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STATEMENT OF FACTS

On March 23, 2006, the state filed two complaints alleging that A.J.S., aged sixteen, was a delinquent child for committing two counts of felonious assault, each enhanced with a firearm specification, case number 06JU 4826, and one count of tampering with evidence, case number 06JU 4836. The state later charged A.J.S. with seven counts of attempted murder with firearm specifications, case number 06JU 5932, for events arising out of the same incident. Because A.J.S. was sixteen and the charges were serious, A.J.S. was subject to the mandatory bindover provisions of R.C. 2152.12(A); accordingly, the state filed motions to relinquish jurisdiction on each of the charges.

On May 5, 2006, the juvenile court held a preliminary hearing to determine whether probable cause existed as to each of the charges. At the conclusion of the hearing, the juvenile court denied the state's motion to relinquish jurisdiction regarding the six counts of attempted murder, case number 06JU 5932, finding no probable cause regarding those charges but found that probable cause supported the charges of felonious assault under case number 06JU 4932. (T.pp. 271-273). Neither the state nor the court moved to dismiss any of the charges in case numbers 06JU 5932 and 06JU 4932. (T.pp. 271-273.) In case number 06JU 4838, however, the state moved the court to dismiss the tampering with evidence charge and the court granted its motion. (T.p. 273).

On June 12, 2006, the state appealed "as a matter of right [* * *] the judgment entry filed on May 31, 2006."¹ On June 21, 2007, the Tenth District reversed, finding that the charges of attempted murder were supported by probable cause and that the juvenile court was required to

¹ In its Notice of Appeal, the state specifically cites R.C. 2950.09(B)(4) which deals with sexual predator classification hearings; R.C. 2905.02 which defines the crime of abduction; and R.C. 2505.03 which provides a reviewing court with jurisdiction to review a final order.

relinquish jurisdiction to the court of common pleas for ultimate adjudication by a trier of fact.

A.J.S. immediately moved the Tenth District to certify its decision to this Court. On August 14, 2007, the Tenth District denied the motion, finding that there was not a majority opinion as to the applicable standard of review and that, absent a decision setting forth a rule of law agreed upon by a majority, the standards set forth in Whitelock v. Gilbane Bldg. Co. (1993), 66 Ohio St.3d 594, 613 N.E.2d 1032, were not satisfied; therefore, certification to this Court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution was inappropriate.

A.J.S. filed a timely appeal in this Court. In his memorandum, A.J.S. challenged the appellate court's jurisdiction to hear his case and the court's analysis of what it found to be the proper standard of review to be applied to mandatory bindover proceedings. This Court accepted A.J.S.'s appeal on the first and second propositions of law. In re A.J.S., 110 Ohio St. 3d 1409, 2006-Ohio-5083. The first proposition asks this Court to pronounce the proper standard of review to be employed by courts of appeals when reviewing a trial court's probable cause determination in mandatory bindover proceedings; and the second proposition asks this court to determine when an appellate court has jurisdiction to review a trial court's probable cause determination in mandatory bindover proceedings.

ARGUMENT

FIRST PROPOSITION OF LAW

Courts of appeals must apply an abuse of discretion standard when reviewing the trial court's probable cause determination in mandatory bindover proceedings.

Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing an act that would constitute a crime if committed by an adult. State v. Iacona, 93 Ohio St.3d 83, 2001-Ohio-1292; State v. Watson, (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d 1181; R.C. 2151.23(A)(1); R.C. 2152.10. Under certain circumstances, the juvenile court must determine whether a child will remain in the juvenile system or will be transferred to the adult system. R.C. 2152.10; R.C. 2152.12. This Court has found that “the juvenile court enjoys wide latitude to retain or relinquish jurisdiction, and the ultimate decision lies within its sound discretion.” State v. Watson, (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d 1181, citing State v. Carmichael (1973), 35 Ohio St.2d 120, 123, 431 N.E.2d 326.

In 2002, the General Assembly amended R.C. 2151.26,² which set forth the procedures to be followed by the juvenile court in mandatory bindover proceedings. Under Ohio's mandatory bindover provisions, after a complaint has been filed alleging that a child aged sixteen or seventeen has committed a “category one” offense—including attempted murder—the only finding that the juvenile court must make before transferring a child to the adult system is a finding of probable cause. R.C. 2152.10; R.C. 2152.12. Consequently, if a trial court finds that probable cause does not exist, the child remains in the juvenile system and cannot be incarcerated beyond the age of twenty-one. R.C. 2152.11; R.C. 2152.22. But, if a child is transferred to the court of common pleas and is tried as an adult, he is subject to any adult

² Effective January 1, 2002, R.C. 2152.26 was repealed and replaced by R.C. 2152.10 and R.C. 2152.12. The amendments to 2152.26 does not effect the outcome if this case.

sanction. R.C. 2929.02(B). Therefore, to children such as A.J.S. in this case, the probable cause hearing is a matter of paramount importance.

This Court has recognized that “the issues determined at a mandatory bindover hearing are therefore a ‘critically important’ stage in juvenile proceedings [and as such,] the hearing ‘must measure up to the essentials of due process and fair treatment.’” Iacona at 91, citing Kent v. United States (1966), 383 U.S. 541, 562, 86 S.Ct. 1057. Further, the United States Supreme Court has held that the juvenile courts’ “admonition to function in a ‘parental’ relationship is not an invitation to procedural arbitrariness” and that due process protections must be respected. In re Gault (1967), 387 U.S. 1, 30, 87 S.Ct. 1428.

In determining whether probable cause exists, “the juvenile court must evaluate the quality of the evidence presented by the state in support of probable cause as well as any evidence presented by the respondent that attacks probable cause.” Iacona at 93. While Iacona addressed a trial court’s finding of probable cause, it did not address the standard of review of the trial court’s finding on appeal. But this Court has repeatedly held that an abuse of discretion standard applies in reviewing discretionary bindover proceedings. See State v. Golphin, 81 Ohio St.3d 543, 546, 1998-Ohio-336; State v. Watson, (1989), 47 Ohio St.3d 93, 96, 547 N.E.2d 1181; State v. Douglas (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711. Because a preliminary hearing in discretionary bindover proceedings is similar to the preliminary hearing in mandatory bindover proceedings, the standard of review should be no different for mandatory bindover proceedings.

As in discretionary bindover proceedings, in all mandatory bindover proceedings, the trial court must conduct a hearing and receive testimony on the issue of probable cause. As in discretionary bindover proceedings, in mandatory bindover proceedings, the trial court has the

advantage of viewing the witnesses' demeanor, watching their facial expressions, listening to the intonation of their voices, and experiencing the time delays between each witnesses' responses.

On review of discretionary bindover hearings, a court of appeals must defer to the trial court's conclusions, and will not disturb the trial court's findings absent a showing of abuse of discretion. See Golphin, at 546; Watson, at 96; Douglas, at 36. An appellate court reviewing the trial court's findings in a mandatory bindover proceeding is in the same position as a court of appeals reviewing the trial court's finding in a discretionary bindover proceedings; therefore, the same standard—abuse of discretion—should apply to the review of both. Further, because an appellate court only possesses second-hand knowledge of the hearing from reading the transcripts and reviewing the record which are certified from the trial court, an appellate court cannot be in a better position than the trial court to assess the credibility of the witnesses and afford their testimony the weight that is due.

Accordingly, some courts of appeals have utilized an abuse of discretion standard when reviewing mandatory bindover proceedings. In re Stanley, 7th Dist. Nos. 05-MA-177, 05-MA-183, 2006-Ohio-1279, ¶18; In re D.T.F., 10th Dist. Nos. 05AP-03, 05AP-04, 2005-Ohio-5245, ¶11; In re Boddie, 2d Dist. No. 18709, 2001-Ohio-7089, 2; State v. Tukes, 10th Dist. No. 99AP-1046, 2000 Ohio App. LEXIS 2870. Further, in this case, the dissenting opinion correctly found that abuse of discretion standard is proper on review because a probable cause finding requires a weighing of the evidence:

abuse of discretion is the proper standard of review of a trial court determination that probable cause exists when such a question is properly appealable to an appellate court. This is true because the determination of probable cause is based upon the evidence adduced and certain factual findings necessarily made by the trial court as to whether the prosecution has shown probable cause that the accused has committed the offense with which he or she is charged. This determination requires a limited weighing of the evidence as discussed infra.

A.J.S., t ¶54.

This Court has found that the abuse of discretion standard applies to the review of discretionary bindover proceedings. Because a probable cause determination for mandatory bindover proceedings is indistinguishable from a probable cause determination for discretionary bindover proceedings, the same standard of review should apply to both: abuse of discretion.

SECOND PROPOSITION OF LAW

An appellate court is without jurisdiction to review a trial court's finding of probable cause because it is not a final appealable order.

The Tenth District erred when it accepted this case for review because it lacked a final appealable order. The court lacked a final appealable order because a determination as to probable cause does not result in an adjudication on the merits. State v. Whisenant (1998), 127 Ohio App.3d 75, 85, 711 N.E.2d 1016. The purpose of a preliminary transfer hearing is to determine whether there is probable cause to believe the child has committed the offense, and does not establish that the child is in fact guilty of the offense. *Id.*

In the absence of a proper bindover proceeding, the juvenile court retains exclusive jurisdiction over the child. See State v. Wilson (1995), 73 Ohio St.3d 40, 1995 Ohio 217; R.C. 2152.11(A); R.C. 215212(I); R.C. 2151.23(H). A mandatory bindover proceeding is a proceeding to determine whether the juvenile court has jurisdiction to proceed to a final adjudication on the merits or whether it must transfer jurisdiction to the criminal division for a hearing on the merits in criminal court. *Id.* It is not a hearing to determine the merits. Whisenant, at 85. Accordingly, the proper procedure for seeking judicial review of the denial of a motion to relinquish jurisdiction is a direct appeal to the court of appeals *after* a judgment on the merits. In the alternative, the state must seek leave of court to obtain permission to appeal. R.C. 2945.67(A).

Ohio law provides courts of appeals with jurisdiction to review final orders or judgments. Ohio Const. Art IV, Section 3(B)(2); R.C. 2505.03. “R.C. 2505.03(A) states, in relevant part, that: “every *final order* * * * may be reviewed on appeal” State v. Crago, (1985), 53 Ohio St.3d 243, 244, 559 N.E.2d 1353. A final order is one which provides a disposition of the case and which affects “a substantial right, and in effect, determines the action and prevents a judgment.” R.C. 2505.02(A). “If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and it must be dismissed.” In the Matter of: Brent McDonald, 5th Dist. No. 05 CAF 06 0039, 2006-Ohio-3128, ¶8. If the parties do not raise the jurisdictional issue, then appellate courts must raise the issue, sua sponte. See Whitaker-Merrell v. Geupel Co. (1972), 29 Ohio St.2d 184, 186, 280 N.E.2d 922.

In determining whether an order appealed from is a final appealable order, three criteria must be met: (1) The order must affect a substantial right, (2) it must determine the action, and (3) prevent a judgment. R.C. 2505.02(A).

In this case, the decision of the juvenile court to retain jurisdiction did not determine the action or prevent a judgment. The charges in case number 06JU 5932 were not extinguished merely because the juvenile court did not transfer jurisdiction to the criminal division of the Court of Common Pleas. The state was entitled to seek a judgment—specifically, an adjudication—in the juvenile court. The effect the motion to transfer is a change in forum from the juvenile division to the criminal division; therefore, the court’s denial of a motion to transfer does not deprive the state of a remedy and does not prohibit it from seeking a judgment on the merits. In fact, if the juvenile court finds that probable cause does not exist to support the charges, it is required to set the matter for a “hearing on the merits.” Juv.R. 30(E).

Further, a motion to relinquish jurisdiction does not determine the action it merely determines whether the juvenile court has jurisdiction to proceed. The question of jurisdiction is not relevant to a judgment on the merits; a motion to transfer only changes divisions within the court. See State v. Payne (1997), 118 Ohio App.3d 699, 693 N.E.2d 1159. A motion to transfer does not result in an adjudication or conviction, does not determine any of the issues, and the determination as to whether the accused is guilty beyond a reasonable doubt remains viable and unresolved. See, generally, Payne and Whisenant.

Similarly, the denial of a motion to transfer does not prevent a judgment. The State may proceed with its action in the juvenile division and obtain a judgment on the merits because a ruling on a motion to transfer jurisdiction does not prevent an actual decision in the case.

The Eleventh District has found that bindover proceedings are not adjudicative. Accordingly, the Eleventh District has held that a juvenile judge is not required to rule on motions to suppress at transfer hearings. The court found that “because the bindover proceeding is not adjudicative (the juvenile’s guilt or innocence is not at issue), statutory and constitutional questions concerning the admissibility of evidence are premature and need not be addressed.” Whisenant, 127 Ohio App.3d at 85.

More recently, the Eleventh District found that a finding of probable cause is not equivalent to a finding of an adjudication. “The bindover proceeding is not adjudicative in that the juvenile’s guilt or innocence is not at issue.” State v. Pruitt, 11th Dist. No. 2001-T-0121, 2002-Ohio-7164, ¶48, citing Whisenant, at 85. The preliminary hearing’s core function is to ascertain the existence of probable cause. Pruitt, at ¶48.

Because the bindover proceeding in this case did not result in an adjudication, the Tenth District erred when it accepted this case for review because there was no final appealable order.

The state appealed the trial court's determination on the issue of probable cause as it related to six counts of attempted murder but the court lacked a final appealable order because there was no final order or judgment—such as a finding of delinquency—on the six counts of attempted murder. See In re Becker, (1974), 39 Ohio St.2d 84, 86, 314 N.E.2d 158.

Although not specific to juvenile procedure in Ohio, this Court has found the rationale of an Illinois Supreme Court case instructive on the issue of permitting interlocutory appeals:

To permit interlocutory review of such an order would obviously delay the prosecution of any proceeding in either the juvenile court or the criminal division, with the result that the prospect of a just disposition would be jeopardized. In either proceeding the primary issue is the ascertainment of innocence or guilt of the person charged. To permit interlocutory review would subordinate that primary issue and defer its consideration while the question of the punishment appropriate for a suspect whose guilt has not yet been ascertained is being litigated in reviewing courts. We are unwilling to sanction such a procedure.

People v. Jiles, (1969) 43 Ill. 2d 145, 150, 251 N.E. 2d 529.

Following Jiles, this Court held, “that a transfer order, pursuant to R.C. 2151.26³, absent a finding of delinquency, is not a final appealable order, and that any error complained of must be raised in an appeal from the judgment of the Court of Common Pleas.” Becker, at 86. It follows then, that an order not to transfer jurisdiction to the Court of Common Pleas pursuant to R.C. 2152.12, is not a final appealable order, and that any error alleged—including the lack of probable cause—must be raised on appeal once a finding of delinquency has been made. See, generally, In re S.J., 106 Ohio St.3d 11, 2005-Ohio-3215.

If this Court finds that the Tenth District had jurisdiction to review the matter, every aggrieved party would file an appeal when it disagreed with the juvenile court's ruling on the motion to relinquish jurisdiction and the resolution of each case would be subject to certain and

³ R.C. 2152.26 has been repealed and replaced by R.C. 2152.10 and R.C. 2152.12.

lengthy delay. Becker, at 87, citing In re Whittington (1969), 17 Ohio App.2d 164, 175, 245 N.E.2d 364. But, “[a] just disposition can be jeopardized by delay.” *Id.* (After two years and six appeals this case has been before the Juvenile Court, the Court of Common Pleas, the Fifth District Court of Appeals, the Supreme Court of Ohio, the United States Supreme Court and is now again before this Court of Appeals. * * * and as a result of the numerous appeals filed and issues raised prior to the determination there has been no final determination in this case to this day.) Such delay places a difficult burden on the court, the defense, and the prosecution, and there would only be a few cases where reversal would be warranted. *Id.*

Because a finding of delinquency or a conviction had not been found, the state did not have a final appealable order. R.C. 2505.02. Absent a proper bindover procedure, the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent. And, “[t]he exclusive subject matter jurisdiction of the juvenile court cannot be waived” State v. Wilson (1995), 73 Ohio St. 3d 40, 1995-Ohio-217. If the juvenile court denies a motion to relinquish jurisdiction, it is required to set the case for a hearing on the merits. Juv.R. 30(E). See, also, State v. Harris, 1st Dist. No. C-050160, 2006-Ohio-716; State v. Washington, 2nd Dist. No. 20226, 2005-Ohio-6546; State v. Burrell, 1st Dist. No. C-030803, 2005-Ohio-34; State v. Goodwin, 8th Dist. No. 86309, 2006-Ohio-2311. As a result, the Tenth District Court of Appeals lacked jurisdiction to hear the case and it should have dismissed the state’s appeal.

This Court recently held that a juvenile court’s sua sponte dismissal of criminal charges, *after* a determination that probable cause did not exist, is the equivalent of a decision granting a motion to dismiss under R.C. 2945.67(A). S.J. at ¶12. R.C. 2945.67 provides the state with an

“appeal as of right” from any order of a juvenile court that dismisses all or part of the complaint.

Specifically, R.C. 2945.67(A) provides:

A prosecuting attorney [* * *] may appeal as a matter of right any decision [* * *] of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, [* * *], and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the [* * *] juvenile court in a delinquency case.

But, unlike in this case, in S.J., the juvenile court, on its own motion, dismissed the murder charge and amended the remaining felony-murder charge to voluntary manslaughter. S.J. at ¶14. Because the court dismissed the two murder charges, the state was prevented from seeking a judgment on the merits. Id. at ¶13, citing R.C. 2505.02. Therefore, the state was entitled to seek immediate appellate review of the juvenile court’s decision.

But here, neither the state nor the juvenile court dismissed any of the attempted murder charges following the probable cause hearing. (T.pp. 271-273.) Despite this fact, the state appealed the trial court’s probable cause determination as it related to six counts of attempted murder in case number 06JU 5932. Because neither the juvenile court, sua sponte, nor the state moved to dismiss any of the charges, the juvenile court retained exclusive jurisdiction to proceed under Juv.R. 30(E) and the Tenth District lacked a final appealable order.

Because there was no dismissal, final order, or judgment in case number 06JU 5932, there was no final appealable order and the state was not entitled to appeal that decision without leave of court.

Specifically, R.C. 2945.67(A) provides:

[* * *] and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the [* * *] juvenile court in a delinquency case.

Because the state failed to request leave to appeal, it did not perfect its appeal in accordance with R.C. 2945.67(A) and the Tenth District did not have jurisdiction to entertain the appeal. Therefore, it is imperative that this Court vacate the Tenth District Court of Appeal's decision and affirm the decision entered by the juvenile court on May 31, 2006.

CONCLUSION

Children who are subject to mandatory bindover proceedings are entitled to the same type of protections and review that children who are subject to discretionary bindover proceedings are entitled: an abuse of discretion.

Because there was no final order or judgment in this case, there was no final appealable order and the state was not entitled to an appeal. Accordingly, the proper procedure for seeking judicial review of the juvenile court's denial of the motion to relinquish jurisdiction would have been a direct appeal at the conclusion of the trial court proceedings on the merits—not an interlocutory appeal of the probable cause determination. Alternatively, the state should have sought leave from the Tenth District Court of Appeals to perfect its appeal. R.C. 2945.67(A). Because the state did not have a final appealable order and did not perfect its appeal under R.C. 2945.67(A), this Court should adopt A.J.S.'s two propositions of law, vacate the Tenth District Court of Appeals decision, and affirm the decision of the juvenile court.

Respectfully submitted,



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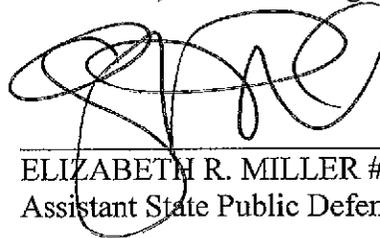
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of A.J.S.** was forwarded by regular U.S. Mail this 19th day of February, 2008, to the office of Katherine J. Press, Assistant Franklin County Prosecutor, 14th Floor, Hall of Justice, 373 South High Street, Columbus, Ohio 43215.



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IN THE SUPREME COURT OF OHIO

IN RE: A.J.S.,
A MINOR CHILD

Case No. **07-1451**

On Appeal from the Franklin
County Court of Appeals
Tenth Appellate District

C.A. Case No. 06-AP-597

**NOTICE OF APPEAL
OF APPELLANT A.J.S.**

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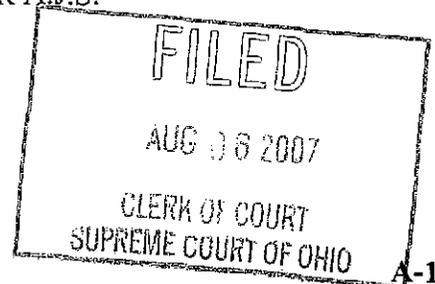
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NOTICE OF APPEAL OF APPELLANT A.J.S.

Appellant A.J.S. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case No. 06AP-597, on June 21, 2007.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Appeal of Appellant A.J.S.** was forwarded by regular U.S. mail this 6th day of August, 2007, to the office of Ron O'Brien, Franklin County Prosecutor, 14th Floor, Hall of Justice, 373 South High Street, Columbus, Ohio 43215.



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#261810

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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In the Matter of:

A.J.S.,

(State of Ohio,

Appellant),

No. 06AP-597
(C.P.C. No. 06JU04-5932)

(REGULAR CALENDAR)

O P I N I O N

Rendered on June 21, 2007

*Nigh & Zeidan, LLC, Tariq H. Zeidan, and Joseph A. Nigh, for
appellee A.J.S.*

*Ron O'Brien, Prosecuting Attorney, Zachary M. Swisher, and
Katherine J. Press, for appellant State of Ohio.*

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

SADLER, P.J.

{¶1} Plaintiff-appellant, State of Ohio ("the state"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which that court found that there was not probable cause to believe that appellee, A.J.S., committed the offense of attempted murder, as charged in six counts of a criminal complaint filed against A.J.S., who was 16 years of age at the time of the events giving rise to the complaint. The court did, however, find probable cause as to two other counts charging A.J.S. with felonious assault, arising out of the same incident.

{¶2} The following facts are gleaned from the record of the probable-cause hearing. At approximately 2:45 p.m. on March 22, 2006, A.J.S. entered the Body Language Productions tattoo shop in the city of Whitehall in Franklin County. Accompanying him were his friend Antwan Smith and his girlfriend, Markala Cooper. Also present in the shop were five employees, including Joseph Morgan and Michael Miracle.

{¶3} Morgan testified that A.J.S. and his friends started a disturbance and were asked to leave the shop, whereupon A.J.S. and Smith began making threatening statements to the shop's employees. Morgan testified that A.J.S. stated that the group "had heat" and were "gonna, peel our cap back," which Morgan construed as slang for an intention to shoot the shop employees. Morgan stated that as A.J.S. made these comments, he moved his hand in and out of his jacket as if he were reaching for something. At this point, Morgan directed another employee to call the Whitehall police.

{¶4} As the shop's employees escorted A.J.S. and his group toward the front door, and the group resisted, A.J.S. broke the shop's glass door. Morgan grabbed A.J.S. and told him, "You're not going anywhere. * * * You're gonna wait here till the cops get here. You just broke our window, you're gonna pay for that." Then Smith punched Morgan in the jaw, whereupon a physical scuffle ensued between the two. A.J.S.'s group left the store and ran toward the back of the building. The shop's employees followed them in order to record the license-plate number of their vehicle.

{¶5} The car was parked in a lot next to the lot for Body Language Productions. The car was running, and in its back seat sat A.J.S.'s friend Rochelle Farr. A.J.S. and his companions got into the car and began to pull away. When Miracle attempted to pry off

the car's license plate, A.J.S., who was in the driver's seat, revved the engine while it was in neutral, then shifted into reverse. Miracle jumped out of the way, and he and Morgan each picked up a wooden stick or board and threw them at the car. At this point, A.J.S. began to pull away from the two men. Morgan and Miracle testified that they began to walk away at this point, believing the altercation to be at an end. Farr, on the other hand, testified that they and other shop employees continued to throw things at the vehicle. In any case, Miracle testified that nothing obstructed the vehicle from driving away.

{¶6} According to Farr, A.J.S. became angry and stopped and exited the vehicle. Miracle characterized it as a "sudden," "screeching" stop. Smith also exited the vehicle, and he and A.J.S. began to walk toward Miracle. Farr stated that A.J.S. then began shooting. From her vantage point in the back seat of the vehicle, she stated that A.J.S. was shooting toward the ground. Morgan testified that he heard the gun cock and, immediately thereafter, saw spray from water that had pooled on the surface of a grease trap located behind him in the parking lot.

{¶7} Morgan testified that he was standing five to seven feet from the car at the time he heard the first shot, and the grease trap was located about two feet from him. He stated that there was no more than 12 feet between A.J.S.'s car and the grease trap. The evidence indicated that the grease trap was three feet high. Morgan further testified that his co-workers, Jamie Hickey and Carey Bowen, were standing five to seven feet behind him and off to his side. Another co-worker, Dustin Hysell, was standing ten feet behind the grease trap. Morgan stated that Miracle was standing directly in front of him, between him and A.J.S.'s vehicle. When the vehicle stopped, Miracle saw Smith get out of the car

and walk toward him yelling, "What then, nigga'." Miracle began to walk backwards away from the vehicle when the shooting began.

{¶8} Miracle began to run when he heard the first shot, and he counted a total of six shots. Miracle testified that one of the shots went through his pants leg, although he told the court that he had initially thought that the hole in his pants was caused when he fell on the pavement in his attempt to escape, but a police officer later informed him that a bullet had caused the hole. Smith was struck in the leg by one of the bullets. Farr testified that she viewed the wound and saw that the bullet entered Smith's leg at a point lower than the point at which it exited his leg. Whitehall Police Detective Steven Brown testified that he recovered six shell casings from the parking lot and one spent projectile from the inside of the grease trap. He also testified that he observed a bullet hole in the top of the grease trap.

{¶9} The state advances a single assignment of error on appeal, as follows:

The juvenile court abused its discretion when it failed to find probable cause on the charge of attempted murder.

{¶10} We must initially discuss the proper standard to be applied in reviewing a juvenile court's probable-cause determination in a mandatory bindover. In their briefs and at oral argument, both parties argued that we should apply an abuse-of-discretion standard. In support of this proposition, A.J.S. cites in his brief cases that involve amenability determinations in *discretionary* bindovers, proceedings in which trial courts are statutorily vested with discretion to determine whether allegedly delinquent juveniles are amenable to rehabilitation in the juvenile justice system.

{¶11} The state takes a different tack and argues that the trial court abused its discretion in wholly refusing to consider certain circumstantial evidence of purpose to kill, such as the short distances between A.J.S. and the tattoo shop employees at the time that A.J.S. fired his weapon, the evidence that one bullet struck an object at a height of three feet, located just beyond the victims, and the fact that two other bullets struck Smith and Miracle.

{¶12} Because of the diversity of arguments and authorities directed to us by the parties, it is necessary to set forth in detail the authorities guiding the review in this case.

{¶13} Our standard of review is determined by whether the trial court's ruling upon the state's motion to relinquish jurisdiction required an exercise of discretion or a decision on a question of law. See *O'Day v. Webb* (1972), 29 Ohio St.2d 215, 280 N.E.2d 896; see, also, *Ranson v. Sheridan* (Oct. 3, 1990), Hamilton App. No. C-890455. Though "a review of the evidence is more often than not vital to the resolution of a question of law[,] * * * the fact that a question of law involves a consideration of the facts or the evidence does not turn it into a question of fact. Nor does that consideration involve the court in weighing the evidence or passing upon its credibility." *O'Day* at 219.

{¶14} The Supreme Court of Ohio has explained:

Two types of transfer exist under Ohio's juvenile justice system: discretionary and mandatory. Discretionary transfer, as its name implies, allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety. See R.C. 2151.26(C) [now R.C. 2152.12(B)].

Mandatory transfer removes discretion from judges in the transfer decision in certain situations.

State v. Hanning (2000), 89 Ohio St.3d 86, 90, 728 N.E.2d 1059.

{¶15} One such mandatory-transfer situation enumerated in the juvenile bindover statute, R.C. 2152.12, is when, as in the present case, the juvenile is 16 years of age at the time of the alleged offense and is alleged to have committed an act that if committed by an adult, would constitute attempted murder. R.C. 2152.12(A)(1)(a) provides:

After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be * * * attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

{¶16} Congruently, Juv.R. 30 provides:

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

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

{¶17} Ohio courts have consistently held that the preliminary hearing to determine the existence of probable cause is not adjudicatory, in that the juvenile's factual guilt or innocence is not at issue. See, e.g., *State v. Yoss* (1967), 10 Ohio App.2d 47, 48 ("The issue is one of jurisdiction * * * rather than one of a determination of guilt of a crime").¹

{¶18} The Supreme Court of Ohio has held that precisely because a probable-cause finding does not involve factual adjudication of delinquency, such an order is not immediately appealable. *In re Becker* (1974), 39 Ohio St.2d 84, 68 O.O.2d 50, 314 N.E.2d 158. It has also been held that because there is no adjudication of factual guilt or

¹ See, also, *State v. Whisenant* (1998), 127 Ohio App.3d 75, 85, 711 N.E.2d 1016; *State v. Pruitt*, Trumbull App. No. 2001-T-0121, 2002-Ohio-7164, ¶48; *In re A.M.* (2000), 139 Ohio App.3d 303, 308, 743 N.E.2d 937; *State v. Revels* (June 30, 1986), Butler App. No. CA 85-06-069, 1986 WL 7392.

innocence at the probable-cause hearing, jeopardy does not attach at that stage. See, e.g., *State v. Payne* (1997), 118 Ohio App.3d 699, 693 N.E.2d 1159; *In re A.M.* (2000), 139 Ohio App.3d 303, 308, 743 N.E.2d 937. *State v. Sims* (1977), 55 Ohio App.2d 285, 380 N.E.2d 1350, paragraphs one and two of the syllabus.

{¶19} In the case of *State v. Iacona* (2001), 93 Ohio St.3d 83, 752 N.E.2d 937, the Supreme Court of Ohio set forth the state's burden of proof and the manner in which the juvenile court must evaluate the evidence, in a mandatory-bindover case, to determine whether the state has met its burden of demonstrating probable cause. The *Iacona* court held, "[T]he state must provide credible evidence of every element of an offense to support a finding that probable cause exists to believe that the juvenile committed the offense before ordering mandatory waiver of juvenile court jurisdiction pursuant to R.C. 2151.26(B) [now renumbered as R.C. 2152.12(A)]." *Id.* at 93.

{¶20} The court went on to hold:

In meeting this standard the state must produce evidence that raises more than a mere suspicion of guilt, but need not provide evidence proving guilt beyond a reasonable doubt.

Accordingly, in determining the existence of probable cause the juvenile court must evaluate the quality of the evidence presented by the state in support of probable cause as well as any evidence presented by the respondent that attacks probable cause.

Id. The state's evidence must be credible, but need not be unassailable. *Id.* at 96.

"Determination of the merits of the competing prosecution and defense theories, both of which [are] credible, ultimately [is] a matter for a factfinder at trial." *Id.*

{¶21} The foregoing language from *Iacona* suggests that the juvenile court does not act as a factfinder at the preliminary hearing; rather, it evaluates the quality of the

evidence and then decides whether the credible evidence adduced justifies a belief that the juvenile committed a particular offense. "In this context, probable cause is a reasonable ground or probability for belief that an act has been committed which, although requiring more than a mere suspicion, requires less than a prima facie showing." *Revels*, Butler App. No. CA 85-06-069, 1986 WL 7392, at *4.

{¶22} In performing this function, *laçona* counsels, the juvenile court does not find facts, choosing one party's evidence over the other when the credible evidence is contradictory as to a fact or element of an offense. Instead, the juvenile court acts as a gatekeeper, charged with evaluating whether sufficient credible evidence exists to warrant going forward with a prosecution on a charge that the legislature has determined triggers a mandatory transfer of jurisdiction to adult court.

{¶23} In this way, the determination made at the probable-cause hearing is akin to a determination as to the existence of probable cause to search or stop in a suppression hearing, which the United States Supreme Court has described as follows:

The first part of the analysis involves only a determination of historical facts, but the second is a mixed question of law and fact: "[T]he historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated."

(Emphasis added.) *Ornelas v. United States* (1996), 517 U.S. 690, 696-697, 116 S.Ct. 1657, 134 L.Ed.2d 911, quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289, 102 S.Ct. 1781, 72 L.Ed.2d 66, fn. 19.

{¶24} Thus, the juvenile court's decision as to the existence or nonexistence of probable cause is not a weighing of evidence and an exercise of discretionary fact-

finding; rather, it is a decision whether the credible evidence adduced satisfies the statutory standard for the particular offense charged. An appellate court must defer to the trial court's credibility determinations, but the appellate court must determine de novo whether the juvenile court's conclusion of law (the conclusion that probable cause does or does not exist) was correct, given the credible evidence adduced. See *In re Cline*, Montgomery App. No. 19082, 2002-Ohio-3280, ¶19.

{¶25} The Eighth Appellate District performed its review in this manner, relying on *Iacona*, in the case of *In re S.J.*, Cuyahoga App. No. 82106, 2005-Ohio-6353. In *S.J.*, the juvenile was the subject of a delinquency complaint alleging that she committed an act that would constitute the crime of murder if committed by an adult. The complaint arose out of the fatal stabbing of another minor. The alleged delinquent was 17 years old at the time of the offense; thus, pursuant to R.C. 2152.12(A)(1), if the court determined that probable cause existed to believe that she committed the act alleged, then the court would have been required to relinquish jurisdiction to the court of common pleas.

{¶26} Following the preliminary hearing, the trial court ruled that the state had failed to establish probable cause for murder because it had not established probable cause to believe that the juvenile could have formed the requisite intent for that crime. The court of appeals stated that the issue before it was whether the state made "the necessary showing of probable cause that the juvenile committed the crime of murder - - i.e. the purposeful killing of another?" *Id.* at ¶22. The court of appeals went on to state that in making this determination, it relied upon *Iacona's* holding that the state must provide credible evidence of every element of an offense to support a finding of probable cause and that in meeting this standard, the state must produce evidence that raises

more than a suspicion of guilt, but need not prove guilt beyond a reasonable doubt. *Iacona* also directs, the S.J. court noted, that the juvenile court evaluate the quality of the evidence of both parties and that the state's evidence must be credible, but need not be unassailable.

{¶27} The record in S.J. contained eyewitness testimony about the circumstances surrounding the altercation between the alleged delinquent and the victim that supported the belief that the killing was purposeful. On the other hand, the defense had presented testimony from a social worker and a psychologist that the alleged delinquent was incapable of forming the requisite intent for the crime of murder because she had a low I.Q., was mildly retarded, had been sexually abused as a child, and suffered from posttraumatic stress disorder.

{¶28} The court of appeals recognized that "the defense did present some compelling evidence challenging the intent element of the crime of murder, [but] * * * such evidence is not sufficient to negate the state's showing of probable cause in this case." *Id.* at ¶30. The appellate court went on to quote *Iacona's* admonition that "[d]etermination of the merits of the competing prosecution and defense theories, both of which were credible, ultimately [is] a matter for a factfinder at trial." *Id.* at ¶31, quoting *Iacona* at 96. The court of appeals then determined, "[a]lthough the testimony presented by the defense may support the contention that appellee lacked the capability of a 'purposeful' killing, the fact that she took the affirmative action to take a knife outside to what she knew would be an altercation alone provides credible evidence to sufficiently compete on the question of whether she did act 'purposefully.' This case, in the end, should be decided by a fact finder at trial." *Id.*

{¶29} On that basis, the appellate court reversed. The court of appeals accepted the trial court's evaluation of the credibility of witnesses and the quality of the evidence, but independently considered whether the credible evidence presented at the preliminary hearing warranted a belief that the juvenile acted with the requisite mental state for murder.

{¶30} In the present case, we, too, must independently consider whether the credible evidence demonstrates probable cause to believe that appellant purposely engaged in conduct that if successful, would have caused the deaths of the alleged victims.

{¶31} Cited in the concurrence are the cases of *In re Stanley*, 165 Ohio App.3d 726, 2006-Ohio-1279, 848 N.E.2d 540, and *State v. Boddie* (Dec. 28, 2001), Montgomery App. No. 18709, for the proposition that the proper standard of review of a juvenile court probable-cause determination is abuse of discretion. Post at ¶50. *Stanley* is inapplicable to the present case because in that case neither party assigned error in the trial court's probable-cause determination. In *Boddie*, the Second Appellate District applied an abuse-of-discretion standard to the review of a probable-cause determination. However, though that case was decided after *Iacona*, it contains no discussion of the standard set forth therein for the trial court's evaluation of the question of probable cause.

{¶32} As noted earlier, our standard of review is determined by whether the trial court exercised discretion or applied statutory standards to the evidence adduced. Because the trial court's probable-cause determination required the latter and did not involve discretionary fact finding, we must independently, and without deference to the

trial court, determine whether the credible evidence demonstrates probable cause to believe that appellant acted purposely.²

{¶33} Therefore, we must now decide the correctness of the trial court's determination that the state failed to meet its burden of demonstrating probable cause under R.C. 2152.12(A).

{¶34} A.J.S. was charged with committing an act that would be attempted murder if committed by an adult. The crime of murder, as relevant here, is set forth in R.C. 2903.02(A), which provides that "[n]o person shall purposely cause the death of another." The attempt statute provides that "[n]o person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense." R.C. 2923.02(A). Thus, in order to obtain a finding of probable cause and an order of transfer, the state was required to present credible evidence that A.J.S. purposely engaged in conduct that if successful, would have caused the death of another.

{¶35} The record reveals that Farr testified that she saw A.J.S. wield a gun and shoot it. She testified that she could not remember how many shots she heard, but when pressed by the trial court to recall how many she had heard "for sure," even though that "may not have been all that was shot," she stated that she recalled hearing at least three shots for sure. Miracle testified that he counted the shots and the number of shots that he

² Additional briefing was not ordered because both parties have thoroughly and adeptly explored the issue before this court; that is, whether the state met its burden of demonstrating probable cause as to the element of intent, which is clearly the element upon which the juvenile court found that the evidence was insufficient. Moreover, the parties do not dispute the admissibility or credibility of any piece of testimony; rather, they dispute whether the evidence, taken together, demonstrates probable cause to believe that A.J.S. harbored the mens rea required for the charged offenses. Additional briefing would not shed

heard was six. Accordingly, the state demonstrated probable cause to believe that A.J.S. fired six shots from a gun at the time and place in question.

{¶36} The remaining element of the charge is the culpable mental state of "purposely." The juvenile court made no findings in its judgment entry denying the state's motion to relinquish jurisdiction. However, review of the transcript of the probable-cause hearing provides insight into the reasons for the court's decision. The trial court was concerned with whether there was sufficient evidence of the requisite mental state for attempted murder. The court stated, "[T]here is no evidence I know of that says there [sic] was everyone at the time this happened, how close were they to one another." The court further stated, "[Y]ou're saying it's not possible for the — the bul — the shots to fired into the ground. Well, it's the ca — it's the burden of the State to make that case if it's possible or not and * * * I don't see any evidence that would lead the Court to be able to agree that it was impossible he shot 'em all in the ground."

{¶37} The court went on to state:

I still am not clear who was where at what time; how far they were from one another. Why is it that all those folk, almost 12 people, some — some 11 some say testified they were 12, whatever, that no one could see the various — from various vantage points. But that again, is the burden of the state to establish all that. * * * [S]how me where everyone was and why you're saying it's impossible for the shots to all have been fired into the ground and why it's impossible for them have ricocheted * * *. So my question is, what evidence is the State relying upon to establish that there was any intention on the part of the alleged de — delinquent to support probable cause for aggravated [sic] murder[?]

{¶38} On appeal, the state argues that it presented credible evidence supporting a belief stronger than mere suspicion as to the element of a purposeful mental state. It

additional light on these issues, nor could counsel have more capably argued their respective positions, even under the standard of review employed herein.

directs our attention to the fact that A.J.S. made threatening statements and movements while still in the tattoo shop, referring to an intention to shoot the shop's employees, and to Farr's testimony that when A.J.S. exited the vehicle and brandished the gun, he was angry. Additionally, A.J.S. fired six shots from a weapon capable of inflicting fatal wounds toward numerous people located as little as seven feet and no more than 20 feet away from him. The state argues that this evidence establishes probable cause to believe that A.J.S. purposely attempted to cause the death of the six victims named in the complaint.

{¶39} In response, A.J.S. points to Farr's testimony that she saw A.J.S. aiming toward the ground. He further contends that the location of the damage to Miracle's pants corroborates Farr's testimony in this regard and demonstrates that he was not aiming at any individual person. He also argues that the trajectory of the bullet that wounded Smith indicates that it ricocheted off the ground before striking Smith. A.J.S. argues that all of this demonstrates that he was indeed shooting at the ground and not at any person and thus lacked the requisite mental state of "purposely" sufficient for a charge of attempted murder.

{¶40} The state counters by pointing out that its evidence demonstrated that the first bullet fired after the gun was cocked struck the top of the grease trap located behind several of the alleged victims. Given that the grease trap was three feet high, the state argues, the evidence establishes probable cause to believe that A.J.S. was aiming for vital areas of the shop employees' bodies, thus evidencing a purposeful attempt to kill.

{¶41} "Purposely" is defined in R.C. 2901.22(A) as follows:

A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain

nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

{¶42} An intent to kill may be inferred "where the natural and probable consequence of a wrongful act is to produce death." *State v. Robinson* (1954), 161 Ohio St. 213, 53 O.O. 96, 118 N.E.2d 517, paragraph five of the syllabus. "It is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." *State v. Johnson* (1978), 56 Ohio St.2d 35, 39, 10 O.O.3d 78, 381 N.E.2d 637. "[A] firearm is an inherently dangerous instrumentality, the use of which is reasonably likely to produce death." *State v. Widner* (1982), 69 Ohio St.2d 267, 270, 23 O.O.3d 265, 431 N.E.2d 1025.

{¶43} Intent need not be proven by direct testimony. *State v. Burke* (1995), 73 Ohio St.3d 399, 404, 653 N.E.2d 242. Instead, an intent to kill may be deduced from the surrounding circumstances, including the nature of the instrument used, its tendency to end life if designed for that purpose, and the manner in which any wounds were inflicted. *State v. Eley* (1996), 77 Ohio St.3d 174, 180, 672 N.E.2d 640.

{¶44} The evidence in the record shows that A.J.S. pointed a gun toward a group of individuals who were located as little as five to seven feet and no more than 20 feet away and then fired six shots, with the first shot hitting the top of a grease trap, the height of which corresponds roughly with waist-height of the full-grown male victims. These acts, together with his words and gestures minutes before the shooting, strongly indicate that A.J.S. attempted to cause the death of these persons and did so purposely. *State v. Smith* (1993), 89 Ohio App.3d 497, 501, 624 N.E.2d 1114 (pointing a 9 mm pistol at a group of people less than 20 feet away and firing at least one shot is strong evidence of

an intention to kill such that conviction for murder was supported by sufficient evidence); *State v. Turner* (Dec. 30, 1997), Franklin App. No. 97APA05-709 ("The act of pointing a firearm and firing it in the direction of another human being is an act with death as a natural and probable consequence"); *State v. Waddell* (Aug. 15, 2000), Franklin App. No. 99AP-1130 (the act of reinitiating an argument, waving a gun in the air, and firing a shot between two individuals who are three feet away from the shooter is sufficient evidence of an intent to kill).

{¶45} The mere fact that the shots that wounded Smith and tore Miracle's pants hit nonvital areas of the body does not mean that a jury could not properly infer an intent to kill. *State v. Brust* (Mar. 28, 2000), Franklin App. No. 99AP-509. "The attempt statute * * * speaks to 'conduct that, if successful, would constitute or result in the offense.' There is no requirement that the victim sustain any injury, let alone a potentially mortal wound, from the attempted act of murder." *State v. Talley* (Sept. 25, 1998), Lake App. No. 97-L-169, 1998 WL 684267, at *5. It is not a defense to a charge of attempted murder even if no harm results to a potential victim. *State v. Jenkins* (1984), 15 Ohio St.3d 164, 220, 15 OBR 311, 473 N.E.2d 264.

{¶46} Although the evidence supports the conclusion that A.J.S. was merely trying to scare the tattoo shop employees by firing his gun, it also supports the conclusion that he acted purposely under the attempt and murder statutes. Under *lacona*, then, it is for a fact-finder at trial to decide whether A.J.S. had no intent to kill and was shooting for some other reason (such as to scare the victims or to inflict non-life-threatening injuries), or whether he did act with an intent to kill and was simply a poor marksman. The evidence is sufficient to demonstrate more than a mere suspicion that he harbored a

purpose to kill, and that is an adequate showing for probable cause. As the *lacona* court instructed, the state must produce evidence that raises more than a mere suspicion of guilt, but need not provide unassailable evidence proving each element beyond a reasonable doubt.

{¶47} *lacona* counsels that when, as here, both the prosecution and the defense present credible evidence at the probable-cause hearing showing that there was or was not probable cause as to each element of the charged offense, the state has satisfied the statutory requirements for mandatory bindover, and the juvenile court must relinquish jurisdiction to the court of common pleas for ultimate adjudication of guilt or innocence by a trier of fact. Therefore, the juvenile court in the present case erred in finding no probable cause and in refusing to relinquish jurisdiction.

{¶48} For this reason, the state's single assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is reversed, and, pursuant to App.R. 12(B), this cause is remanded to the juvenile court with instructions to enter appropriate findings and take other actions in accordance with this opinion.

Judgment reversed
and cause remanded.

BROWN, J., concurs in judgment only.

WHITESIDE, J., dissents.

WHITESIDE, J., retired, of the Tenth Appellate District, sitting by assignment.

BROWN, Judge, concurring in judgment only.

{¶49} In *State v. Iacona* (2001), 93 Ohio St.3d 83, 93, the Ohio Supreme Court set forth the standard for determining probable cause at a bindover hearing. Our court has cited *Iacona* in reviewing the case of *In re D.T.F.*, Franklin App. No. 05AP-03, 2005-Ohio-5245, at ¶12, stating:

In meeting this standard, the state must produce evidence that raises more than a mere suspicion of guilt, but need not provide evidence proving guilt beyond a reasonable doubt. * * * The state must provide credible evidence of every element of an offense to support a finding that probable cause exists to believe that the child committed the offense. * * * To determine whether probable cause exists, the juvenile court "must evaluate the quality of the evidence presented by the state in support of probable cause as well as any evidence presented by the respondent that attacks probable cause."

Iacona, citing *Kent v. United States* (1966), 383 U.S. 541, 563, 86 S.Ct. 1045, 1058, 16 L.Ed.2d 84.

{¶50} The issue in *Iacona* was not whether the juvenile court erred in finding probable cause. The issue was, had a blood culture report been disclosed prior to the probable-cause hearing, whether the juvenile court would have reached a different conclusion regarding probable cause. Therefore, the *Iacona* court did not expressly set forth the proper standard of appellate review of a probable-cause determination. Rather, the juvenile court was directed to "evaluate the quality of the evidence." *Id.* I do not believe, in setting forth the standard for the trial court, that the *Iacona* court signaled a change in appellate review of probable cause in juvenile bindover proceedings, which is abuse of discretion. See, e.g., *In re Stanley*, 165 Ohio App.3d 726, 2006-Ohio-1279, at ¶18, 33 (using the abuse-of-discretion standard to review a trial court's decision pursuant to the mandatory-bindover provisions and its subsequent failure to apply the discretionary-bindover provisions); *State v. Boddie* (Dec. 28, 2001), Montgomery App.

No. 18709 (using the abuse-of-discretion standard to review a juvenile court's determination of probable cause in a mandatory-bindover hearing).

{¶51} Upon review of the present case, I concur in judgment only. Using the abuse-of-discretion standard, I would still find that the juvenile court erred in finding no probable cause as to attempted murder.

WHITESIDE, Judge, dissenting.

{¶52} Being unable to concur in the conclusions reached in the main or the concurring opinions, I must respectfully dissent.

{¶53} R.C. 2152.12 has been amended to require that a delinquent child who is 16 or 17 years of age, who is charged with committing an act that would be attempted murder if committed by an adult, must be transferred for trial as an adult provided that there is probable cause to believe that the child committed the act charged. Nevertheless, the proper standard of review in this case is abuse of discretion rather than purely a question of law for two reasons: (1) abuse of discretion is the only error alleged by appellant, the prosecution, for reversal of the trial court and (2) it is the proper standard of review of a trial court determination of probable cause, assuming the prosecution has the right to appeal the trial court's probable-cause determination. Furthermore, the amendment to R.C. 2152.12 eliminated the discretion of the juvenile court to determine not to transfer the case when the juvenile was amenable to juvenile treatment.

{¶54} The single assignment of error raised by appellant is that "[t]he juvenile court abused its discretion when it failed to find probable cause on the charge of attempted murder." No other error is asserted by appellant. Second, abuse of discretion

is the proper standard of review of a trial court determination that probable cause exists when such a question is properly appealable to an appellate court. This is true because the determination of probable cause is based upon the evidence adduced and certain factual findings necessarily made by the trial court as to whether the prosecution has shown probable cause that the accused has committed the offense with which he or she is charged. This determination requires a limited weighing of the evidence.

{¶55} When the standard of review is abuse of discretion, a reviewing court must accept the trial court's determination unless the trial court acts in an unreasonable, arbitrary, or unconscionable manner. See *State v. Finnerty* (1989), 45 Ohio St.3d 104, 543 N.E.2d 1233. In *State v. Montgomery* (1991), 61 Ohio St.3d 410, 413, 575 N.E.2d 167, the Ohio Supreme Court, quoting from *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 16 O.O.3d 169, 404 N.E.2d 144, stated: "The term 'abuse of discretion' * * * connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.' "

{¶56} In this case, there was no direct evidence as to defendant's intent, as is rarely the case, but there was evidence from which the trial court could have inferred that appellee had the requisite intent. However, whether to make an inference from the evidence is a question for determination by the trial court, not this court. There is also evidence before the trial court suggesting that appellee did not have the requisite intent, but instead was shooting into the ground in order to scare the alleged attackers, and the bullet that struck one of the attackers could have ricocheted. In light of the totality of the evidence, I am unable to find that the trial court's attitude was unreasonable, arbitrary, or unconscionable. Because there was an evidentiary basis for the trial court's

determination, even though there also is an evidentiary basis for the determination that the appellant seeks, this court is not permitted to substitute its judgment for that of the trial court since the standard of review is abuse of discretion. Accordingly, being unable to find an abuse of discretion on the part of the trial court, I would overrule appellant's assignment of error and affirm the judgment of the trial court from which this appeal is taken.

Class 2

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COURT OF APPEALS
FRANKLIN COUNTY, OHIO

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

2007 Aug 16 PM 12:41

CLERK OF COURTS

In the Matter of:

A.J.S.,

(State of Ohio,

Appellant).

No. 06AP-597
(C.P.C. No. 06JU04-5932)

(REGULAR CALENDAR)

MEMORANDUM DECISION ON COMPUTER 12

Rendered on August 14, 2007

Tyack, Blackmore & Liston Co. LPA, Tariq H. Zeidan, and Joseph A. Nigh, for appellee A.J.S.

Ron O'Brien, Prosecuting Attorney, Zachary M. Swisher, and Katherine J. Press, for appellant State of Ohio.

ON MOTION TO CERTIFY

SADLER, P.J.

{¶1} Pursuant to App.R. 25, appellee, A.J.S., moves this court for an order certifying a conflict to the Supreme Court of Ohio on the issue of the appropriate standard of review of probable cause determinations in juvenile bindovers. Appellant, State of Ohio, has filed a memorandum in opposition to appellee's motion, and the matter is now submitted to this court for decision.

{¶2} Section 3(B)(4), Article IV of the Ohio Constitution provides, "[w]henever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

{¶3} In *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 613 N.E.2d 1032, the Supreme Court of Ohio set forth the standard for courts of appeals to use in passing upon a motion to certify:

* * * [A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be "upon the same question." Second, the alleged conflict must be on a rule of law -- not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.

(Emphasis sic.) *Id.* at 596.

{¶4} "Questions certified should have actually arisen and should be necessarily involved in the court's ruling or decision." *Pincelli v. Ohio Bridge Corp.* (1966), 5 Ohio St.2d 41, 44, 34 O.O.2d 55, 213 N.E.2d 356. In fact, the question certified must be "so material to the judgments that it is determinative" thereof. *Lyons v. Lyons* (Oct. 4, 1983), Franklin App. No. 82AP-949, 1983 Ohio App. LEXIS 14978, at *2. "Only then are the judgments in conflict; one court of appeals has established a rule of law contrary to the

rule of law established by another court of appeals and the conflict is capable of resolution by the Supreme Court." *Ibid.* Thus, in order for a conflict to be properly certified to the Supreme Court of Ohio, the conflict must be between *different* appellate districts. See *Whitelock*, *supra*; see, also, Section 3(B)(4), Article IV, Ohio Constitution.

{¶5} Appellee argues that our judgment in *In re A.J.S.*, Franklin App. No. 06AP-657, 2007-Ohio-3216, conflicts with the case of *State v. Boddie* (Dec. 28, 2001), Montgomery App. No. 18709. As was recognized at paragraph 31 of the lead opinion in *In re A.J.S.*, the *Boddie* court indeed employed an abuse of discretion standard in evaluating the propriety of a probable cause determination in a juvenile bindover, whereas the lead opinion in *In re A.J.S.* espoused a different standard. However, we are unable to certify a conflict between our judgment in *A.J.S.* and the Second Appellate District's judgment in *Boddie* because only the lead opinion in our case articulated a different standard than that applied in *Boddie*. Though the two members of the majority agreed on the disposition of the case and, thus, the ultimate judgment of reversal, one member issued a concurring opinion that differed from the lead opinion with respect to the applicable standard of review.

{¶6} Thus, as appellant points out, no majority of this court established a rule of law that was dispositive of the within case and was in conflict with a rule of law established by another district. Accordingly, because this court has not agreed upon a judgment that "is in conflict with a judgment pronounced *upon the same question* by any

other court of appeals"¹ the requirements of *Whitelock* are not satisfied and appellee's motion to certify a conflict must be, and hereby is, denied.

Motion to certify conflict denied.

BROWN and WHITESIDE, JJ., concur.

WHITESIDE, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

¹ (Emphasis added.) Section 3(B)(4), Article IV, Ohio Constitution.

59597J13

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS
AND JUVENILE BRANCH

JUDGMENT ENTRY

ANDRE J. STATON
ALLEGED DELINQUENT MINOR

06JU-04-5932
JUDGE CAROLE SQUIRE

This day this cause came on for hearing and the Court being fully advised in the premises, and for good cause shown hereby **ORDERS:**

ON MAY 5, 2006, THE COURT FINDS THAT ALL PARTIES HAVE STIPULATED TO ANDRE J. STATON'S, DATE OF BIRTH BEING SEPTEMBER 15, 1989, MAKING HIM 16 YEARS OF AGE AT THE TIME OF THE ALLEGED OFFENSES. THE COURT DENIES THE MOTION TO RELINQUISH JURISDICTION FILED MARCH 23, 2006.

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APPEALS
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CLERK OF COURTS

JUDGE SQUIRE BY

Carole Squire

JUDGE CAROLE SQUIRE

Steno: PG
Index No: 06-05-30-1128
06-05-31-21

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CLERK OF COURTS

PRAECIPE: TO THE CLERK OF COURTS

Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO 59597J14
DIVISION OF DOMESTIC RELATIONS
AND JUVENILE BRANCH

ANDRE J. STATON
ALLEGED DELINQUENT MINOR

06JU-04-5932
JUDGE CAROLE SQUIRE

HEARING DATE: MAY 5, 2006

STATUS: HEARING ON A MOTION TO RELINQUISH JURISDICTION FILED MARCH 23, 2006

THE COURT FINDS THAT THE ABOVE MATTER IS WITHIN THE JURISDICTION OF THE COURT. THE PARENTS, GUARDIAN OR PERSON HAVING CUSTODY OF THE CHILD HAVE BEEN CITED TO APPEAR AS REQUIRED UNDER SECTION 2151.28 OF THE OHIO REVISED CODE, AND THE FOLLOWING PERSON(S) WERE PRESENT:

- Zach Swisher, Assistant Prosecutor
- Scott Gaugler, Assistant Prosecutor
- David Rowland, Attorney for Minor
- Andre Staton, Father
- Vanessa Staton, Mother
- Andre J. Staton, Minor

Mr. Swisher stated all parties have agreed to stipulate to Andre J. Staton's date of birth being, September 15, 1989, making Andre J. Staton, 16 years of age at the time of the alleged offense.

Mr. Noel stated his agreement with the stipulation as presented by Mr. Swisher.

: Magistrate proceeded to hear SWORN testimony from the following persons:

State's Witnesses

- 1 - Detective Steven Brown
- 2 - Joseph Morgan
- 3 - Michael Miracle
- 4 - Antwan Smith
- 5 - Markala Cooper
- 6 - Rochelle Farr

The following exhibits were introduced into evidence:

State's Exhibits

- 1 - 2 Photos of Grease Trap (Admitted)
- 3 - 4 Photo Arrays
- 5 - Photo (Admitted)
- 6 - Mike Miracle's Pants (Admitted)

Defendant's Exhibits

- A - 1 Photos of Building (Admitted)

All exhibits were maintained by the respective parties.

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS
AND JUVENILE BRANCH

ANDRE J. STATON
ALLEGED DELINQUENT MINOR
PAGE 2 CONTINUED

06JU-04-5932
JUDGE CAROLE SQUIRE

FINDINGS:

The Court finds that the parties have agreed to stipulate to the date of birth of Andre J. Staton, being September 15, 1989, making him 16 years of age at the time of the alleged offenses. Based upon the testimony and exhibits as submitted, the Court finds that the State has failed to prove beyond a reasonable doubt, the Motion to Relinquish Jurisdiction filed March 23, 2006.

IN VIEW OF THE FOREGOING FACTS:

ON MAY 5, 2006, THE COURT FINDS THAT ALL PARTIES HAVE STIPULATED TO ANDRE J. STATON'S, DATE OF BIRTH BEING SEPTEMBER 15, 1989, MAKING HIM 16 YEARS OF AGE AT THE TIME OF THE ALLEGED OFFENSES. THE COURT DENIES THE MOTION TO RELINQUISH JURISDICTION FILED MARCH 23, 2006.

COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
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CONSTITUTION OF THE STATE OF OHIO

ARTICLE IV: JUDICIAL

§ 3 Court of Appeals.

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2 (B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

LEXSTAT ORC 2151.23

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
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*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 15, 2008 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
ESTABLISHMENT AND JURISDICTION

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ORC Ann. 2151.23 (2008)

Legislative Alert: LEXSEE 2007 Ohio HB 214 -- See sections 5 and 6.

§ 2151.23. Jurisdiction of juvenile court

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated *section 2151.87 of the Revised Code* or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant;

(2) Subject to divisions (G) and (V) of *section 2301.03 of the Revised Code*, to determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in *section 5122.01 of the Revised Code*;

(5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;

(6) To hear and determine all criminal cases in which an adult is charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of *section 2919.23*, or *section 2919.24 of the Revised Code*, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of *section 2919.23*, or *section 2919.24 of the Revised Code*;

(7) Under the interstate compact on juveniles in *section 2151.56 of the Revised Code*;

(8) Concerning any child who is to be taken into custody pursuant to *section 2151.31 of the Revised Code*, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

(9) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to *section 5103.15 of the Revised Code*;

(10) To hear and determine applications for consent to marry pursuant to *section 3101.04 of the Revised Code*;

(11) Subject to divisions (G) and (V) of *section 2301.03 of the Revised Code*, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code;

(12) Concerning an action commenced under *section 121.38 of the Revised Code*;

(13) To hear and determine violations of *section 3321.38 of the Revised Code*;

(14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child;

(15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code regarding a child who has been adjudicated a delinquent child and to refer the duties conferred upon the juvenile court judge under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code to magistrates appointed by the juvenile court judge in accordance with *Juvenile Rule 40*.

(B) Except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, the juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to *sections 3111.01 to 3111.18 of the Revised Code*;

(3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code;

(4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state;

(5) To hear and determine an action commenced under *section 3111.28 of the Revised Code*;

(6) To hear and determine a motion filed under *section 3119.961 [3119.96.1] of the Revised Code*;

(7) To receive filings under *section 3109.74 of the Revised Code*, and to hear and determine actions arising under *sections 3109.51 to 3109.80 of the Revised Code*.

(8) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction pursuant to *section 3127.32 of the Revised Code*;

(9) To grant any relief normally available under the laws of this state to enforce a child custody determination made by a court of another state and registered in accordance with *section 3127.35 of the Revised Code*.

(C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas with all the papers filed in the action to the juvenile court for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.

(D) The juvenile court, except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children.

(E) The juvenile court, except as provided in divisions (G) and (I) of *section 2301.03 of the Revised Code*, has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if the child comes within the jurisdiction of the juvenile court as defined by this section.

(F) (1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with *sections 3109.04, 3127.01 to 3127.53, and 5103.20 to 5103.22 of the Revised Code*.

(2) The juvenile court shall exercise its jurisdiction in child support matters in accordance with *section 3109.05 of the Revised Code*.

(G) Any juvenile court that makes or modifies an order for child support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to *section 2152.12 of the Revised Code*, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by *Criminal Rule 11* or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

(I) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of *section 2152.12 of the Revised Code* do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.

HISTORY:

133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2151.26

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*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 15, 2008 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
PROCEDURE IN CHILDREN'S CASES

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ORC Ann. 2151.26 (2008)

§ 2151.26. Renumbered

Amended and renumbered RC § 2152.12 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

LEXSTAT ORC ANN. 2152.10

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*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 15, 2008 ***

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

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ORC Ann. 2152.10 (2008)

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

LEXSTAT ORC ANN. 2152.11

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*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***

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

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ORC Ann. 2152.11 (2008)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OFFENSE CATEGORY (Enhancement Factors)	Age	Age	Age	Age
	16 & 17	14 & 15	12 & 13	10 & 11
Murder/Aggravated Murder	N/A	MSYO, DSYO,	DSYO,	DSYO,
Attempted Murder/Attempted Aggravated Murder	N/A	MSYO, DSYO,	DSYO,	DSYO,
F1 (Enhanced by Offense of Violence Factor and Either Disposition Firearm Factor or Previous DYS Admission Factor)	MSYO,	DSYO,	DSYO,	DSYO,
F1 (Enhanced by Any Single or Other Combination of Enhancement Factors)	TJ	TJ	TJ	TJ

F1 (Not Enhanced)		DSYO, DSYO, TJ	TJ
	TJ	TJ	
F2 (Enhanced by Any Enhancement Factor)		DSYO, DSYO, DSYO, TJ	
		TJ	TJ
F2 (Not Enhanced)		DSYO, DSYO, TJ	TJ
	TJ	TJ	
F3 (Enhanced by Any Enhancement Factor)		DSYO, DSYO	TJ TJ
		TJ	TJ
F3 (Not Enhanced)		DSYO, TJ	TJ TJ
	TJ		
F4 (Enhanced by Any Enhancement Factor)		DSYO, TJ	TJ TJ
		TJ	
F4 (Not Enhanced)		TJ	TJ TJ
F5 (Enhanced by Any Enhancement Factor)		DSYO, TJ	TJ TJ
		TJ	
F5 (Not Enhanced)		TJ	TJ TJ

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) "TJ" refers to traditional juvenile.

HISTORY:

148 v S 179, § 3. Eff 1-1-2002.

LEXSTAT ORC ANN. 2152.12

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ORC Ann. 2152.12 (2008)

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

(A) (1) (a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged. The juvenile court also shall transfer the case at a hearing if the child was fourteen or fifteen years of age at the time of the act charged, if *section 2152.10 of the Revised Code* provides that the child is eligible for mandatory transfer, and if there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if *section 2152.10 of the Revised Code* requires the mandatory transfer of the case and there is probable cause to believe that the child committed the act charged.

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

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

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

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

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

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

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall con-

sider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for *, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

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

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

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

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

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

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of *section 2151.23 of the Revised Code*.

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

HISTORY:

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

LEXSTAT ORC ANN. 2152.22

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ORC Ann. 2152.22 (2008)

§ 2152.22. Court control of child following commitment to department; judicial release

(A) When a child is committed to the legal custody of the department of youth services under this chapter, the juvenile court relinquishes control with respect to the child so committed, except as provided in divisions (B), (C), and (G) of this section or in *sections 2152.82 to 2152.86 of the Revised Code*. Subject to divisions (B) and (C) of this section, *sections 2151.353 [2151.35.3] and 2151.412 [2151.41.2] to 2151.421 [2151.42.1] of the Revised Code, sections 2152.82 to 2152.86 of the Revised Code*, and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

The department shall not release the child from a department facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court in division (A)(1) of *section 2152.16 of the Revised Code* and any term of commitment imposed under *section 2152.17 of the Revised Code* or prior to the child's attainment of twenty-one years of age, except upon the order of a court pursuant to division (B) or (C) of this section or in accordance with *section 5139.54 of the Revised Code*.

(B) (1) The court that commits a delinquent child to the department may grant judicial release of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department of youth services desires to release a child during a period specified in division (B)(1) of this section, it shall request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for a judicial release to court supervision from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following: approve the release by journal entry; schedule within thirty days after the request is received a time for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release to court supervision within the applicable pe-

riod. The additional request may be made no earlier than thirty days after the filing of the prior request for a judicial release to court supervision. Upon the filing of a second request for a judicial release to court supervision, the court shall either approve or disapprove the release by journal entry or schedule within thirty days after the request is received a time for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (B)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves the 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. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

(C) (1) The court that commits a delinquent child to the department may grant judicial release of the child to department of youth services supervision under this division during the second half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department of youth services desires to release a child during a period specified in division (C)(1) of this section, it shall request the court that committed the child to grant a judicial release to department of youth services supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to department of youth services supervision. Upon receipt of a request for judicial release to department of youth services supervision, the child, or the child's parent, or upon its own motion at any time during that period, the court shall do one of the following: approve the release by journal entry; schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for release under this division by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of ninety days that the child is in a secure department facility after the filing of a prior request for early release. Upon the filing of a request for release under this division subsequent to an initial request, the court shall either approve or disapprove the release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (C)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and shall order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to department of youth services supervision.

If the court approves the judicial release to department of youth services supervision, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (E) of this section that shall include the conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by the department as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional conditions, it shall enter those additional conditions in its journal and shall send to the department a copy of the journal entry of the additional conditions.

If the court approves the judicial release to department of youth services supervision, the actual date on which the department shall release the child is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in a department facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in a department facility while the department finds the suitable placement.

(D) If a child is released under division (B) or (C) of this section and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with the conditions of the child's judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under division (C) of this section, divisions (A) to (E) of *section 5139.52 of the Revised Code* apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was held in a secure department facility prior to the child's judicial release shall be considered as time served in fulfilling the prescribed period of institutionalization that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with which the department has contracted to provide a revocation program.

(E) The department of youth services, prior to the release of a child pursuant to division (C) of this section, shall do all of the following:

(1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release;

(2) Completely discuss the conditions of the plan prepared pursuant to division (E)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;

(3) Have the plan prepared pursuant to division (E)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) of this section;

(4) Prior to the child's release, file a copy of the treatment plan prepared pursuant to division (E)(1) of this section with the committing court and the juvenile court of the county in which the child is to be placed.

(F) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions for altering the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(G) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in *section 5139.51 of the Revised Code* with respect to the granting of supervised release by the release authority and to perform the functions specified in *section 5139.52 of the Revised Code* with respect to violations of the conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

HISTORY:

148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC 2505.02

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 15, 2008 ***

TITLE 25. COURTS -- APPELLATE
CHAPTER 2505. PROCEDURE ON APPEAL

Go to the Ohio Code Archive Directory

ORC Ann. 2505.02 (2008)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to *section 2307.85* or *2307.86* of the Revised Code, a prima-facie showing pursuant to *section 2307.92* of the Revised Code, or a finding made pursuant to division (A)(3) of *section 2307.93* of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63,

3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of *sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code* or or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of *sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.*

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of *section 163.09 of the Revised Code.*

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

HISTORY:

GC § 12223-2; 116 v 104; 117 v 615; 122 v 754; Bureau of Code Revision, 10-1-53; 141 v H 412 (Eff 3-17-87); 147 v H 394. Eff 7-22-98; 150 v H 342, § 1, eff. 9-1-04; 150 v H 292, § 1, eff. 9-2-04; 150 v S 187, § 1, eff. 9-13-04; 150 v H 516, § 1, eff. 12-30-04; 150 v S 80, § 1, eff. 4-7-05; 152 v S 7, § 1, eff. 10-10-07.

LEXSTAT ORC ANN. 2905.02

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2905. KIDNAPPING AND EXTORTION
KIDNAPPING AND RELATED OFFENSES

Go to the Ohio Code Archive Directory

ORC Ann. 2905.02 (2008)

§ 2905.02. Abduction

(A) No person, without privilege to do so, shall knowingly do any of the following:

- (1) By force or threat, remove another from the place where the other person is found;
- (2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear;
- (3) Hold another in a condition of involuntary servitude.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) Whoever violates this section is guilty of abduction, a felony of the third degree.

(D) As used in this section, "sexual motivation" has the same meaning as in *section 2971.01 of the Revised Code*.

HISTORY:

134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2. Eff 7-1-96; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2905.03

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2905. KIDNAPPING AND EXTORTION
KIDNAPPING AND RELATED OFFENSES

Go to the Ohio Code Archive Directory

ORC Ann. 2905.03 (2008)

§ 2905.03. Unlawful restraint

(A) No person, without privilege to do so, shall knowingly restrain another of the other person's liberty.

(B) No person, without privilege to do so and with a sexual motivation, shall knowingly restrain another of the other person's liberty.

(C) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

(D) As used in this section, "sexual motivation" has the same meaning as in *section 2971.01 of the Revised Code*.

HISTORY:

134 v H 511. Eff 1-1-74; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC ANN. 2929.02

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

Go to the Ohio Code Archive Directory

ORC Ann. 2929.02 (2008)

§ 2929.02. Penalties for aggravated murder or murder

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of *section 2903.01 of the Revised Code* shall suffer death or be imprisoned for life, as determined pursuant to *sections 2929.022 [2929.02.2], 2929.03, and 2929.04 of the Revised Code*, except that no person who raises the matter of age pursuant to *section 2929.023 [2929.02.3] of the Revised Code* and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B) (1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code* shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code*, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of *section 2971.03 of the Revised Code*.

(3) If a person is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code* and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D) (1) In addition to any other sanctions imposed for a violation of *section 2903.01 or 2903.02 of the Revised Code*, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the of-

fender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of *section 4510.02 of the Revised Code*.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in *section 4501.01 of the Revised Code*.

HISTORY:

134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

LEXSTAT ORC 2945.67

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2945. TRIAL
BILL OF EXCEPTIONS

Go to the Ohio Code Archive Directory

ORC Ann. 2945.67 (2008)

§ 2945.67. Appeal by state

(A) A prosecuting attorney, village solicitor, city director of law, or the attorney general may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24* of the Revised Code, and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case. In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general may appeal, in accordance with *section 2953.08 of the Revised Code*, a sentence imposed upon a person who is convicted of or pleads guilty to a felony.

(B) In any proceeding brought pursuant to division (A) of this section, the court, in accordance with Chapter 120. of the Revised Code, shall appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not represented by counsel, and does not waive the person's right to counsel.

HISTORY:

137 v H 1168 (Eff 11-1-78); 146 v S 2. Eff 7-1-96.

LEXSTAT ORC ANN. 2950.09

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2950.09 (2008)

§ 2950.09. Repealed

Repealed, 152 v S 10, § 2 [146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07]. Eff 1-1-08.

[Repealed]

LEXSTAT OHIO JUV R 30

OHIO RULES OF COURT SERVICE
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*** RULES CURRENT THROUGH JANUARY 1, 2008 ***
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Ohio Rules Of Juvenile Procedure

Ohio Juv. R. 30 (2007)

Rule 30. Relinquishment of jurisdiction for purposes of criminal prosecution**(A) Preliminary hearing.**

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

(B) Mandatory transfer.

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

(C) Discretionary transfer.

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

(D) Notice.

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

(E) Retention of jurisdiction.

If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

(F) Waiver of mental examination.

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

(G) Order of transfer.

The order of transfer shall state the reasons for transfer.

(H) Release of child.

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

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