



OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

Juvenile Justice Committee

October 20, 2016

Agenda

- I. Call to Order
- II. Approval of Meeting Notes of August 18, 2016 meeting
- III. Probation
 - Discussion
- IV. Enhancements, Allied Offenses, and Sealing/Expungment
 - Discussion
- V. Adjourn

Upcoming Meetings

Ohio Criminal Sentencing Commission December 15, 2016

Juvenile Justice Committee January 16, 2017

PLEASE NOTE: The committee will not meet in November



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CRIMINAL SENTENCING COMMISSION

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Juvenile Justice Subcommittee

August 18, 2016

Meeting Notes

Attending:	Paul Dobson, Chair	Erin Davies, Vice-Chair
	Jill Beeler	Ron Burkitt
	Jim Cole	Judge Robert Fragale
	Kathleen Hamm	Judge Teri Jamison
	Hon. Aaron Montz	Rep. Dorothy Pelanda
	Kyle Petty	Director Harvey Reed
	Judge Nick Selvaggio	Sara Andrews
	Jo Ellen Cline	Tammy Alsaada (JJC)
	Lucy Chandler (SCO)	Marla Burton (DYS)
	Kathy Wellington (Rep. Craig)	

1. Vice-Chair Davies called the meeting to order at 10:03 a.m.
2. The meeting notes of July 21, 2016 were approved unanimously.
3. Brief introductions were made by committee members.
4. The committee began by returning to the discussion of a bright line exemption from transfer for those children with an IQ of 70 or below. Vice-Chair Davies noted that an adult cannot be executed in capital cases if they have an IQ of less than 70 but also noted that the Supreme Court has said that 70 is not a "magic number". It was also noted that competency can be an issue in bindover cases. A concern was raised that have a mandatory "non-bindover" takes away judicial discretion and that a hard and fast rule will lead to an increase in arguments about IQ and what it means for bindover. There was extensive discussion about resources and the lack thereof in both the juvenile and adult systems. Judge Fragale raised an issue regarding the financial impact locally in regards to resources. A motion was made and seconded to not include a bright line exclusion of those with an IQ of 70 or below and the motion carried. [10 – 2 (Davies, Beeler)]. The committee then turned to consideration of a bright line exclusion of misdemeanors. This was intended to address the concept of "once an adult, always an adult" in the system. The proposal was that if a juvenile is transferred to adult court and serves their adult time and is subsequently commits a misdemeanor that the juvenile does not automatically go to adult court. After discussion a motion was made to limit the language of

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committee will invite David Williams who is Chief of the Holmes County Juvenile Probation department to discuss this issue at the next committee meeting.

6. Ms. Hamm introduced the topic of how detention time is being used in Ohio. The initial suggestion was to look at just post-adjudication time; however, after more consideration, Ms. Hamm would like the committee to get information and research on both arrest and detention pretrial and then how local time is used and how it is imposed. Ms. Hamm indicated that she is gathering information that she will share with the committee in the future.
7. There being no further business to come before the committee, the committee adjourned at 12:40 p.m.

NEXT MEETING: OCTOBER 20, 2016

Questions regarding probation for juveniles

Do we have any data on juvenile probation in Ohio? Characteristics of kids on probation? How many kids are on probation at any given time? How long are kids typically on probation? Any recidivism outcome data?

Is there any research or information from other states that discusses the pros/cons of indefinite probation vs. a definite period of probation?

Is monitored time rehabilitative or effective?

Should there be guidelines or requirements when determining the terms of probation, specifically that they bear some connection to the offense for which the child was adjudicated? (My experience has been that probation and parole terms tend to be uniform for all kids)

2152.19 contains the VCO exception – is that up for discussion?

2152.19 also contains a catch-all disposition. Is this used? Is it effective? What types of dispositions are not otherwise covered by statute?

Do we know how many kids start out on probation but they end up incarcerated in detention, DYS, other for a technical violation (as opposed to the underlying or a new criminal charge)?

How long does a child typically serve in detention or other facility for a technical violation?

To: Jo Ellen Cline, Criminal Justice Counsel

From: JT Harrison, Legislation Clinic

Date: October 6, 2016

Re: Juvenile Probation

Issues

- I. What is juvenile probation?
- II. Who is subjected to juvenile probation?
- III. What are the conditions of juvenile probation?

Brief Answer

- I. Juvenile probation is when a juvenile court adjudicates a delinquent child and orders court supervision.
- II. Juveniles adjudicated delinquent may be subjected to probation. Under certain restrictions, unruly children may also be subjected to probation.
- III. The conditions of probation vary based on the type of offense, judge, and minor's history and record with the juvenile court.

Discussion

- I. Juvenile probation is when a juvenile court adjudicates a delinquent child and orders court supervision.*

Under R.C. 2152.19(A), a juvenile probation court may order several dispositional orders including probation. Probation is a court order after an adjudication of a delinquent child.¹ Once a child is adjudicated delinquent, the judge of the juvenile courts orders a disposition similar to a sentence in the adult system. The disposition options include: commitment to a state, county, or private facility; imposition of house arrest or electronic monitoring; restrictions on driving privileges; and imposition of fines, restitution, and court costs.² Community control conditions

¹ R.C. 2152.19.

² R.C. 2152.19(A)(2), (3), (4).

may include: intensive or basic probation; day reporting; community service; attendance at school and work; curfew; monitored time; and abiding by the law.³

Basic probation is when the child must maintain contact with a court-appointed person usually a probation officer, who supervises the child per the sanctions that the juvenile court imposed.⁴ In contrast, intensive probation requires the child to maintain *frequent* contact with a probation officer to supervise the child while he or she is seeking employment and participating in training, education, and treatment programs in compliance with court sanctions.⁵

II. Children who are adjudicated delinquent may face probation; the court may also order probation for unruly children under certain restrictions.

When a juvenile has been adjudicated on an offense, the juvenile court must abide by the statutory orders prescribed when administering a disposition. A juvenile is subjected to a disposition based on the types of offenses he or she committed. In Ohio, there are two primary categories of offense under ORC: delinquent and unruly. The juvenile court can order any number of dispositions after a child has been adjudicated delinquent or unruly.⁶

A delinquent child is a person under eighteen years old who violates any state laws or federal laws, or any ordinances of a political division of the state, that would be an offense if it were committed by an adult.⁷ In addition, a child is delinquent when the child knowingly submits false information concerning his or her age to gain entrance to an adult entertainment establishment, purchase or attempt to purchase a firearm, knowingly and unlawfully acquire a pseudoephedrine or ephedrine product, or violate a lawful court order.⁸ Any child who is habitually truant and has been adjudicated previously as an unruly child for habitual truancy or a chronic truant is also deemed delinquent.⁹ On the other hand, an unruly child is any child who does not submit to the reasonable control of the child's parents, guardians, or teachers; is habitually truant from school

³ R.C. 2152.19(A)(4).

⁴ R.C. 2152.19(A)(4)(a).

⁵ R.C. 2152.19(A); R.C. 2151.354.

⁶ R.C. 2152.19.

⁷ R.C. 2152.02(1); R.C. 2152.02(F)(1).

⁸ R.C. 2152.02 (F)(2), (3).

⁹ R.C. 2152.02(F)(4), (5).

and has not been previously adjudicated unruly for truancy; or behaves in a manner that endangers him or her health and morals or those of others.¹⁰

Disposition varies based on whether a child is determined to be delinquent or unruly. While a juvenile court has broad discretion when ordering probation for delinquent juveniles, a child adjudicated unruly is ordered probation when his or her case meets certain conditions. Under R.C. 2151.35 (6), “if, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amendable to treatment or rehabilitation under that disposition, [the court may] make a disposition...under divisions (A)(1), (4) ...of section 2152.19...”

Furthermore, a child is not automatically removed from probation supervision at the age of eighteen. The Juvenile Court can maintain jurisdiction until the age of twenty-one.¹¹ In Allen County, if the juvenile would require detention as a result of a probation violation, the juvenile will be held at the Allen County Justice Center instead of the Juvenile Detention Center after turning eighteen years old.¹²

III. A juvenile court sets the conditions of probation while the Probation Department implements the court order.

The court’s probation department, under the direction of the juvenile judge and the chief probation officer, must keep informed of the delinquent child’s conduct and condition and must report to the judge as directed.¹³ Each probation officer is required to use all suitable methods to aid probationers and to bring about improvement in their conduct and condition. The department must maintain records of its work, which are considered confidential and not available to the public.¹⁴

a. Juvenile probation is discretionary and highly fact-specific.

Juvenile courts have very few restrictions on how they might impose probation, including behavioral requirements for an individual child.¹⁵ In fact, juvenile courts have “broad discretion in fashioning orders specifically tailored to address each juvenile’s particular treatment and

¹⁰ R.C. 2151.022

¹¹ R.C. 2151.23

¹² www.co.allen.oh.us/cjuv_faq.php

¹³ R.C. 2151.14(A).

¹⁴ *Id.*

¹⁵ *In re Cross*, 96 Ohio St.3d 328 (2002).

rehabilitative needs.”¹⁶ The court can impose probation in broad and creative ways because it can tailor the sentence to each juvenile delinquent. Not only will probationary periods vary based on age and type of offense but they will also vary inter-county and intra-county. For example, in Summit County, a minor was adjudicated delinquent for felonious assault while a fifteen-year-old was adjudicated delinquent by reason of unauthorized use of a motor vehicle, which would constitute a fourth-degree felony; both were sentenced to six months of probation.¹⁷ In Franklin County, a twelve-year-old was placed on intensive probation after he was charged with delinquency for a crime that would be first degree felony—rape.¹⁸ The Franklin County Juvenile Court also placed a juvenile on probation for one year for a crime that would constitute second-degree felony by robbery.¹⁹ Allen County utilizes a “risk/need instrument” that was designed for that county.²⁰ When a child is placed on probation, the probation officer conducts “risk/need” assessment.²¹ A high-risk youth will be placed on twelve months of probation, a medium risk youth on eight months, and a low-risk youth on fourth months.²² Each youth is also evaluated every ninety days.²³

Nevertheless, a juvenile court cannot abuse its discretion when administering probation. For example, probation conditions which prohibited a child from going to a specified place of business, from associating with a specified individual, and from dressing as a female were held to be unreasonable, arbitrary, and capricious and an abuse of discretion.²⁴ The probationary period can be indefinite; furthermore, the court cannot revoke probation unless there is a hearing in which the child is charged on the grounds that called-for the revocation. To revoke probation, the child must violate a condition of his or her probation.²⁵

¹⁶ *In re J.F.*, 2007-Ohio-5652 (2nd Dist. Greene), *aff'd* and remanded, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19 (2009).

¹⁷ *In re Vinson*, 9th Dist. Summit No. 18112, 1997 WL 760695; *In re Herring*, 9th Dist. Summit No. 17553, 1996 WL 385611.

¹⁸ *In re Walker*, 2003-Ohio-2137 (10th Dist. Franklin).

¹⁹ *In Matter of Kelly*, 10th Dist. Franklin No. 95APF05-613, 1995 WL 656944.

²⁰ www.co.allen.oh.us/cjuv_faq.php

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Oh. Juvenile L. § 22:8.

²⁵ Juvenile Procedure, Rule 35, OH ST JUV P Rule 35.

To: Jo Ellen Cline
From: Katie Plumer
Re: *In Re A.G.*, Slip Opinion No. 2016-Ohio-3306
Date: September 27, 2016

Issue:

To what extent does the Constitution protect juveniles from receiving multiple punishments for the same offense?

Case Background:

In June 2012 the Defendant approached an individual who was getting into a car after leaving the ATM. The Defendant pulled a gun out of his pocket and threatened to shoot the individual if they did not get in the car. The individual did not comply and escaped. The police later used fingerprints from the car to identify the suspect as a juvenile who was 15 at the time of the incident.

A complaint was then filed alleging the juvenile was delinquent for committing acts that if he would have been an adult at the time of the crime he would have been charged with aggravated robbery.¹

Procedural History:

Trial Court

The juvenile entered an admission to the allegations stated in the complaint and after finding that the allegations were proven beyond a reasonable doubt the juvenile court ordered the juvenile to Department of Youth Services for a minimum term of one year for the aggravated robbery and a minimum term of one year for kidnapping. The court merged the firearm specification into a single specification and ordered all the terms to be served consecutively. This would have led to a minimum commitment of three years with a maximum commitment of lasting until the juvenile turned 21.

The juvenile appealed raising two assignments of error (1) he argued the juvenile court erred in failing to merge the adjudications for aggravated robbery and kidnapping as “allied offenses of similar import” and that failure violated double-jeopardy (2) counsels failure to raise the allied-offense issue was ineffective assistance of counsel.²

Eighth District Court of Appeals

¹ *In Re A.G.*, Slip Opinion No. 2016-Ohio-3306 ¶ 2-3

² *In Re A.G.*, Slip Opinion No. 2016-Ohio-3306 ¶ 3-4

The court held that the two charges would only be considered allied offenses of similar import if an adult had committed them. The court looked at the case of *Blockburger*³, which requires comparing the elements of offenses at issue “without regard to the evidence introduced at trial”. The juvenile court did not err in refusing to merge the adjudications and the second assignment of error was moot. Therefore, affirming the trial courts decision.

The juvenile then appealed on the proposition of law “the merger analysis set forth in *State v. Johnson* applies to juvenile delinquency proceedings to protect a child’s right against double jeopardy.”⁴

Holding:

The Supreme Court of Ohio reversed the judgment of the Court of Appeals and remanded the case to the Eighth District to apply the correct analysis for merger of the charges and to consider the remaining assignment of error if necessary.

The merger analysis set forth in *State v. Ruff*⁵ applies to juvenile delinquency proceedings to protect a child’s right against double jeopardy. This includes looking at (1) juvenile’s conduct (2) the juvenile’s animus (3) the import of the offenses. If the court were to apply the *Blockburger* test for merger, there would be very few times where merger would occur in the juvenile system, even if a case with identical facts would be merged in adult court.

The application of the *Ruff* test to questions of merger of allied offenses of similar import fully comports with the juvenile court system and “heightened goals of rehabilitation and treatment” in Ohio. The Judge will retain more discretion and be able to individualize on a case-by-case basis. If the court were to follow the decision of the Eighth District Court of Appeals the defendant would serve a minimum sentence of three years. The juvenile could be rehabilitated from the single offense after serving just a single year; therefore, if the court were to follow the Eighth District Court requiring him to serve additional time after he was potentially rehabilitated would not continue to embrace the ideas of the juvenile court.

Dissent:

The dissent argues that by following the majority’s view the court is taking another step towards characterizing juvenile proceedings as if they are criminal in nature. It argues that it was not the General Assembly’s intent to apply statutes written to govern criminal proceedings to the civil process. It specially focuses on the language that is used in O.R.C. 2941.45, which includes “defendant”, “offenses”, “indictment”, and “convicted” which are all words that are associated with the criminal justice

³ *Blockburger v. United States*, 248 U.S. 299, 304, 52 S. Ct. 180, 76 L.Ed. 306 (1932)

⁴ *State v. Johnson*, 142 Ohio St.3d 1464, 2015-Ohio-1896, 30 N.E.3d 973.

⁵ *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892

system not civil proceedings. The use of this language specifically shows that it was not the legislative intent to apply this statute to juvenile adjudications. The application of this statute to juvenile proceeding further blurs the focus on rehabilitation and flexibility that distinguishes the juvenile court system.

The second argument that the dissent makes is that double jeopardy protections only apply to successive proceedings and are not meant to apply when the sentence is given in the same proceedings. “The Double Jeopardy Clause does nothing more than prevent the sentencing court from imposing a greater punishment than *the legislature intended*.”⁶

Statutory Changes:

The majority and the dissent focus greatly on legislative intent. The majority uses the argument that the legislature intended to protect juveniles from faces the consequences of double jeopardy by codifying a code section on when multiple punishments for the same crime can be imposed. While the dissent makes the argument that the intent is the exact opposite because of the language that is used within the statute. It can be concluded that the legislative intent in regards to this specific statute is ambiguous.

The majority and the dissent both raise issues with applying or not applying this protection within the juvenile court system raises concerns on if the Court is still achieving the goal of rehabilitation which is the purpose of having a separate juvenile court system.

There is also uncertainty if the Ohio Constitution coupled with the code sections extends the protections from Double Jeopardy that are guaranteed by the United States Constitution. The question raised by the dissent is if the protection is guaranteed only when there are successive proceedings or if it also protects against sentences given at one time.

⁶ *In Re A.G.*, Slip Opinion No. 2016-Ohio-3306 ¶ 31

To : Jo Ellen Cline
From: Katie Plumer
Re: *State v. Hand*, Slip Opinion No. 2016-Ohio-5504
Date: September 27, 2016

Issue:

Whether it is a violation of due process to treat a juvenile adjudication as the equivalent of an adult conviction for purposes of enhancing a penalty for a later crime?

Case Background:

Hand entered no contest pleas to aggravated-burglary, aggravated-robbery, and kidnapping. He also entered no contest pleas to two felonious assault charges. Each count had a three-year firearm specification. Hand entered a no contest plea to these specifications.

At the plea hearing the parties agreed to a six-year prison term, three of those years were mandatory in relation to the merged firearm specification. The question is if the second three-year term is made mandatory due to the prior adjudication as a juvenile and if that can be used as a conviction to enhance the sentence.

Procedural History:

The trial court merged the allied offenses and sentenced him to a mandatory three-year prison term for each of the aggravated-burglary, aggravated-robbery, and felonious-assault counts. These sentences were to be served concurrently with each other but consecutively to the mandatory three-year prison term for the firearm specification, for an aggregate six-year mandatory term of incarceration.¹

The Second District Court of Appeals affirmed the trial court's judgment. The Appellate Court, in a two-to-one decision, rejected Hand's arguments that treating his juvenile adjudication as a prior conviction violated his due process rights because he was not afforded the right to a jury trial in juvenile court. The court also did not find a violation of *Apprendi*.²

In reaching its conclusion the Trial Court and Second District Court read the two statutes together. R.C. 2929.13(F)(6) required the court to sentence an offender to a mandatory prison term if he had previously been convicted of a first-degree or second-degree felony. There is not a definition for what is considered a conviction under RC. 2929.13, therefore Court looks to R.C. 2901.08(A), which allows a

¹ *State v. Hand*, Slip Opinion No. 2016-Ohio-5504 ¶ 4

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

previous adjudication to enhance a subsequent sentence to include a mandatory prison term.

Jurisdictional Split:

There is a jurisdictional split on if juvenile adjudications can be used to enhance criminal convictions. Two Ohio Appellate Courts have held that this is not a violation of due process.³ The majority of Federal Circuit Courts have also found that this is not a violation of due process except for the Ninth Circuit.⁴ There is also a split between the State Supreme Courts on if this is a due process violation.⁵

Holding:

It is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult. R.C. 2901.08(A) violates the Due Process Clauses of the Ohio Constitution and the 14th Amendment of the United States Constitution.⁶

The United States Supreme Court has an unwavering commitment to a narrow definition of what qualifies as a prior conviction. “[It] is required that any fact that increased the penalty for a state crime beyond the prescribed statutory maximum--other than the fact of a prior conviction--had to be submitted to a jury and proved beyond a reasonable doubt.”⁷ A juvenile adjudication cannot fit into this statement because it was never submitted to a jury in making a determination of guilt or innocence.

Juvenile Courts are unique; their focus is on rehabilitation. The juvenile court system is one that is civil in nature, not criminal. However, there are still some Constitutional protections in place. There is the right to have counsel present, protection against self-incrimination, double jeopardy protections, amongst others. These Constitutional safeguards are in place, however, a right to a trial by jury is not guaranteed in the juvenile court system.

Dissent:

The dissent concludes that by reading the two statutes together juvenile adjudications can be used to enhance criminal convictions. The dissent also points to the fact that the majority of other jurisdictions in Federal Court and other State

³ *State v. Parker*, 8th Dist. Cuyahoga No. 97841, 2012-Ohio-4741, ¶ 24; *State v. Carver*, 2d Dist. Montgomery No. 25804, 2014-Ohio-3635.

⁴ *United States v. Tighe*, 266 F.3d at 1191-1195; *State v. Hand*, Slip Opinion No. 2016-Ohio-5504, ¶ 29.

⁵ *State v. Hand*, Slip Opinion No. 2016-Ohio-5504, ¶ 30

⁶ *Id* ¶ 37

⁷ *Apprendi v. New Jersey*, 530 U.S. 466, 468, 120 S. Ct. 2348, 2351 (2000).

Supreme Courts allow for the use of adjudications to enhance criminal convictions. Arguing that this change involves a policy consideration involving Ohio Law and is not appropriate for a judicial decree, but rather should be done through the power vested in the General Assembly. ⁸ The dissent also argues that using juvenile adjudications is in align with *Apprendi*⁹. In that case there is no specific definition for what a “conviction” is to be considered. Therefore, the court using an adjudication has a conviction is still in alignment with the decision in *Apprendi*.

Statutory Changes:

R.C. 2929.13 requires that a sentence be enhanced if the defendant has been convicted previously of a felony, however, nowhere in the statute does it give a clear definition of what a conviction is to be considered. Looking further the code section does state that a prior adjudication can be used to enhance a conviction in R.C. 2901.08. The dissent argues that the plain language of the statute is unambiguous and resolves the question that prior juvenile delinquency adjudication are a prior conviction for purposing of imposing a mandatory prison term. The majority goes beyond the plain language of the statute.

In order for the code sections to be in alignment with the ruling that the use of juvenile adjudications to enhance criminal convictions would have to be eliminated from the statute when those juvenile adjudications were not submitted to the jury for a decision. The majority finds that this would be a violation of Due Process through both the United State’s and Ohio’s Constitutions.

⁸ *Id.* ¶ 51

⁹ *Apprendi*, 530 U.S. 466, 468, 120 S. Ct. 2348, 2351 (2000).

To: Jo Ellen Cline
From: Katie Plumer
Re: Juvenile Records: Sealing & Expungements
Date: September 19, 2016

Process:

Ohio Revised Code §2151.354 provides for the process and the requirements for sealing and expunging any record dealing with allegations or adjudications against juveniles.¹ “Expunge” is defined as being made permanently irretrievable; “Seal a record” is defined as being removed from the main system and secured separately in a location only containing sealed records.² The Ohio Revised Code makes a distinction within the juvenile field between the two terms; however, it is unclear if there is a difference in the effect of either process. If a juvenile has been adjudicated of aggravated murder, murder, or rape they are prohibited from having their record sealed or expunged.

Sealing Records

A juvenile record can be sealed in two ways. First, certain juvenile allegations or adjudications qualify for automatic sealing. These include (1) when there is an arrest, but no charges filed (2) when the youth is charged with underage drinking, but completes a diversion program, (3) when the court dismisses the complaint, (4) when the court finds that the juvenile is not a delinquent, unruly or juvenile traffic offender, (5) when a youth has been adjudicated unruly, turns 18, and has no pending delinquency charges.³

Second, the juvenile or the court can submit a motion to have the juvenile record sealed if the juvenile meets the requirements set out by the statute. If the juvenile is under the age of 18 they can submit a motion 6 months after the final disposition of the case or if they are over 18 they can apply at any time if they do not have any pending juvenile cases. When the juvenile meets all of the requirements they can file in Clerk of Courts Office where the record is located. The prosecutor’s office and the judge then have discretion on if they want to allow for the sealing of the juvenile record.⁴ For a record to be sealed the juvenile must show that they have been sufficiently rehabilitated.

Expungement of Records

A record that has been sealed can be expunged five years after the record has been sealed or upon the 23rd birthday of the individual. The individual can apply for the record to be expunged. The court may require the individual to submit any documentation that would tell that he/she has been rehabilitated. The prosecutor is informed and if the office does not object within 30 days a hearing can be held or the record is expunged upon due consideration from the court. If the prosecutor’s office does file an objection within a timely manner, then a hearing will be scheduled. The hearing will be to determine if the individual has been rehabilitated to a satisfactory degree.⁵

¹ ORC Ann. 2151.356

² ORC Ann. 2151.355

³[http://law.capital.edu/uploadedFiles/Law_School/NCALP/Fact%20Sheet%20\(ML\)\(1\).pdf](http://law.capital.edu/uploadedFiles/Law_School/NCALP/Fact%20Sheet%20(ML)(1).pdf)

⁴ *Id*

⁵ ORC Ann. 2151.358

Accessibility

If a record is sealed it can be accessed by⁶:

- The court
- Law enforcement if it would be considered a felony if done as an adult
- Law enforcement if it would be considered a crime of violence as an adult
- The Applicant themselves
- If it was an alcohol related crime then when being considered for a diversion program
- A party involved in a civil action dealing with the record
- Attorney General's Office

If a record is expunged it can be accessed by⁷:

- Law enforcement or a prosecutor to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime
- Parole or Probation of record while on supervision for the current charge
- The Applicant themselves
- Law enforcement to protect themselves from any civil suit dealing with the matter
- Superintendent of the Bureau if it would have been a felony if convicted as an adult
- Superintendent of the Bureau if it would be considered a crime of violence as an adult
- Purpose of fingerprinting
- Criminal Record search for obtaining firearm
- Attorney General's Office
- A few other job specific

There is not a clear difference in the reading of the two statute sections that would explain why there are two separate processes. While the actual language in the statute seems to draw a differentiation the effect of both sealing a record and expungment seem to be the same. The only other difference that is clear between the two processes is the amount of time the individual would have to wait before qualifying for the either process.

Impact as an Adult

There are a few differences in the accessibility to a record if it is sealed or expunged. However, in both cases the record will have an impact on the juvenile as an adult. It will keep juvenile's name on the Attorney General's Registry for any crime that would qualify. It will show up on a background check for a job in law enforcement as well as limited other career related background searches. It could preclude the juvenile from being able to obtain a firearm. As an adult the record can preclude an individual from entering into a diversion program.

There has been a recent Ohio Supreme Court Case, *State v. Hand*, where the court held that a juvenile adjudication could not be used as a criminal conviction to enhance the level of crime an individual is charged with as an adult or to increase the mandatory minimum sentence the individual is given.⁸ The court stated that increasing a mandatory sentence due to a juvenile adjudication was a

⁶ ORC Ann. 2151.357

⁷ ORC Ann. 2151.358

⁸ *State v. Hand*, 2016-Ohio-5504

violation of due process. O.R.C. Ann. 2901.08 as currently written allows for the court to use a prior adjudication as a conviction to determine how an individual is charged or how an individual is sentence. The statute section does include language that would prohibit the use of these adjudications when determining if the individual is to be considered a violent career criminal. However, the statute section is still allowing for the court to treat adjudications as convictions in too many occasions according to the decision in *Hand*.

Overall, there are many collateral consequences that result out of proceedings that take place within the juvenile section of the court system even after a record has been sealed or expunged.

Different Jurisdictions

Pennsylvania

Sealing a record means that some individuals are still able to see the record including some law enforcement members and court staff. Expungement is to completely erase the record so that no one is able to see it. Courts and Law enforcement must completely delete the record. If charges were dismissed an individual can apply or the record will automatically be expunged. If there was a consent decree and the end of supervision the record will automatically be expunged after 6 months. If there was an adjudication of delinquency then the juvenile can file for an expungement after five years or upon turning 18.⁹

The process to get a record expunged will vary from county to county in Pennsylvania, however, the code sets out requirements of what needs to be contained in the motion to the District Attorney.¹⁰ The process will vary on what the charges before the court were and if the District Attorney consents to the expungement or not.

Overall the two states are similar in the process and the requirements for getting a juvenile record sealed or expunged. The main difference here is the fact that when a record in Pennsylvania is expunged it is completely destroyed and is not readily accessible to law enforcement in any possible future interactions with the law.

Indiana

Indiana only has the option to expungement the record. Indiana code requires that when an expungement is granted the record is removed from court files, law enforcement files, and the files of any other agency that handled the case. The records will then be destroyed or given to the individual who applied for the expungement.¹¹

The process for expungement varies county to county with the code section only requiring the petition be filed in the jurisdiction where original case had been heard. The code section looks at a number of factors that the juvenile court can look at in deciding if they should grant the motion for expungement.¹² Overall, the code sections for juvenile expungement include much less detail in Indiana than in Ohio.

⁹ http://www.jlc.org/sites/default/files/publication_pdfs/expungeguide.pdf

¹⁰ Pa.R.J.C.P. 170

¹¹ Ind. Code Ann. § 31-39-8-7

¹² Ind. Code Ann. § 31-39-8-3

Kentucky

If a juvenile record is due to a dependency, neglect, or abuse action, that record is eligible to be sealed when an individual turns eighteen.¹³ A record stemming from an adjudication of delinquency can be expunged two years after the completion from the juvenile court system. This two year time period can be waived if the individual can show extraordinary circumstances. A motion must be filed in order to consider the record for expungement this can be filed by the court, the probation officer of the case, or any other interested party. Individuals that would have been charged with a felony if they had committed the act while an adult are not eligible to obtain an expungement of their records.¹⁴

¹³ Ky. Rev. Stat. § 620.160

¹⁴ Ky. Rev. Stat. § 610.330

JUVENILE JUSTICE COMMITTEE WORK CHART

<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
3-6 month	Mandatory sentences	Discussion	Pending	Jo Ellen Erin Davies	
6-12 Month	Probation (Length of time)	Discussion	Pending	Jill Beeler	Discussion at October meeting
6-12 Month	Post-Dispositional Detention Time	Discussion	Pending	Kathleen Hamm	
6-12 month	Sexting	Discussion	Pending	Members	Wait on Ohio Criminal Justice Recodification Committee proposals
6-12 Month	Truancy		Pending	Jo Ellen Scott Lundregan	Monitor HB 410

OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
6-12 Month	Juvenile Records - sealing, expungement	Discussion	Pending		Gather information
	Allied Offenses (In re A.G.)		Pending		Gather information
	Enhancements (State v. Hand)				

OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
COMPLETED	Address juvenile court costs – assessment & collection	Restitution language approved.	COMPLETED	Jo Ellen	
COMPLETED	Extended sentence review (Juvenile)	SB 272 introduced in February 2016	COMPLETED	Jo Ellen Jill Beeler-Andrews	
COMPLETED	Juvenile confinement credit	Language approved by committee	COMPLETED	Jo Ellen Director Reed	
COMPLETED	JSORN	Committee decided not to make any recommendations to Recodification Committee	COMPLETED	Jo Ellen	

OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
COMPLETED	Mandatory shackling	Comment on proposed Sup.R. 5.01 re: juvenile restraints submitted	COMPLETED	Members	Sup.R. 5.01 adopted by Supreme Court (Eff. 7/1/16)
COMPLETED	Mandatory bindovers – eliminate or limit	Language approved by Commission	COMPLETED	Jo Ellen Erin Davies	