17*, and *2929.18 of the Revised Code*. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of *section 2929.13 of the Revised Code*.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose an additional prison term as specified in *section 2929.14 of the Revised Code*. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (I)(1) of *section 2929.14 of the Revised Code*, may recommend placement of the offender in a program of shock incarceration under *section 5120.031 of the Revised Code* or an intensive program prison under *section 5120.032 of the Revised Code*, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.