

JUVENILE DEPARTMENT

Guidebook

Introduction:

The Appeals Section of the Juvenile Department engages in a wide variety of post-dispositional advocacy for children in Ohio’s juvenile justice system. From fact and duration of confinement issues for children who are incarcerated, to post-dispositional representation for children facing the consequences of their adjudications. This Guidebook gives an overview to the Ohio Rules of Juvenile Procedure, the Ohio Rules of Appellate Procedure, and the portions of Revised Code Chapter 2152 that the section utilizes most often.

Table of Contents:

General Information.....	2
Preliminary Hearings.....	4
Relinquishment of Jurisdiction to Criminal Court.....	15
Adjudicatory Hearings.....	21
Dispositional Hearings.....	30
Serious Youthful Offender Dispositional Sentence.....	38
Post-Disposition Hearings.....	45
Sex Offender Registration and Notification	52
Sealing and Expunging.....	60
Appeals.....	65

GENERAL INFORMATION

Purpose and Scope of Juvenile Court Jurisdiction

R.C. 2152.01(A)-(C); 2152.02

“Child” includes any of the following:

- A person who is under 18.
- Any person who violates a state law or municipal ordinance before turning 18, irrespective of whether the person is over 18 at the time the complaint is filed or a hearing on the complaint is held.¹
- A person who enters the jurisdiction of the juvenile court prior to turning 18 is still considered a “child” until the person attains 21 years of age.

“Delinquent child” includes any of the following:

- Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of this state, that would be an offense if committed by an adult.
- Any child who violates any lawful order of the court made under Chapters 2151 or 2152 of the Revised Code (except an order issued under R.C. 2151.87).
- Any child who violates R.C. 2907.39(C), R.C. 2923.211(A), or R.C. 2925.55(C)(1),(D).
- Any child who is a habitual truant and who was previously adjudicated an unruly child for being a habitual truant.
- A child who is a chronic truant.

Purpose of Delinquency Dispositions

- Provide for the care, protection, and mental and physical development of children; protect the public interest and safety; hold the child accountable; restore the victim; and rehabilitate the child.
- Dispositions must be reasonably calculated to achieve the overriding purposes of Chapter 2152 of the Revised Code, commensurate with and not demeaning the seriousness of the child’s conduct, consistent with dispositions for similar acts committed by other children, and not based on race, ethnic background, gender, or religion.

¹ A person who violates a felony code section prior to turning 18, but who is not apprehended or taken into custody until after the age of 21 is no longer a “child” under Chapter R.C. 2152.

Hearings, Generally

Juv.R. 27; Juv.R. 37; Sup.R. 45(E)

- Serious youthful offender (“SYO”) proceedings are open to the public; but, in all other proceedings, the court may exclude the general public, unless they are a person with direct interest in the case or demonstrate at a hearing, a countervailing right to be present.
- Cases involving alleged delinquent children must be heard separate and apart from the trial of cases against adults; and, with the exception of SYO proceedings, heard and determined without a jury.
- Adjudicatory hearings, dispositional hearings, and hearings held before a magistrate must be recorded.
- Juvenile court records are not subject to public use by any person or party, except in the course of an appeal or otherwise authorized by law.
- When restricting public access to a case document, courts must use the least restrictive means possible, including: redaction of information, restricting remote access, restricting public access, using generic titles or descriptions, using initials or other identifiers for the parties’ proper names.

PRELIMINARY HEARINGS

Custody, Detention, Shackling, and Transfer to another County

Juv. R. 6; Juv.R. 7; Sup.R. 5.01; Juv.R. 11

Taking a Child into Custody:

Juv.R. 6

Findings

- A child subject to a delinquency complaint may be taken into custody by court order, pursuant to lawful arrest, or by law enforcement or duly authorized officer of the court when:
 - There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that a parent, guardian, custodian, or other household member has abused or neglected another child in the house and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian.
 - There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.
 - While the proceedings are pending, there are reasonable grounds to believe that the child may abscond or be removed from the court's jurisdiction or will not be brought to the court.

Hearing Required

- When a child is taken into custody pursuant to an ex parte order, a probable cause hearing must be held before the end of the next business day after the day on which the order is issued, but no later than 72 hours after the issuance of the order.

Detaining a Child for a Delinquency Proceeding
Juv.R. 7

Standard

- A child may not be placed in detention prior to final disposition unless:
 - Detention or shelter care is required to protect the child or other persons or property from immediate or threatened physical or emotional harm;
 - The child may abscond or be removed from the jurisdiction of the court;
 - The child has no parent, guardian, custodian, or other person able to provide supervision and care for the child and return the child to court when required; or
 - An order for placement in detention has been made; or confinement is authorized by statute.

Hearing

- When a child has been admitted to detention, a hearing to determine whether detention is appropriate shall be held no later than 72 hours after admission, or the next court date, whichever is earlier.

Notice

- Reasonable oral or written notice of the time, place, and purpose of the detention hearing must be provided to the child and the child's parents, guardian, or other custodian.
- Prior to the hearing, the court must inform the parties of the right to counsel and to appointed counsel if indigent.²

Shackling (Local Juvenile Restraint Rule)
Sup.R. 5.01

Adoption of Rule

- Each court must adopt a local rule governing the use of physical restraints for juveniles appearing in court proceedings. The rule must:
- Create a presumption that physical restraints shall not be used unless a judge finds both of the following:

² According to O.A.C. 120-1-03(B)(4), children are presumed indigent for purposes of appointment of counsel.

- The use of physical restraints is necessary because the juvenile's behavior represents a current threat to the safety of the juvenile or others in the courtroom; or, there is a significant and imminent risk of the juvenile will flee the courtroom; *and*
- There are no less restrictive alternatives to the use of physical restraint.

Hearing Required

- The court must permit any party to be heard on whether physical restraint is necessary.

Standard for Restraint

- If physical restraint is found to be necessary, the type of restraint must be the least restrictive necessary to meet the level of risk posed by the child, and must not unnecessarily restrict the movement of the child's hands.

Transfer to another County

Juv.R. 11

When Permitted

- If a child resides in a county other than the county where a proceeding is commenced, the court may, *sua sponte*, or upon the motion of a party, transfer the proceeding to the county of the child's residence; the court shall proceed as if the original complaint had been filed in that county.
- Transfer may be made if the child's residence changes.
- Where either the transferring court or the receiving court determine that the interests of justice and convenience of the parties so require, the adjudicatory hearing shall be held in the county where the complaint is filed; thereafter, the proceeding may be transferred to the county of child's residence for disposition.
- Where a case is transferred, certified copies of all legal and social records pertaining to the proceeding shall accompany the transfer.

When Required

- Other than a removal action, proceedings shall be transferred if other proceedings involving the child are pending in a juvenile court of the county of the child's residence.

Discovery

Juv. R. 24

Applicability

- Applies to adjudicatory and transfer proceedings.³

Duty of Parties to Supply

- Upon written request, each party of whom discovery is requested shall produce promptly for inspection, copying, or photographing, the following unprivileged information, documents, and materials in that party's custody, control, or possession:
 - The names and last known addresses of each witness to the occurrence that forms the basis of the charge or defense;
 - Copies of any written statements made by any party or witness;
 - Transcriptions, recordings, and summaries of any oral statements of any party or witnesses, except the work product of counsel;
 - Any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;
 - Photographs and any physical evidence which a party intends to introduce at the hearing; and
 - All evidence, known or that may become known to the prosecuting attorney, favorable to the respondent and material either to guilt or punishment.⁴

Order Granting Discovery

- Upon refusal of a party to comply with a discovery request, the requesting party apply for a written order granting discovery; the application must certify that a request for discovery was made and refused.
- The court may deny, in whole or part, or otherwise limit or make conditional the discovery authorized by Juv.R. 24, if a party shows that granting discovery may:
 - Jeopardize the safety of a party, witness, or confidential informant;

³ *In re D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404, ¶ 16.

⁴ *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

- Result in the production of perjured testimony or evidence;
 - Endanger the existence of physical evidence;
 - Violate a privileged communication; or
 - Impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence.
- An order granting discovery may make discovery reciprocal for all the parties, including the party requesting the discovery.
 - It is an abuse of discretion to dismiss a case for a party's failure to comply with a discovery order without first performing an in camera inspection of the withheld evidence to determine whether the evidence is discoverable under Juv.R. 24.

Failure to Comply

- If a party brings it to the court's attention that a person has failed to comply with an order compelling discovery, the court may grant a continuance, prohibit the person from introducing the undisclosed material into evidence, or enter such order as it deems just under the circumstances.

Competency

R.C. 2152.52 - R.C. 2152.59

Presumption

- Any child who is 14 or older who is not found to be mentally ill, intellectually disabled, or developmentally disabled is presumed competent. R.C. 2152.52(A)(2).⁵

Procedure Following Motion for Competency Determination

Within 15 business days of the filing of the motion:

- Find the child incompetent without an evaluation or hearing if the prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination or a previous court determined the child was incompetent and could not attain competency through attainment services. R.C. 2152.52(B)(1),(2)

⁵ The presumption is rebuttable.

- Determine whether there is a reasonable basis to conduct a competency evaluation either: without a hearing or by holding a hearing and making a determination within 10 days after the conclusion of the hearing. R.C. 2152.53(A)(2),(3); (B).
- Upon a determination that there is a reasonable basis for the competency evaluation, or upon agreement of the parties, the court must order an evaluation and appoint an evaluator. R.C. 2152.53(B).

Competency Evaluator

- If there is reasonable basis for a competency evaluation (or by agreement of the parties), the court must order an evaluation and appoint an evaluator. The type of evaluator depends on whether the child appears to be at least moderately intellectually disabled.
 - If the child appears to be at least moderately intellectually disabled, the evaluation must be made by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disabilities. R.C. 2152.54(B) (*See criteria* in R.C. 5122.01(I)(1)).⁶
 - If the child does *not* appear to be at least moderately intellectually disabled, the evaluation must be made by either a professional who is employed by a psychiatric facility or other center certified by the department of mental health to provide forensic services, and is appointed by the director of the facility or center to conduct the evaluation; or a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents. R.C. 2152.54(B) (*See criteria* in R.C. 51.22.01(I)(1)).

Evaluation Requirements

- Must be performed in the least restrictive setting available that both facilitates the evaluation and maintains the safety of the community, the child, and the child's parents, guardians or custodians. R.C. 2152.55(A).
- The evaluator must have access to all relevant private and public records. R.C. 2152.55(B).
- Within 10 business days, the attorneys for the parties must deliver copies of relevant police reports and other background information pertaining to the child and in their possession to the evaluator, unless the release would interfere with the prosecution of any person, create a substantial risk of harm to any person, or is protected by attorney client privilege. R.C. 2152.55(C),(D).

⁶ If the initial evaluator determines that the child is at least moderately intellectually disabled, the court must order a new evaluation by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disabilities. R.C. 2152.54(C).

Evaluator's Report

- The report must include the evaluator's opinion as to whether the child, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, is presently incapable of understanding the nature and objective of the proceedings or of assisting in the child's defense. R.C. 2152.56(A).
- The report must *not* include any opinion as to the child's sanity at the time of the alleged offense, details of the alleged offense as reported by the child, or an opinion on the child's culpability. R.C. 2152.56(A).
- The report must address the child's capacity to:
 - Comprehend and appreciate the charges or allegations;
 - Understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian ad litem, or court appointed special assistant;
 - Assist in his or her defense and communicate with counsel; and
 - Comprehend and appreciate the consequences that may be imposed or result from the proceedings. R.C. 2152.56(B).

Competency Evaluation – Conclusion and Submission of Report

- If the evaluator determines that the child's competency is impaired, but that the child may be able to understand the nature and objectives of the proceedings and assist in his or her defense with reasonable accommodations, the report must include recommendations for those accommodations.
- If the evaluator determines that the child is not competent, the report must include an opinion as to the likelihood that the child could attain competency within the applicable time period. In addition, the report must include:
 - A recommendation as to the least restrictive setting for competency attainment services that is consistent with the child's ability to attain competency and the safety of the child and the community; and,
 - A list of providers of child competency attainment services known to the evaluator and located most closely to the child's residence. R.C. 2152.56(C),(D).
- The evaluator must submit the competency report to the court no more than 45 days after the appointment is issued, although one extension may be granted. R.C. 2152.57(A).

- If the child obtains an independent competency evaluation, it may only be admitted if submitted within the time permitted for the court-appointed evaluator. R.C. 2152.57(B).
- The court shall provide a copy of each report to the prosecutor, defense attorney, and the child's parent, custodian, or guardian. R.C. 2152.57(C).
- Expenses may not be recovered from the child or the child's parent, custodian, or guardian. R.C. 2152.57(D).
- Any party may object to or request an additional evaluation. If the child is indigent, the county shall pay the costs for the additional evaluation; but, the county is not required to pay more than what it would normally pay for an evaluation. R.C. 2152.57(E).

Competency Hearing

- The hearing to determine competency must be held within 15-30 business days after receipt of the competency evaluation.
 - The competency determination must be made within 15 business days of the completion of the hearing. R.C. 2152.58(A), (D)(1).

Considerations and Findings

- The court must consider the competency reports and may consider additional evidence, including the court's own observations of the child's conduct and demeanor in court.
- The competency determination cannot be based solely on the following:
 - The child's voluntary or involuntary treatment for mental illness;
 - Whether the child has been institutionalized under R.C. 5123;
 - The child's receipt of psychotropic or other medication, even if the child would become incompetent without the medication. R.C. 2152.58(D)(2).

Proceedings on Determination

- No statement the child makes during the competency hearing may be used against him on the issue of culpability in any juvenile or adult proceeding. R.C. 2152.59(A).
- If the child is found competent, the court shall proceed with the delinquent child proceedings as provided by law.

- If the child is found not competent and cannot attain competency within the maximum period of participation, the charge(s) must be dismissed without prejudice. The court may delay dismissal for up to 90 days to either:
 - Refer the matter to a public services agency to determine when to file an action alleging the child is a dependent, neglected, or abused child; or
 - Assign court staff to refer the child or child’s family to the local family and children first council, an agency funded by the department of mental health, developmental disabilities, or otherwise secure services. R.C. 2152.59(B).
- If the child is found not competent but likely to attain competency within the maximum period of participating by participating in services specifically designed to help the child develop competency, the court may order the child to participate at county expense. The court shall name the provider. R.C. 2152.59(C).

Competency Attainment:

- Services shall be provided in the least restrictive setting and the child shall only be required to participate for as long as is required for the child to attain competency. Services are subject to the following time periods.

	Non-residential setting	Residential setting operated for purpose of competency attainment	Residential detention, or other secure setting for purposes other than competency attainment	Partial residential setting/ Partial non-residential setting
Misdemeanors	3 months	45 days	3 months	45 days
F3, F4, F5	6 months	3 months	6 months	3 months
F1, F2	1 year	6 months	1 year	6 months
Murder, Attempted Murder, Aggravated Murder, Attempted Aggravated Murder	1 year	1 year	1 year	1 year

- The court shall deliver a copy of the competency reports to the competency attainment provider within 10 business days.
- The provider shall submit to the court a plan for the child to attain competency within 30 days.
- Copies of the plan are to be provided to the prosecutor, child’s attorney, guardian ad litem and parent, custodian, or guardian.
- The competency attainment services provider shall submit reports:
 - Every 30 days and upon termination of services;
 - If the provider determines that the child is not cooperating to a degree that would allow services to be effective;
 - If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child’s ability to attain competency and the safety of the child and the community;
 - If the provider determines that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings and could assist in the child’s defense; and
 - If the provider determines that the child will not achieve the goals of the plan within the maximum period of participation. R.C. 2152.59(F).
- Within 15 business days of receiving one of these reports, the court may hold a hearing to determine if a new order is necessary.
- If the court determines that the child is not making progress towards competency, the court may order a change in setting or services.
- If the court determines that attainment has not or will not occur within the maximum period of participation, the court must dismiss the charges without prejudice.⁷
- If the court determines that the child has attained competency, the court shall proceed with the delinquent child proceedings as provided by law.

⁷ Dismissal may be delayed for up to 90 days for the reasons outlined in R.C. 2152.59.

RELINQUISHMENT OF JURISDICTION TO CRIMINAL COURT

Transfer (or “Bindover”), Generally

Juv.R. 30; Juv.R. 32; R.C. 2152.10; R.C. 2152.12

- No person, either before or after reaching eighteen years of age may be prosecuted as an adult, except through the procedures set forth in R.C. 2152.12(A),(B), and (J).
- Transfer proceedings commence with the filing a motion to relinquish jurisdiction pursuant to Juv.R. 30.

Notice

- Written notice of the time, place, and purpose of any hearing held pursuant to Juv.R. 30 must be provided to the prosecuting attorney, the child, the child’s parents, guardian, or custodian, at least three days prior to the date of the hearing.

Probable Cause Hearing

- In all cases where transfer to criminal court is considered, the court must hold a preliminary hearing to determine whether there is probable cause to believe the child committed the act alleged and that the act would be an offense if committed an adult.
- The hearing may be made upon motion of the court, prosecuting attorney, or the child.

Mandatory Transfer

Juv.R. 30(A); R.C. 2152.12(A)

Findings

- Upon the filing of a complaint alleging that a child committed an act that would be a felony if committed by an adult and a determination that there is probable cause to believe that the child committed the act, the court shall transfer the child’s case to criminal court for prosecution if it finds the following:
 - That the child is alleged to have committed a category one offense and was 16 or 17 years old at the time of the alleged act;
 - That the child is alleged to have committed a category one offense, was 14 or 15 years old at the time of the offense, and was previously committed to the Ohio Department of Youth Services (“DYS”) following a previous adjudication for a category one or two offense;
 - That the child is alleged to have committed a category two offense (except kidnapping), was 16 or 17 years old at the time of the offense, and was previously

committed to DYS following a previous adjudication for a category one or two offense;

- That the child is alleged to have committed a category two offense (except kidnapping), was 16 or 17 years old at the time of the offense, was alleged to have had a firearm on or about the child's person or under the child's control while committing the alleged act, *and* to have displayed, brandished, indicated possession of, or used the firearm to facilitate the alleged act.
- That the child is eligible for discretionary transfer under R.C. 2152.10 and was previously convicted of or pleaded guilty to a felony in a case that was transferred to criminal court; or
- That the child is domiciled in another state where the offense charged would be a felony if committed by an adult and the child's home jurisdiction would have required criminal prosecution without the need to transfer jurisdiction from juvenile court to criminal court.

Procedure Following Determination of Probable Cause

- In any proceeding in which criminal prosecution is required by statute following a determination of probable cause, the order of transfer shall be entered upon the finding of probable cause.
- The juvenile court shall state the reasons for transfer on the record, and shall order the child to enter into recognizance with good and sufficient surety for the child's appearance before the appropriate court.
- All further proceedings pertaining to the act charged shall be discontinued in juvenile court, except as provided by Ohio's reverse waiver statutes.

Discretionary Transfer

Juv.R. 30(C); R.C. 2152.12(B)

Eligibility

- After a complaint is filed alleging that a child is delinquent for an act that would be a felony if committed by an adult, and upon a finding of probable cause, the juvenile court may transfer the case to criminal court for prosecution if it finds all the following:
 - The child was at least 14 years of age or older at the time of the act charged;
 - There is probable cause to believe the child committed the act charge; and

- The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions.

Amenability Investigation and Hearing

- Prior to considering transfer, the juvenile court must order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to rehabilitation.
- The court's consideration includes a mental examination of the child by a public or private agency or person qualified to make such an examination.
- The investigation shall be completed and a report submitted to the court no more than 45 days after the investigation is ordered. The court may grant one reasonable extension of time.
- A child may waive this investigation provided that the child's on-the-record waiver is knowingly, intelligently, and voluntarily made, through counsel, in writing, and in compliance with the waiver standard announced in Juv.R. 3(D).⁸
- In determining whether a child is not amenable to the care and rehabilitation of the juvenile court, the court must determine that the factors in favor of transfer outweigh the factors against transfer.

Limited Use of Amenability Report

- Any social history, physical examination or mental examination ordered shall be utilized only for the limited purpose specified. The person preparing a social history or making a physical or mental examination shall not testify about the information received in its preparation in any adjudicatory hearing, except as may be required in a hearing to determine whether a child should be transferred to an adult court for criminal prosecution.
- A reasonable time before the hearing at which a social history or physical or mental examination is to be utilized, counsel shall be permitted to inspect any social history or report of a mental or physical examination.
- The court may order that the contents of the history or report, in whole or in part, not be disclosed to specified persons. If inspection or disclosure is denied or limited, the court shall state its reasons for such denial or limitation to counsel.

⁸ *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894.

Factors in Favor of Retention

- The victim induced or facilitated the charge.
- The child acted under provocation in allegedly committing the act charged.
- The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
- The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.
- The child previously has not been adjudicated a delinquent child.
- The child is not emotionally, physically, or psychologically mature enough for the transfer.
- The child has a mental illness or is developmentally delayed.
- There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.
- Any other relevant factors.

Factors in Favor of Transfer

- The victim suffered physical or psychological harm, or serious economic harm as a result of the alleged act.
- The harm suffered was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- The child's relationship with the victim facilitated the charge.
- The child allegedly committed the act for hire or as part of a gang or other organized criminal activity.
- The child had a firearm on or about the child's person or under the child's control at the time of the alleged act and during the commission of the act, allegedly used, displayed, brandished, or indicated possession of the firearm.
- At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

- The results of any previous juvenile sanctions and programs indicate that rehabilitation will not occur in the juvenile system.
- The child is emotionally, physically, or psychologically mature enough for transfer.
- There is not sufficient time to rehabilitate the child in the juvenile system.

Procedure Following Amenability Determination

- Upon determining that a child is amenable to the care and rehabilitation of the juvenile system, the court shall issue an order denying the prosecuting attorney's motion to relinquish jurisdiction; and, the case shall proceed in accordance with the Juvenile Rules.
- Upon determining that a child is not amenable to the care and rehabilitation of the juvenile court system, the court shall issue an order transferring jurisdiction of the child's case to criminal court for prosecution.
- The juvenile court shall state the reasons for transfer on the record, and shall order the child to enter into recognizance with good and sufficient surety for the child's appearance before the appropriate court.
- All further proceedings pertaining to the act charged shall be discontinued in juvenile court, except as provided by Ohio's reverse waiver statutes.

Reverse Waiver

R.C. 2152.121

Retention of Jurisdiction for Purposes of Disposition

- The juvenile court retains jurisdiction over the case of a child transferred to criminal court where required under the circumstances outlined below:
- Following the transfer of a child's case to criminal court for prosecution under the mandatory transfer provisions of R.C. 2152.12, and upon the child's conviction or plea of guilty in that case, the disposition shall be determined as follows:
 - If the child is convicted of or pleads guilty to an offense that was not eligible for transfer to criminal court, either through mandatory or discretionary transfer procedures, the criminal court must transfer jurisdiction back to the juvenile court, and all records related to the criminal case must be expunged.
 - If the child is convicted of or pleads guilty to an offense that was eligible for mandatory transfer, the criminal court shall sentence the child in accordance with applicable laws.

- If the child is convicted of or pleads guilty to an offense that was not eligible for mandatory transfer but was subject to discretionary transfer, the criminal court shall:
 - Sentence the child in accordance with applicable laws but stay the sentence pending further proceedings in juvenile court.
 - Remand the child's case to juvenile court for further proceedings.
- Upon return of the child's case to juvenile court, the juvenile court shall:
 - Impose an SYO dispositional sentence on the child, with deference to the adult sentence imposed by the criminal court. If the prosecuting attorney does not object to the imposition of an SYO dispositional sentence, the juvenile court retains jurisdiction of the child's case and the criminal court expunges all record of the criminal proceedings.
 - If the prosecuting attorney objects to the imposition of an SYO dispositional sentence , the court shall:
 - Provide the child with the amenability procedures outlined in R.C. 2152.12(B) and (C).
 - If the court determines that the child is amenable to care and rehabilitation in the juvenile court, the child shall remain in the juvenile system and the criminal court shall expunge all record of the criminal case.
 - If the court determines that the child is not amenable to care and rehabilitation in the juvenile court, the court shall relinquish jurisdiction of the child back to criminal court where the criminal court invokes the previously stayed sentence.

ADJUDICATORY HEARINGS

Right to Counsel

Juv.R. 4(A); R.C. 2151.352; Juv.R. 3; Juv.R. 29

- Every party has the right to be represented by counsel and the right to appointed counsel if indigent.⁹
- “Party” includes the child and the child’s parent, custodian, or other person in loco parentis to the child.
- The right to counsel commences when the person becomes party to a juvenile court proceeding.

Notice

- If a party appears without counsel, the court shall ascertain whether the party knows of their right to counsel and the right to appointed counsel if indigent.
- If a child faces the potential loss of liberty, the child must be informed, on the record, of the right to counsel and the disadvantages of self-representation.
- The court may continue a hearing to enable a party to obtain counsel.

Waiver

- If a child is charged with a felony offense, the child may not waive counsel unless the child has met privately with an attorney to discuss the right to counsel and the disadvantages of self-representation.
- A child’s waiver of the right to counsel must be made in open court, recorded, and in writing.
- In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court must look to the totality of the circumstances, which includes, but is not limited to consideration of the following characteristics of the child:
 - Age
 - Intelligence
 - Education
 - Background and experience generally and in the court system specifically
 - Emotional stability
 - Complexity of the proceedings

⁹ *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

- The court must ensure that the child consults with a parent, custodian, or guardian ad litem before waiving the right to counsel.¹⁰
- No parent, guardian, custodian, or other person may waive the child’s right to counsel.

Waiver Prohibited

- A child may not waive counsel in the following circumstances:
 - At a transfer hearing pursuant to Juv.R. 30.
 - When an SYO dispositional sentence has been requested.
 - When there is a conflict or disagreement between the child and the parent, guardian, or custodian or if the parent, guardian, or custodian requests that the child be removed from the home.

Guardian Ad Litem

Juv.R. 4; R.C. 2151.281; Sup.R. 48

Definitions and Duty to Appoint

- Guardian ad litem: “an individual appointed to assist a court in its determination of a child’s best interest”
- In delinquency proceedings, a court must appoint a guardian ad litem when:
 - The child has no parent, guardian, or legal custodian; the interests of the child and parent may conflict.
 - The parent is under 18 and appears to be mentally incompetent;
 - The court believes that the parent is not capable of representing the best interests of the child; or
 - Appointment is otherwise necessary to meet the requirements of a fair hearing.
- Only qualified volunteers or court appointed special advocates may be appointed as guardian ad litem.
- Guardians ad litem must be given notice of all proceedings in a case in the same manner as other parties to the action.

¹⁰ See also *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4949, 874 N.E.2d 1177.

Appointment of Guardian

- Each order of appointment must include: a statement regarding whether the appointment is solely as a guardian ad litem or whether it also includes appointment as the child's counsel.
- A statement that the appointment shall remain in effect until discharged by the court or until the court issues a final order.
- A statement that the guardian shall receive notice of all hearings and proceedings and shall be supplied copies of all pleadings, motions, notices, and other documents filed in the case.
- Where possible, the same guardian ad litem shall be reappointed for a specific child in any subsequent case where the best interest of the child is at issue.

Attorney as Guardian ad Litem

- When the guardian ad litem is also a licensed attorney, admitted to practice in this state, the guardian may also serve as counsel to the child, provided no conflict exists between the two roles; in case of a conflict, the court shall appoint another person to be the guardian ad litem.
- If the court appoints someone who is not a licensed attorney to be guardian ad litem, the court may appoint an attorney to represent the guardian ad litem.

Qualifications and Administrative Records

Each court appointing guardians ad litem must do the following:

- Maintain a public list of approved guardians while maintaining individual privacy.
- Establish criteria for appointment and removal of guardians ad litem and procedures to ensure equitable distribution of the workload of those guardians.
- Appoint or contract with a person to coordinate the application and appointment process, keep the files and records required under the Supreme Court Rules of Superintendence, maintain information regarding training opportunities, and receive written comments and complaints regarding performance of the guardians ad litem practicing before the court.
- Maintain files for all applicants and individuals approved for appointment as guardian ad litem, which include all records and information required by rule and a certificate or other satisfactory proof of compliance with training requirements.

- Require applicants to submit a resume, documentation of training experience and expertise demonstrating that the person has the ability to perform the responsibilities of a guardian ad litem.
- Conduct or cause a criminal and civil background check to be conducted for each applicant.
- Conduct an annual review of the list of approved guardians ad litem to confirm compliance with all training and education requirements.
- Require all guardians ad litem on the list to certify annually that they are unaware of any circumstances that would disqualify them from serving and reporting the training they have attended to comply with the rule.

Duty to Maintain Complaint Information

- Each court must develop a practice or local rule and appoint a person to accept and consider written comments or complaints about the performance of the guardians ad litem.
- Guardians must receive copies of the written comments or complaints made against them.
- The administrator who reviews and considers complaints and written comments may forward those to the administrative judge of the appointing court.
- The court must contain a copy of the result of any administrative action taken in response to a complaint or written comment in the guardian’s file.

Procedures in Adjudicatory Hearings

Juv.R. 29

Scheduling a Hearing

- The date for the adjudicatory hearing must be set when the complaint is filed or as soon thereafter as is practicable, but no later than 15 days after the filing of a delinquency complaint against a child who is in detention or shelter care.
- The prosecutor’s filing of a notice of intent to pursue SYO dispositional sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention.

Notice

- At the beginning of the hearing, the court shall:
 - Ascertain whether notice requirements have been met; and, if not, whether the parties waive compliance;
 - Inform the parties of the substance of the complaint, the purpose of the hearing, and the possible consequences of the hearing, including that the case may be transferred to criminal court pursuant to Juv.R. 30 where applicable;
 - Inform unrepresented parties of their right to counsel and determine whether those parties are waiving counsel;
 - Appoint counsel for any unrepresented party who does not waive the right;
 - Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and upon requests, to have a recording of the proceedings made, at public expense if indigent.
 - The court must request that the child admit or deny the allegations in the complaint. A failure or refusal to admit the allegations constitutes a denial, except where the court consents to a no contest plea.
 - A court must substantially comply with these notice requirements.

Procedure upon Entry of Admission

- A court shall not accept an admission from an alleged delinquent child without addressing the child personally and determining the following:
 - That the child is making the admission voluntarily;
 - That the child understands the nature of the allegations;
 - That the child understands the consequences of the admission.; and
 - That the child understands that by entering the admission, the child is waiving the following rights:
 - To challenge witnesses and evidence against the party;

- To remain silent; and
 - To introduce evidence at the adjudicatory hearing.
- The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the adjudicatory findings.
- A court must substantially comply with these requirements.

Procedure upon Entry of Denial

- If a child subject to a delinquency complaint denies the allegations, the court shall:
 - Direct the prosecuting attorney or another attorney-at-law to present evidence in support of the allegations;
 - Order the separation of witnesses, upon a party's request;
 - Take all testimony under oath or affirmation in either question-answer or narrative form; and
 - Determine the issues by proof beyond a reasonable doubt.

Procedure Following Determination of the Issues

- Upon determination of the issues, if the allegations were not proven, the court shall dismiss the complaint.
- Upon determination of the issues, if the allegations were proven or if the child entered an admission, the court shall do any one of the following, unless prohibited by statute:
 - Enter an adjudication and proceed forthwith to disposition;
 - Enter and adjudication and continue the matter for disposition for no more than six months, making appropriate temporary orders;
 - Postpone entry of adjudication for not more than six months; or
 - Dismiss the complaint if dismissal is in the best interest of the child and community.
- Upon a request of any party, the court shall make written findings of fact and conclusions of law pursuant to Civ.R. 52.

Magistrates

Juv.R. 40

Qualifications

- An appointee for magistrate must have been engaged in the practice of law for at least four years and be in good standing with the Supreme Court of Ohio.
- Any person who has contemporaneous responsibility for working with or supervising the behavior of children who are subject to dispositional orders of the appointing court may not serve as a magistrate.

Authority

- Juvenile court magistrates are authorized to assist juvenile courts of record, pursuant to Juv.R. 40 to:
 - Determine any motion in any case, except cases involving a court's determination of a child's status as an SYO;
 - Conduct the trial of any case that will not be tried to a jury, except the adjudication of a case against an alleged SYO;
 - Exercise any other authority specifically vested in magistrates by statute and consistent with this rule;
 - Issue subpoenas for the attendance of witnesses and production of evidence;
 - Rule on the admission of evidence;
 - Put witnesses under oath and examine them;
 - Call the parties to the action and examine them under oath;
 - Issue an attachment for contempt action, including the type, amount, and any conditions of bail;
 - Impose appropriate sanctions for civil or criminal contempt.

Magistrate's Orders

- A magistrate may enter orders without judicial approval if necessary to regulate proceedings and if not dispositive of a claim or defense of a party.

- A magistrate's order must be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their counsel.
- Any party wishing to set aside a magistrate's order shall be filed not later than 10 days after the order is filed and shall state the moving party's reasons with particularity.

Magistrate's Decisions

- A magistrate's decision may be general unless a party requests that the Magistrate issue findings of fact and conclusions of law, provided the request is made before the entry of the decision or within seven days after the filing of the decision.
- If a party requests findings of fact and conclusions of law, the magistrate may require any or all the parties to submit proposed findings of fact and conclusions of law.
- The decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served on all parties or counsel no later than three days after the decision is filed.
- The decision shall conspicuously state that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion unless the parties timely and specifically object to that finding or conclusion.
- A magistrate's decision is not effective unless adopted by the court.

Objections to the Magistrate's Decision

- A party may file written objections to a magistrate's decision within 14 days of the filing of the decision. The objection must be specific and state with particularity all grounds for objections.
- If any party files timely objections, any other party may file objections within 10 days after the first objection is filed.
- An objection shall be supported by a transcript of the evidence submitted to the magistrate or an affidavit of the evidence if a transcript is not available.
- The objecting party shall file the transcript within 30 days after filing the objection unless the court extends the time upon request.
- Except for a claim of plain error, a party shall not assign error on appeal the court's adoption of any factual findings or legal conclusions whether or not specifically designated as a finding of fact or conclusion of law unless the party has objected to that finding or conclusion.

- Irrespective of whether objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, or without modification. The court may hear a previously referred matter, take additional evidence, or return the matter to the magistrate.
- The court shall rule on objections, undertaking an independent review of the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. The court may hear additional evidence, but is not required to.
- If no timely objections are filed, the court may adopt the magistrate's decision, unless it determines that an error of law or other defect exists on the face of the magistrate's decision.
- The court may enter judgment either during the 14 day period permitted for filing objections or after the 14 days have expired. If the court enters judgment and objections are timely filed, the objections shall operate as an automatic stay of the execution of the judgment until the court disposes of the objections

DISPOSITIONAL HEARINGS

Timing of Hearing, Hearing Procedure, Judgment

Juv.R. 34; R.C. 2152.16; R.C. 2152.20.

Timing of Dispositional Hearing

- The dispositional hearing may be held immediately after the adjudicatory hearing if all the parties were served with the documents necessary for disposition prior to the adjudicatory hearing and if all the parties consent to an immediate disposition.
- Upon request of any party or guardian ad litem, the court may continue the dispositional hearing for a reasonable time not to exceed the time permitted by rule to obtain or consult counsel.

Hearing Procedure

- The judge or magistrate who presided over adjudication shall preside over the dispositional hearing if possible.
- The court may admit evidence that is material and relevant, including hearsay, opinion, and documentary evidence.
- Medical examiners and each investigator who prepares a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or at the court's discretion.
- Any party may offer evidence which supplements, explains, or disputes any information contained in the social history or other reports; and, the court may consider that information in determining disposition.

Judgement

- The court shall enter an appropriate judgment within seven days and shall serve any requesting party with a copy thereof.
- In any case where a child is placed on probation, the child shall receive a written statement of the conditions of probation.
- If the judgment is conditional, the conditions shall be stated in the entry.

- If the child is not being returned to the child's home, the court shall determine the school district that is to bear the costs of the child's education and may fix an amount of support to be paid by the parent or from public funds.

Dispositional Orders

R.C. 2152.19

- When a child is found delinquent, the court may make any of the following orders of disposition, in addition to any other disposition authorized by Chapter 2152 of the Revised Code:
 - Any order authorized by R.C. 2151.353 for the care and protection of an abused, neglected, or dependent child;
 - Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care, treatment, or placement of delinquent children by the county, by a district organized under R.C. 2152.41 or 2151.65, or by a private agency or organization in or outside of the state;
 - Place the child in a detention facility for up to 90 days;
 - Place the child on community control under any sanctions, services, and conditions the court prescribes, including, but not limited to the following sanctions and conditions:
 - An order that the child shall abide by the law;
 - A basic period of probation, during which the child shall maintain contact with a person appointed to supervise the child;
 - A period of intensive probation during which the child is required to maintain frequent contact with a person appointed to supervise the child and participate in training, education, and treatment programs;
 - A period of day reporting, in which the child reports to a center or another approved location to participate in work, education, training, treatment, or other approved programs;
 - A period of community service of up to 500 hours for a felony or first degree misdemeanor, up to 200 hours for a second, third, or fourth degree misdemeanor, or up to 30 hours for a minor misdemeanor;

- A requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocational training, or employment;
 - A period of drug and alcohol monitoring;
 - A requirement of alcohol or drug assessment or counseling, or a period in a drug or alcohol treatment with a court-determined level of security;
 - Curfew, with hours determined by the court;
 - A requirement to serve monitored time;
 - A period of house arrest without electronic monitoring or continuous alcohol monitoring;
 - A period of electronic monitoring or continuous alcohol monitoring without house arrest, or house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act;
 - A suspension of the child's driver's license, probationary license, or temporary instruction permit, for a period of time;
 - Commit the child to the custody of the court;
 - Require the child not to be absent from school without legitimate excuse for five or more consecutive date, seven or more school days in one month, or 12 or more school days in a school year;
 - Where the court has established a victim-offender mediation program, provided the court obtains the victim's assent, require the child to participate in the program.
 - Make any further disposition that the court finds proper, except that the child shall not be placed in a state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held.
- If the court commits a child to the custody of any person, organization, or entity for a sexually oriented or child-victim offense, the court shall either:

- Require that the child be provided treatment as described in R.C. 5139.13(A)(2); or
- Inform the custodial agent that it is the preferred course of the action in this state that the child be provided treatment as described in R.C. 5139.13(A)(2).

Dispositions for Truancy

- If a child is adjudicated delinquent for chronic truancy or for habitual truancy after previously being adjudicated an unruly child for habitual truancy, the court may do either or both of the following:
 - Require the child to participate in a truancy prevention mediation program;
 - Make any order of disposition authorized by R.C. 2152.19, except that the child shall not be committed to a detention facility or other facility described in R.C. 2152.19(A)(2) or (3) unless the court first determines that the child violated a lawful court order made pursuant to R.C. 2151.354(C)(1)(e) or R.C. 2152.19(A)(6).
- If the child's parent has failed to cause the child's attendance, the court may do either of the following or both:
 - Require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program;
 - Require the parent, guardian, or other person having care of the child to participate in any community service program.

License Suspension Limitations

- If a child is adjudicated delinquent for violating R.C. 2923.122, the court may impose a class four suspension of the child's license, permit, or privilege from the range specified in R.C. 4510.02 or deny the child the issuance of a license in accordance with R.C. 2923.122(F)(1).
- If a child is adjudicated delinquent for committing an act that would be a drug abuse offense or for violating R.C. 2917.11(B), suspend the child's license, permit, or privilege for a period of time prescribed by the court.

Victim Impact Statement

- Ordered where a child is adjudicated delinquent of an offense that would be a felony if committed by an adult and in which the child caused, attempted to cause, threatened, or created a risk of physical harm
- Prepared by the probation department of the county where the victim resides or by the victim's assistance program operated by the state or other governmental entity.
- The court shall consider the victim impact statement in determining the order of disposition.
- The statement must identify the victim, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered and the serious and permanence of the injury, identify any change in the victim's personal welfare and relationships as a result of the act, and any psychological impact as a result of the act.
- Any victim impact statement is confidential and not a public record.
- The court may furnish DYS with a copy of the victim impact statement if the child is committed therein.
- The court shall furnish a copy of a victim impact statement for inclusion in a presentence investigation report under Crim.R. 32.2; but, the statement shall be immediately returned to the juvenile court following its use in preparing the presentence investigation report.

Notices after Hearing

- At the conclusion of the dispositional hearing, the court shall advise the child of the right to record expungement, and where any part of the proceeding was contested, advise the parties of their right to appeal.
- When a court places a child on community control, the court shall provide the child's parent, custodian, or guardian with a written notice that informs them that authorized probation officers may conduct searches pursuant to R.C. 2152.19(E)(1).
- A court shall notify the child that the court retains jurisdiction for purposes of granting a judicial release pursuant to R.C. 2152.22(D)(1). Failure to provide this notice is not jurisdiction and does not affect the court's authority to grant judicial release.

Commitment to DYS

R.C. 2152.16 - R.C. 2152.17

- If a child is adjudicated delinquent for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for secure confinement as follows:
 - For aggravated murder or murder, until the child attains 21 years of age;
 - For attempted aggravated murder or attempted murder, a minimum period of six to seven years, maximum to the child's 21st birthday;
 - For all other homicide offenses, an indefinite minimum term of one to three years, maximum to the child's 21st birthday;
 - For rape, other than R.C. 2907.02(A)(1)(b), when the sexual conduct or insertion involved was consensual and when the victim was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, maximum to the child's 21st birthday;
 - For other offenses that would be a felony of the first or second degree if committed by an adult, an indefinite term consisting of a minimum period of one year, maximum to the child's 21st birthday, or
 - For other offenses that would be a felony of the third, fourth, or fifth degree if committed by an adult, an indefinite term consisting of a minimum period of six months, maximum to the child's 21st birthday.
- In each case where the court commits a child to DYS, the court retains control over the commitment for the minimum periods described in R.C. 2152.16.

Definite Terms of Commitment for Specifications

- If a child is adjudicated delinquent for committing an act that would be a felony if committed by an adult,¹¹ in addition to the commitment imposed on the underlying offense, the court may require the child to serve an addition, definite commitment to DYS if the child is also responsible for a specification under R.C. 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, 2941.1414 or 2941.1415, as follows:

¹¹ Excluding Carrying Concealed Weapon

Code Section	Specification Detail	Length of Specification
R.C. 2941.141	Firearm on or about person or under control.	Definite period of one year.
R.C. 2941.145	Displaying, brandishing, indicating possession, use or facilitation of firearm; or where the underlying offense is aggravated vehicular homicide committed as a result of an OVI.	Definite period of less than one year, not more than three years.
R.C. 2941.144, R.C. 2941.146, R.C. 2941.1412	Automatic firearm or firearm muffler or silencer, Discharging firearm from a motor vehicle, or Discharging firearm at peace officer or conditions officer.	Definite period of not less than one year, not more than five years.
R.C. 2941.142	Participation in a criminal gang.	Definite period of not less than one year, not more than three years.
R.C. 2941.1411	Offender wore body armor during offense.	Up to two years.

- Provided that the child who was found delinquent for the specifications outlined in R.C. 2941.141 - R.C. 2941.146, was only complicit in another's actions, and the child did not furnish, use, or dispose of any firearm that was involved in the underlying delinquent act or with the other person's specification-related conduct, in addition to the commitment imposed for the underlying act, the court may only impose a one-year definite commitment for the accompanying specification.
- Definite periods of commitment imposed pursuant to R.C. 2152.16 shall be served in addition and consecutively to any commitment imposed under R.C. 2152.17.
- A court shall not commit a delinquent child to the legal custody of DYS under R.C. 2152.17 for a period that exceeds the child's attainment of 21 years of age.

Confinement Credit
R.C. 2152.18

- An order committing a child to DYS must include a calculation of the total number of days the child was confined in connection with the delinquent child complaint upon which the order of commitment is based.
- Time a child spent being held pending adjudication for a probation violation must also be included.¹²
- Days that a child was under electronic home monitoring is not included in the confinement credit calculation, neither is time the child is held in a halfway house.
- The Supreme Court of Ohio has defined “confined” to mean any place a person is “not free to come and go as he wishes.”¹³
- DYS must reduce the minimum period of institutionalization by the amount of days reflected in the order of commitment.

¹² *In re Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908.

¹³ *State v. Napier*, 93 Ohio St.3d 646, 758 N.E.2d 1127 (2001).

SERIOUS YOUTHFUL OFFENDER DISPOSITIONAL SENTENCE

SYO Dispositional Sentences

R.C. 2152.11; R.C. 2152.13; R.C. 2152.14

Mandatory and Discretionary SYO

- A court must impose an SYO dispositional sentence when required under Ohio's reverse waiver statute.
- A court is required to impose an SYO disposition against a child if the child has committed an act when the child was 14 or 15 years old and, following the statutory initiation of SYO proceedings, the court finds:
 - The act would be an offense of violence if committed by an adult;
 - During the commission of the act, the child used, displayed, brandished, or indicated that the child possessed a firearm and actually did; or
 - If the child was previously committed to a Department of Youth Services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult.
- A child who otherwise fulfills the above requirements but was 10-13 years of age at the time of commission is subject to discretionary SYO.
- If a child is adjudicated delinquent for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for mandatory SYO if the act was alleged to have been committed when the child was 14 or 15 years of age or discretionary SYO if the child was between 10-13 years of age at the time of the alleged act.
- If a child is adjudicated delinquent for committing an act that would be a first-degree felony if committed by an adult, the child is eligible for mandatory SYO if the child was 16 or 17 years old and, or discretionary transfer if none of those factors exist or if the child was 14-15 when the alleged act occurred, or if the child was 10-13 and one of the aggravating factors in R.C. 2152.11(A)(1)-(3) apply.
- A child is subject to discretionary SYO if the child commits an act that would be a felony of the second degree if committed by an adult and the child was 14-17 years of age at the time of the offense or if the child was 12-13 years of age at the time of the offense and one of the aggravating factors in R.C. 2152.11(A)(1)-(3) apply.

- A child is subject to discretionary SYO if the child commits an act that would be a felony of the third degree if committed by an adult and the child was 16 or 17 at the time of the alleged act or if the child was 14 or 15 and one of the aggravating factors in R.C. 2152.11(A)(1)-(3) apply.
- A child is subject to discretionary SYO if the child commits an act that would be a fourth or fifth degree felony if committed by an adult and the child was 16 or 17 years of age and one of the aggravating factors in R.C. 2152.11(A)(1)-(3) apply

Initiation

- The prosecuting attorney may initiate a the SYO dispositional sentence by:
 - Obtaining an indictment of the child as a SYO;
 - Where the child waives indictment, charging the child in a bill of information as a SYO;
 - Requesting an SYO dispositional sentence in the original complaint until indictment or bill of information is secured;
 - Filing a written notice of intent to seek an SYO dispositional sentence within 20 days after the later of the following: a) the date of the child’s first juvenile court hearing on the complaint; or b) the date the juvenile court determines not to transfer to the child for prosecution in criminal court pursuant to R.C. 2152.12
- After written notice is filed, the court shall serve a copy of the notice on the child and advise of the child’s intent to seek an SYO dispositional sentence.

Probable Cause Hearing

- If the prosecuting attorney does not obtain an indictment or bill of information, but has filed other appropriate notice of intent to seek an SYO dispositional sentence, the court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is age eligible for, or required to receive, an SYO dispositional sentence.

Rights of the Child

- A child subject to an SYO dispositional sentence has the following rights:
 - Right to a grand jury determination of probable cause; the jury may be impaneled by the common please or juvenile court.

- After indictment or charged by information, the right to an open and speedy trial. Speedy time commences as follows:
 - If the child is charged by indictment or bill of information, on the date of the filing of the indictment or bill of information;
 - If the child is charged by an original complaint requesting an SYO dispositional sentence, on the date of filing of the complaint; or
 - If the child is not charged by an original complaint on the date that the prosecuting attorney files the notice of intent to seek an SYO dispositional sentence.
- Trial by jury in juvenile court.
- A transcript of proceedings.
- The same right to bail that is afforded to adults.
- All the rights afforded a person who is prosecuted for committing a crime in criminal court, including the right to counsel and the right to raise the issue of competency.
- The child may not waive the right to counsel.

Imposition of SYO Dispositional Sentence

- If a child is adjudicated delinquent under circumstances that require the court to impose an SYO dispositional sentence, all of the following apply:
 - The court shall impose a sentence in accordance with R.C. 2929, as if the child were an adult at the time of offense, except that the court may not impose a sentence of death or life imprisonment without parole.
 - The court shall impose a traditional juvenile disposition as permitted under R.C. 2152.16, 2152.19, 2152.20, and 2152.17 if applicable.
 - The court shall stay the adult portion of the SYO dispositional sentence pending the successful completion of the traditional juvenile disposition imposed.
- If a child is adjudicated delinquent under circumstances that permit but do not require the court to impose an SYO dispositional sentence, all of the following apply:

- If the court finds, on the record, that given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in R.C. 2152.01 will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under R.C. 2929, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.
- The court shall impose a traditional juvenile disposition as permitted under R.C. 2152.16, 2152.19, 2152.20, and 2152.17 if applicable.
- The court shall stay the adult portion of the SYO dispositional sentence pending the successful completion of the traditional juvenile disposition imposed.
- A child upon whom an SYO dispositional sentence is imposed has a right to appeal the adult portion of the child's sentence under R.C. 2953.08, and the court shall consider the appeal as if the adult portion were not stayed.

SYO Invocation Hearing

R.C. 2152.14

Motion to Invoke Adult Sentence

For Youth Residing in DYS

- The Director of Youth Services may request that the prosecuting attorney in the committing county file a motion to invoke the adult portion of a child's SYO dispositional sentence, provided:
 - The child is at least 14 years old;
 - The child is in the institutional care of or has escaped from DYS; and
 - The child is serving the juvenile portion of an SYO dispositional sentence.
- The motion must state that there is reasonable cause to believe that either of the following occurred after the child turned 14:
 - The child committed an act that is a violation of the rules of the institution *and* that can be charged as any felony or as a misdemeanor of the first degree if committed by an adult; or

- The child has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.
- If the prosecuting attorney declines to file a motion to invoke the adult portion of a child's SYO sentence, DYS may file a motion to invoke, or the court may proceed on its own motion.

For Youth on Parole from DYS or Under Court Supervision

- The Director of Youth Services, the juvenile court that imposed the SYO disposition, or the probation department supervising the child may request that the prosecuting attorney in the ordering county file a motion to invoke the adult portion of a child's SYO dispositional sentence, provided:
 - The child is at least 14 years old;
 - The child is serving the juvenile portion of an SYO dispositional sentence; and
 - The child is on parole or aftercare from a DYS facility, or on community control.
- The prosecuting attorney in the county of supervision may file a motion to invoke the adult portion of the SYO sentence even if no request is made.
- The motion must state that there is reasonable cause to believe that either of the following occurred after the child turned 14:
 - The child committed an act that is a violation of the conditions of supervision *and* that can be charged as any felony or as a misdemeanor of the first degree if committed by an adult; or
 - The child has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.
- If the prosecuting attorney declines to file a motion to invoke the adult portion of a child's SYO dispositional sentence, the probation department may file a motion to invoke, or the court may proceed, on its own motion.

Hearing

- The court has discretion as to whether to hold a hearing upon the filing of a motion to invoke the adult portion of a child's SYO dispositional sentence.
- A court shall not invoke the adult portion of a child's SYO dispositional sentence without holding a hearing.

- The child subject to invocation of the adult sentence has:
 - The right to be present;
 - The right to receive notice on the grounds upon which invocation is sought;
 - The right to counsel, including appointed counsel under Juv.R. 4;
 - The right to be advised on the procedures and protections set forth in the Juvenile Rules;
 - The right to present evidence on the child's behalf, including evidence that the child has a mental illness or is developmentally delayed; and
 - May not waive the right to counsel.
- The invocation hearing shall be public.

Findings

- The juvenile court may invoke the adult portion of a child's SYO dispositional sentence if the court finds the following, on the record, by clear and convincing evidence:
 - The child is serving the juvenile portion of an SYO dispositional sentence.
 - The child is at least 14 years old and has been admitted to a DYS facility or criminal charges are pending against the child.
 - The child engaged in conduct that:
 - Violated the institutional rules where he was held or the rules of supervision with conduct that would be a felony or first-degree misdemeanor if committed by an adult *and* the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

or

 - The child has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim *and* the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

- The court may modify the adult sentence previously imposed to a lesser prison term that could be imposed for the offense.
- In addition to the prison term or in lieu of the prison term if the term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

Procedure Following Invocation

- Upon issuance of the order invoking the adult portion of the child's SYO dispositional sentence, the juvenile disposition shall terminate.
- DYS shall transfer the child to the Department of Rehabilitation and Correction ("DRC") or place the child under another sanction imposed as a part of that sentence.
- The court shall state the number of days the child was held in detention or in a facility operated by DYS under the juvenile portion of the dispositional sentence.
- DRC shall reduce the time the child will serve by the number of days specified in the order plus any additional days the child is held in a juvenile facility or in detention after the issuance of the order but before transfer to DRC is complete.
- In no case shall the total prison term imposed exceed the maximum prison term available for an adult who is convicted of violating the same sections of the Revised Code.

Supervision

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

POST-DISPOSITIONAL HEARINGS

Probation Revocation Proceedings

Juv.R. 35; Juv.R. 29

Jurisdiction Invoked by Motion

- The continuing jurisdiction of the juvenile court must be invoked by motion filed in the original proceeding.

Notice

- Notice of the invocation shall be served in the manner provided for the service of process.

Revocation of Probation

- Upon the filing of a motion to revoke a child's probation, the court must hold a hearing, at which the child shall be present and apprised of the grounds on which revocation is proposed.
- The parties have the right to counsel and to appointed counsel where indigent.
- The court must comply with the adjudicatory hearing procedures outlined in Juv.R. 29 before revoking a child's probation.¹⁴

Findings

- The court may not revoke probation without first finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34, been notified.

Detention

- A child may be placed in detention pursuant to Juv.R. 7 during the pendency of revocation proceedings.

Confinement Credit

- If a child is confined pending revocation proceedings and ultimately committed to DYS, the child is to receive credit for the days confined relative to the revocation proceedings.

¹⁴ *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471.

Supervised Release (“Parole”) or Discharge
R.C. 5139.51; R.C. 5139.52; R.C. 2152.22(E)

Definitions

- “Discharge” means that DYS’ legal custody of a child is terminated.
- “Release” means the termination of a child’s stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.

Supervised Release and Discharge

- DYS’ Release Authority is prohibited from releasing a child in institutional care or discharging the child prior to the expiration of the prescribed minimum period of institutionalization imposed by the court or prior to the child’s attainment of 21 years of age, whichever is applicable.
- The Release Authority may conduct periodic reviews of the case of each child in the department’s custody and who is eligible for release or discharge after the child completes the minimum period of time prescribed by the committing court.

Notice and Duty of Court to Journalize Supervised Release

- At least 30 days prior to placing a child on supervised release, the Release Authority shall prepare and provide the court with a copy of a supervised release plan for the child and the terms and conditions of the release.
- The court, with 15 days of its receipt of the supervised release plan, may add any additional consistent terms and conditions to the supervised release plan, but may not decrease the level or degree of supervision set forth by the Release Authority that substantially increases the financial burden of supervision or that alters the child’s placement. The court shall then journalize the supervised release plan and send the Release Authority a copy thereof.
- If, within 15 days of its receipt of the supervised release plan, the court declines to add to the terms of the child’s supervised release plan, the court shall journalize the supervised release plan and send the Release Authority a copy thereof.
- If, within 15 days of its receipt of the supervised release plan, the court neither journalizes the supervised release plan nor journalizes a modified plan, the court and DYS may attempt to resolve any differences concerning the plan within three days. If no resolution is reached

within that period, the plan shall be enforceable to the same extent as if it had been journalized.

- At least 30 days prior to conducting a periodic review, release hearing, or discharge review, for a child in DYS custody, the Release Authority shall give notice of the hearing or review to the committing court, the prosecuting attorney, and the victim or victim's relative.
- When there is insufficient time to provide 30 days' notice, the Release Authority must provide reasonable notice, at least ten days prior to the child's release, to the committing court, the prosecuting attorney, and the victim or victim's relative.
- At least two weeks prior to placing a child on supervised release or discharging a child who was adjudicated delinquent of a category one or two offense, the Release Authority shall notify the following persons/entities of the release or discharge:
 - The prosecuting attorney of the county of adjudication.
 - The chief law enforcement officer of the municipal corporation, or county sheriff of an unincorporated area of the county where the child will reside.
- At least 15 days before discharging a child from institutional care without placing the child on supervised release, the Release Authority shall notify the court, in writing, of the planned discharge and the reason for the discharge.

Requirements on Supervised Release

- At a minimum, the Release Authority must specify the following requirements for each child whom it releases:
 - The child shall observe the law.
 - The child shall maintain appropriate contact, as specified in the supervised release plan.
 - The child shall not change residence without seeking prior approval from the employee in charge of supervising the child on release.

Authority to Discharge

- The Release Authority determines the date on which a child may be placed on supervised release and the termination of a child's supervised release and discharge.
- The court or prosecuting attorney may submit written comments or objections to the Release Authority concerning the supervised release or discharge of the child.
- If the child's DYS commitment was for a category one or two offense, the court or prosecuting attorney may submit comments or objections orally, at a hearing, if one is held.
- The Release Authority must consider any comments and objections submitted or communicated by the court or prosecuting attorney or communicated under R.C. 5139.56 by the victim.
- If the Release Authority denies the supervised release or discharge of a child, it must supply the child with a written record of the reasons for the decision.
- Except for children adjudicated delinquent of aggravated murder or murder, the Release Authority may discharge the child from institutionalization without placing the child on a supervised release plan, without court approval if the Release Authority is satisfied that discharge would be consistent with the child's welfare and protection of the public or if the child is removed from the jurisdiction of this state by lawful order.

Procedure Following Violation of a Term or Condition of Supervised Release or Judicial Release

- If the employee in charge of a child's supervised release has reasonable grounds to believe that the child has violated a term or condition of supervised or judicial release, the employee may request that the supervising court issue a summons that requires the child to appear for a hearing on the violation.
- The summons issued must include the date and place of the violation and must require the child to appear before the court at a specific date, time, and place.
- The employee supervising the child may request that the court issue a warrant for the child's arrest where reasonable grounds exists to believe the child violated a term or condition of supervised or judicial release.

Judicial Release

R.C. 2152.22

- When a child is committed to DYS, the court relinquishes jurisdiction of the child, generally, except that:

Release During First Half of Prescribed Minimum Commitment

- Upon the filing of a motion by the child, child's parent or guardian, DYS, or upon the court's own motion, the court may grant judicial release of a child to court supervision during the first half of the prescribed minimum term for which the child was committed to the department.
 - Upon a request for judicial release, the court shall: approve the release by journal entry; schedule a hearing within 30 days to determine whether the child should be released; or reject the request by journal entry without a hearing.
 - If the court schedules a hearing, it may order the department to deliver the child to the court for the hearing and may order the department to present a report on the child's progress. The child's presence is not required.
 - The court shall determine at the hearing whether to grant or deny the request for release.
 - If the court approves release, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court.
 - If the initial request is denied, the child, child's guardian, or department may make one additional request before the expiration of the first half of the child's minimum commitment.

Release During Second Half of Prescribed Minimum Commitment

- Upon the filing of a motion by the child, child's parent or guardian, DYS, or upon the court's own motion, the court may grant judicial release of a child to Department of Youth Services' supervision during the second half of the prescribed minimum term for which the child was committed to the department.
 - Upon a request for judicial release, the court shall: approve the release by journal entry; schedule a hearing within 30 days to determine whether the child should be released; or reject the request by journal entry without a hearing.

- If the court schedules a hearing, it may order the department to deliver the child to the court for the hearing and may order the department to present a report on the child's progress. The child's presence is not required.
- The court shall determine at the hearing whether to grant or deny the request for release.
- If the court approves the request for release, the department shall prepare a written treatment and rehabilitation plan for the child that includes the conditions of the child's release. The department shall provide the committing court with a copy of the plan. The child's actual date of release is contingent upon the department finding a suitable placement for the child.
- If the initial request is denied, the child, child's guardian, or department may make additional requests for judicial release, but no sooner than 90 days after the prior request.

Release after Expiration of Prescribed Minimum Commitment or Specification

- A court may grant judicial release of a child any time after the expiration of one of the following periods of time:
 - The expiration of the prescribed minimum term of commitment.
 - If the child was committed to the department under a specification outlined in R.C. 2152.17(A),(B),(C), or (D), and a period defined under R.C. 2152.22(D)(1)(a), all of the prescribed minimum periods shall be aggregated; and, the court may grant judicial release of the child any time after the expiration of one year after the child begins serving the aggregate period of commitment.
- A child's release after the prescribed minimum shall be to Department of Youth Services supervised release.
- When a court grants a child judicial release after serving one year of a firearm specification, but prior to reaching the first half of the child's minimum commitment, the child shall be released to court supervision.

Post-Release Hearing

- If the court of the county where a child is placed has reason to believe that a child's deportment is not in accordance with the conditions of the child's release, the court shall schedule a hearing to determine whether the child has violated any conditions of his post release control.

Progress Reports

- At least once every 30 days, DYS shall file a written progress report to the committing report with regard to each child released to Department of Youth Services supervision, which informs of the court of the child's treatment and rehabilitative progress and gives suggestions for altering the program, custody, living arrangements, or treatment.

Return to Department of Youth Services

- If the court determines that the child violated post-release conditions, and that the violation was serious, the court may order the child to be returned to DYS consistent with the original order of commitment, with the child's original commitment considered to be time served in fulfilling the prescribed minimum period of institutionalization originally ordered by the court.
- If the court orders the child returned to DYS, the child shall remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of not less than 30 days.

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION

Sex Offender Classification Hearing

R.C. 2152.82-2152.83

- Under Ohio's version of SORNA, not every child who commits a sexually oriented offense is eligible to be classified as a juvenile sex offender registrant. Whether a child is required to register or eligible for registration depends on a number of factors, including the child's age and delinquency history.

Mandatory Registrants

- All children who were 16 or 17 at the time of their offense are required to register. R.C. 2152.82(A); R.C. 2152.83(A).
- Children who were 14 or 15 at the time of their offense and who have a prior adjudication for a sexually oriented offense are required to register. R.C. 2152.82(A).

Discretionary Registrants

- Children who were 14 or 15 at the time of their offense with no prior adjudication for a sexually oriented offense are discretionary registrants. The court must consider the factors outlined in R.C. 2152.83(D) to determine whether to classify those youth.
- In determining whether to classify a discretionary registrant, the court must consider the following:
 - The nature of the sexually oriented offense;
 - Whether the child has shown any genuine remorse or compunction;
 - The public interest in safety;
 - The factors set forth in R.C. 2950.11(K), provided that the references in those factors to "the offender" are construed for purposes of R.C. 2152.38 to be references to the delinquent child;
 - The factors in R.C. 2929.12(B),(C) as applied regarding the delinquent child, the offense, and the victim; and,
 - The results of any treatment provided to the child and of any follow up professional assessment of the child.

Children Ineligible for Classification

- Children who were under 14 at the time of their offense are ineligible for classification. R.C. 2152.82-2152.83.

Timing of Classification Hearing

- For children who were 16 or 17 years old at the time of the offense with no prior adjudication for a sexually oriented offense, classification occurs at disposition. But, if the court commits the child to a secure facility at disposition, classification must occur upon the child's release from the secure facility. R.C. 2152.83(A).
- For children who were 16 or 17 years old at the time of the offense and who have a prior adjudication for a sexually oriented offense, classification must occur at disposition, regardless of whether the child is committed to a secure facility. R.C. 2152.82.
- For children who were 14 or 15 years old at the time of the offense and who have a prior adjudication for a sexually oriented offense, classification occurs at disposition, regardless of whether the child is committed to a secure facility. R.C. 2152.82.
- For children who were 14 or 15 years old at the time of the offense with no prior adjudication for a sexually oriented offense, classification may occur at disposition; or, if the child is committed to a secure facility at disposition, classification may occur upon the child's release from a secure facility. R.C. 2152.83(B).¹⁵

Tier Level Determination

- Prior to issuing an order classifying the child as a juvenile sex offender registrant, the court must hold a hearing under R.C. 2152.831 to determine whether the child is a tier I, II, or III juvenile offender registrant.
- Juvenile courts have discretion to determine a juvenile's tier level. This is in contrast to the classification of adults, which is dictated by offense. R.C. 2950.01(E)-(G).¹⁶
- No statutory factors are outlined for court to make this determination. R.C. 2152.381. But, the Attorney General has advised that the factors in R.C. 2152.83(D) are equally applicable to the tier determination.¹⁷

Tiers Levels, Frequency, and Duration of Registration

¹⁵ *In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653.

¹⁶ *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729.

¹⁷ See pages 11-12 of the Brief of Amicus Curiae Ohio Attorney General, filed in support of neither party in *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291.

- The tier frequencies and durations are different for juveniles than they are for adults. This chart illustrates the tier levels for juvenile offenders.

Tier Level	Frequency of Registration	Duration of Registration
Tier I	Annually	Ten years, unless declassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
Tier II	Every 180 days	Twenty years, unless declassified or reclassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
Tier III	Every 90 days	Life, unless declassified or reclassified pursuant to R.C. 2152.84 or 2152.85. R.C. 2950.07.
PRQJOR (2152.86)	No longer valid.	No longer a valid classification.

- **Caution:** In *In re C.P.*, the Supreme Court of Ohio held that R.C. 2152.86, which required the mandatory, automatic, and lifetime classification of certain SYOs as public registry-qualified juvenile offender registrants to be unconstitutional. Accordingly, the procedures outlined therein are no longer applicable; and, children may not be given this classification or be included on the Attorney General’s electronic Sex Offender Registration and Notification database (“eSORN”).

Order Imposing Classification

- Classification orders must be imposed by a juvenile court judge.
- If a judge imposes a classification order under R.C. 2152.82 or 2152.83, the court must provide the delinquent child and the child’s parent, guardian, or custodian, a copy of the order and a notice containing the information described in R.C. 2950.03. The notice must be provided at the time of the issuance of the order and must comply with R.C. 2950.03(B) and (C).
- The classifying order must include notice that, upon completion of the disposition, the order is subject to modification or determination under R.C. 2152.84.
- The classification order shall remain in effect until either the expiration of the child’s duty to register, as defined by R.C. 2950.07, or until the child’s duty to register is modified or terminated pursuant to R.C. 2152.84 or 2152.85.

Eligibility for Community Notification

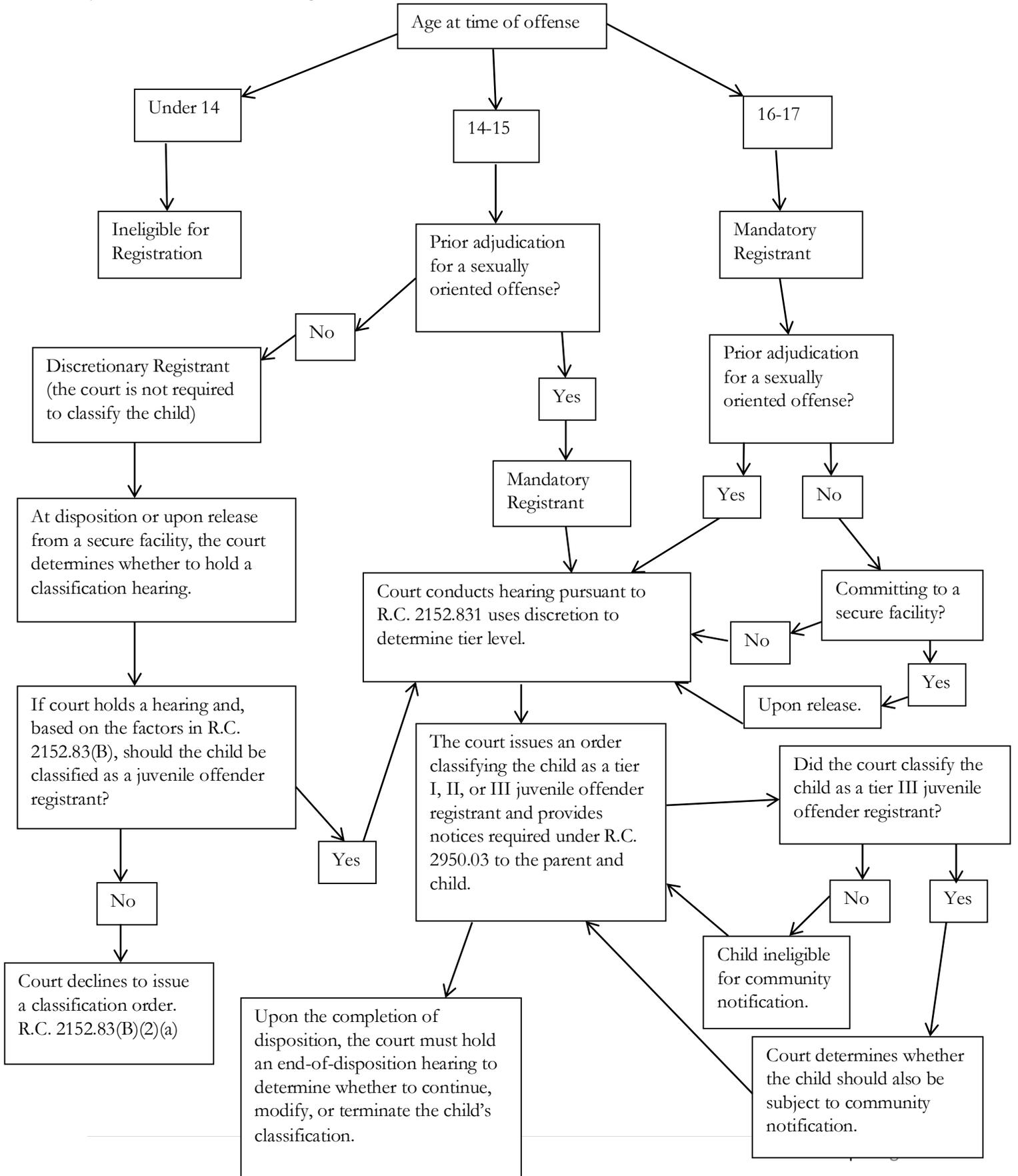
- Although juvenile registration may not appear on eSORN, R.C. 2950.081 makes all juvenile sex offender registration subject to public records request.
- Certain youth who are classified as tier III juvenile sex offender registrants may be subject to community notification under R.C. 2950.10(B)(1)(c) and 2950.11(F)(1)(c) upon a determination by the juvenile court.
- If the court determines that a tier III juvenile sex offender registrant should be subject to community notification, the requirement must be included in the order classifying the child.

Difference Between Juvenile Registrants and Adult Registrants

- Tier determinations for adult registrants are based on offense, juvenile tiers are not. R.C. 2950.01(E)(1)-(3), (F)(1)-(3), (G)(1)-(3).
- Juveniles are only required to register in the county where they live, not in the counties where they attend school (non-residential) or work.
- Residency restrictions do not apply to juvenile sex offender registrants. R.C. 2950.034.¹⁸

¹⁸ Ohio Attorney General Opinion 2009-029.

Juvenile Sex Offender Registration Flow Chart



End-of-Disposition Review Hearing and Petition for Reclassification or Declassification R.C. 2152.84 - R.C. 2152.85

- For children who are classified as juvenile offender registrants, upon the completion of the child's disposition, the court must hold a hearing.
- The purpose of the hearing is to review the effectiveness of the child's disposition, determine the child's risk to sexually reoffend, and determine whether to continue, modify, or terminate the child's duty to register.

Factors for Consideration

- In determining whether to continue, modify, or terminate a juvenile offender registrant's duty to register, the court must consider the following:
 - The nature of the sexually oriented offense;
 - Whether the child has shown any genuine remorse or compunction;
 - The public interest in safety;
 - The factors set forth in R.C. 2950.11(K), provided that the references in those factors to "the offender" are construed for purposes of R.C. 2152.38 to be references to the delinquent child;
 - The factors in R.C. 2929.12(B),(C) as applied regarding the delinquent child, the offense, and the victim; and
 - The results of any treatment provided to the child and of any follow up professional assessment of the child.

Findings and Orders

- At the conclusion of the hearing, the court must determine whether to continue, modify, or terminate the child's classification.
- For all juvenile offender registrants, the court may decrease the child's tier level, or where applicable, remove community notification from the child's registration requirements.
- For juveniles who were only subject to discretionary classification at disposition, the court may terminate the child's duty to register and issue an order finding that the child is no longer a juvenile offender registrant and no longer has a duty to comply with Chapter 2950 of the Revised Code.

- The court may not increase a child’s classification level at this hearing.
- At the conclusion of the hearing, the court must issue an order detailing the child’s classification level and corresponding duties; and must provide copy of the order to the delinquent child, and to the bureau of criminal identification and investigation.

Notice

- At the conclusion of the hearing, the court must notify the child and the child’s parent, guardian, or custodian of the information contained in R.C. 2950.03, which details the child’s duties to comply with registration requirements under Chapter 2950 of the Revised Code.

Petition for Reclassification or Declassification

- For juvenile offenders whose duty to register was not terminated at their end-of-disposition hearing, three years after the end-of-disposition hearing, the child may petition the classifying court for declassification.
- A subsequent petition may be filed three years after the initial petition and every five years thereafter.

Factors for Consideration

- In determining whether to continue, modify, or terminate a juvenile offender registrant’s duty to register, the court must consider the following:
 - The nature of the sexually oriented offense;
 - Whether the child has shown any genuine remorse or compunction;
 - The public interest in safety;
 - The factors set forth in R.C. 2950.11(K), provided that the references in those factors to “the offender” are construed for purposes of R.C. 2152.38 to be references to the delinquent child;
 - The factors in R.C. 2929.12(B),(C) as applied regarding the delinquent child, the offense, and the victim; and,
 - The results of any treatment provided to the child and of any follow up professional assessment of the child.

Findings and Orders

- At the conclusion of the hearing, the court may either:
 - Enter an order denying the petition; or
 - Issue an order that reclassifies or declassifies the juvenile offender as requested.
- If the court denies the juvenile offender's petition, the prior classification order remains in effect.
- If the court grants the petition and reclassifies the juvenile offender to a lower tier level, the court shall issue an order that specifies the juvenile offender's new registration duties and shall provide a copy of the order to the child and to the bureau of criminal identification and investigation.
- If the court grants the petition and declassifies the juvenile offender, the court shall issue an order finding that the child is no longer a juvenile offender registrant and no longer has a duty to comply with Chapter 2950 of the Revised Code and shall provide a copy of the order to the child and to the bureau of criminal identification and investigation.
- The court may not increase a child's classification level at this hearing.

SEALING AND EXPUNGING

Applications for Sealing and Expunging

R.C. 2151.355-R.C. 2151.358

Definitions and Eligibility

- *Expunge*: “means to destroy, delete, and erase a record, as appropriate for the record’s physical or electronic form or characteristic, so that the record is permanently irretrievable.” R.C. 2151.355(A).
- *Sealing*: “to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible to the juvenile court.” R.C. 2151.355(B).
- Delinquency records pertaining to children adjudicated delinquent of aggravated murder, murder, or rape are not eligible to be sealed or expunged.

Notice

- Upon the final disposition of a case, the court shall provide written notice to the child that states that the child may apply for an order to seal and/or expunge their record and explains what sealing or expunging a record means.

Records Subject to Immediate Sealing

- The following records shall be immediately and automatically sealed without an application being filed on behalf of the child:
 - Any record pertaining to a child’s arrest or detention for a delinquent act if no complaint is ever filed and the child is not brought to court.
 - If a child is brought before the court on an alleged delinquent act, but the matter is resolved without the filing of a complaint.
 - If a child is charged with underage drinking, but the child successfully completes a diversion program with respect to that charge.
 - If a complaint is filed alleging that a child is delinquent, and after a hearing on the merits, the court finds the child to be not delinquent.
 - If a child, after being adjudicated unruly, turns 18 and is not under the jurisdiction of the juvenile court in relation to a delinquency complaint.

- All public offices or agencies with original records pertaining to the case subject to sealing or expunging must deliver them to the court. R.C. 2151.356(B)(1)-(2).

Records Subject to Discretionary Sealing

- All other records eligible for sealing and expunging may be sealed and expunged, upon the court's own motion, or upon a juvenile's application if:
 - The child has been adjudicated delinquent; and
 - At the time of the child's application, the child is no longer under the jurisdiction of the juvenile court in relation to an alleged delinquency complaint. R.C. 2151.356(C)(1).
- No fees may be assessed for the filing of an application.
- Children who are under 18 may apply for sealing and expunging: 6 months after the termination of any order made by the court in relation to the adjudication; 6 months after the unconditional discharge of the person from DYS or other facility of commitment, with respect to the adjudication; or 6 months after the court enters an order declassifying the child from the juvenile sex offender registry. R.C. 2151.356(C)(1)(a)(i)-(iii).
- Children who are 18 or older may apply for sealing and expunging any time after: the child attains 18 years of age; immediately after any occurrence listed in R.C. 2151.356(C)(1)(a)(i)-(iii). R.C. 2151.356(C)(1)(b)(i)-(ii).

Procedure Following Application for Sealing of Records

- Upon the filing of an application for sealing, the court may require the applicant to submit any relevant documentation to support the request and may cause an investigation to be made to determine whether the applicant has been rehabilitated to a satisfactory degree.
- The court must promptly notify the prosecutor of any proceedings to seal records. The prosecuting attorney may file a response within 30 days of receipt of the court's notice.
- If the prosecutor does not respond to the application, or responds, but does not object to sealing, the court may grant the application without a hearing. The court may hold a hearing, within its discretion. If the court determines that a hearing is necessary, the hearing shall be held within 30 days and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecutor and applicant.
- If the prosecutor objects to sealing, the court must hold a hearing within 30 days of receipt of the prosecutor's responsive pleading. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecutor and applicant.

- When considering an application to seal, the court may consider the following: the age of the applicant; the nature of the case; the cessation or continuation of delinquent or criminal behavior; the education and employment history of the person; the granting of a new tier classification or declassification from the juvenile offender registry; any circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.
- After conducting a hearing, or after due consideration when a hearing is not conducted, the court may order the records of the applicant sealed if it finds that the person has been rehabilitated to a satisfactory degree.
- If the court receives notice that a civil action has been filed on the basis of the records that are subject to sealing, the records shall not be sealed until the civil action has been resolved and is no longer subject to appellate review, at which time the records shall be sealed.
- Upon sealing of a person's records, the court must provide verbal notice to an applicant who is present, or written notice when the applicant is not present, that explains what sealing a record means and that notifies the applicant that they may apply to have their records expunged under R.C. 2151.358.

Response Respecting Sealed Records

- After records have been sealed, the applicant who is the subject of the sealed records may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.
- If the court orders a person's juvenile records sealed, the court must do all of the following:
 - Order that the proceedings in the case be deemed never to have occurred;
 - Delete all index references to the case and the person so that they are permanently irretrievable;
 - Order that all original records of the case maintained by any public office or agency (except fingerprints, DNA specimens, and DNA records) be delivered to the court;
 - Order each public office or agency to expunge any remaining records of the case (except fingerprints, DNA specimens, and DNA records);
 - Send notice of the order to any public office or agency that the court has reason to believe may have a record of the sealed record including, but not limited to, the bureau of criminal identification and investigation; and
 - Seal all of the records delivered to the court in a separate file in which only sealed records are maintained.

- No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person any information or other data concerning any sealed records, unless expressly permitted by R.C. 2151.357. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.
- The judgment rendered by the court shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication.

Procedure Following Application for Expunging of Records

- The juvenile court shall expunge all records sealed under R.C. 2151.356 five years after the court issues an order sealing juvenile court records, or upon the 23rd birthday of a person who is the subject of a sealing order, whichever is earlier.
- A juvenile may also apply to the court to expunge a sealed record.
- In determining whether to expunge sealed records *before* the periods outlined in R.C. 2151.358(A), the court may require the applicant to submit any relevant documentation to support the request and may cause an investigation to be made to determine whether the applicant has been rehabilitated to a satisfactory degree.
- The court must promptly notify the prosecuting attorney of any proceedings to expunge records. The prosecutor may file a response within 30 days of receiving the notice of expungement proceedings.
- If the prosecutor does not respond to the application, or responds, but does not object to expungement, the court may grant the application without a hearing. The court may hold a hearing, within its discretion. If the court determines that a hearing is necessary, the hearing shall be held within 30 days and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecutor and applicant.
- If the prosecutor objects to expungement, the court must hold a hearing within 30 days of receipt of the prosecutor's responsive pleading. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecutor and applicant.
- After conducting a hearing, or after due consideration when a hearing is not conducted, the court may order the records of the applicant sealed if it finds that the person has been rehabilitated to a satisfactory degree.
- If the court receives notice that a civil action has been filed on the basis of the records that are subject to expungement, the records shall not be expunged until the civil action has

been resolved and is no longer subject to appellate review, at which time the records shall be expunged.

- When considering an application to expunge juvenile court records prior to the expiration of the periods outlined in R.C. 2151.358(A), the court may consider the following:
 - The age of the applicant;
 - The nature of the case;
 - The cessation or continuation of delinquent or criminal behavior;
 - The education and employment history of the person;
 - The granting of a new tier classification or declassification from the juvenile offender registry; and
 - Any circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.
- After records have been expunged, the applicant who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.

APPEALS

THE APPELLATE RULES PROVIDE GENERAL TIMEFRAMES AND GUIDELINES FOR APPEALS. HOWEVER, IT IS IMPORTANT TO ALWAYS REFER TO THE LOCAL RULES FOR ADDITIONAL PROCEDURES AND GUIDELINES.

App.R. 4 – Timely appeal

- A party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal within 30 days of that entry.

App.R. 5 – Delayed appeal

- After the expiration of the 30-day period provided by App. R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in criminal proceedings, delinquency proceedings, and serious youthful offender proceedings.
- A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right.

App.R. 9 – Appellate Record

- The appellate record may be supplemented when anything material to either party has been omitted from the record, by error or accident.

App.R. 10 – Transmission of the record

- The trial court for cause shown may extend the time for transmitting the record. The clerk shall certify the order of extension to the court of appeals. A request for extension to the trial court and a ruling by the trial court must be made within the time originally prescribed or within an extension previously granted.

App.R. 14 – Extension of time

- For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time.

App.R. 21 – Oral argument

- If counsel on oral argument intends to present authorities not cited in the brief, counsel shall, at least five days prior to oral argument, present in writing such authorities to the court and to opposing counsel, unless there is good cause for a later presentment.

App.R. 28 – Voluntary dismissal

- An appeal may be dismissed on motion of the appellant upon such terms as may be fixed by the court.