IN THE SUPREME COURT OF OHIO

IN RE: SHARDAI BURT, **CASE NO. 2007-1751**

Juvenile Delinquent-Appellant,

[vs.

THE STATE OF OHIO,

Plaintiff-Appellee,]

ON APPEAL FROM THE OHIO COURT OF APPEALS FOR STARK COUNTY, OHIO, FIFTH APPELLATE DISTRICT CASE NO. 2006-CA-00328

MERIT BRIEF FOR PLAINTIFF-APPELLEE, STATE OF OHIO

JOHN D. FERRERO, #0018590
Stark County Prosecutor

RONALD MARK CALDWELL #0030663
(Counsel of Record)
Assistant Prosecuting Attorney
Stark County Prosecutor's Office
110 Central Plaza, South-Suite 510
Canton, Ohio 44702-1413
(330) 451-7869
(330) 451-7965 Fax. No.

AARON P. HOWELL #0081347
Assistant Prosecuting Attorney
Stark County Prosecutor's Office
110 Central Plaza, South-Suite 510
Canton, Ohio 44702-1413
(330) 451-7889
(330) 451-7482 Fax. No.

COUNSEL FOR APPELLEE
STATE OF OHIO

ANGELA MILLER #0064902
(Counsel of Record)
Assistant Public Defender
Ohio Public Defender's Office
8 East Long Street-11th Floor
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 Fax. No.
angela.wilson-miller@opd.ohio.gov

COUNSEL FOR APPELLANT
SHARDAI BURT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE FACTS.....1

ARGUMENT.....8

FIRST PROPOSITION OF LAW.....8

Ms. Burt's violation of a prior court order adjudication was properly charged as a delinquency offense under R.C. 2152.02(F)(2), and thus Ms. Burt's constitutional right to due process under the Fifth and Fourteenth Amendments to the United States Constitution were not violated.

SECOND PROPOSITION OF LAW.....8

Filing a new charge against a juvenile probationer for violation of a prior court order under R.C. 2152.02(F) (2) does not violate the juvenile's constitutional right to due process under the Fifth and Fourteenth Amendments to the United States Constitution.

CERTIFICATE OF SERVICE.....28

APPENDICES

In re Burt, Stark County Court of Common Pleas (Family Court Division), Case No. 2006-JCR-3114, Judgment Entry from (10/11/2006).....A

In re Burt, Stark County Court of Common Pleas (Family Court Division), Case No. 2006-JCR-3114, Judgment Entry from (11/16/2006).....B

In re Burt, Stark App. No. 2006-JCR-03114, 2007-Ohio-4034.....C

In re Burt, Stark App. No. 2006-CA-00328, Judgment Entry (filed Sept. 19, 2007) (court overruling motion to certify conflict).....D

In re Schreiber (Sept. 30, 1999), Ohio App. 11 Dist. No. 98-A-0039, unreported, 1999 WL 959822.....E

In re Herring (July 10, 1996), Ohio App. 9 Dist. No. 17553, 1996 Ohio App. LEXIS 3017.....F

Ohio Rev. Code § 2151.022.....G

Ohio Rev. Code § 2152.01.....H

Ohio Rev. Code § 2151.354.....I

Ohio Rev. Code § 2152.02.....J

Ohio Rev. Code § 2152.19.....K

Ohio Rev. Code § 2705.02.....L

Ohio Rev. Code § 2917.11.....M

Ohio Rev. Code § 2921.31.....N

Evid. R. 101.....O

Juv.R. 35.....P

TABLE OF AUTHORITIES

A.W. v. Kentucky (2005), 163 S.W.3d 4.....23, 24

Cafeteria & Restaurant Workers Union v. McElroy (1961), 367 U.S. 886, 81 S.Ct. 1743, 6 L.Ed.2d 1230.....18

City of Shaker Heights v. Hairston (Dec. 10, 1998), Ohio App. 8 Dist. No. 74435, unreported, 1998 WL 855601.....25

Denovchek v. Board of Trumbull Cty. Commrs. (1988), 36 Ohio St.3d 14, 520 N.E.2d 1362....11

Ex parte Robinson (1873), 86 U.S. 505, 510, 22 L.Ed. 205, 19 Wall. 505.....11

G.S. v. State (Fla.App.1998), 709 So.2d 122.....24

Harris v. Harris (1979), 58 Ohio St.2d 303, 12 O.O.3d 291, 390 N.E.2d 789.....10

In re Burt, Stark App. No. 2006-CA-00328, 2007-Ohio-4034.....*passim*

In re C.S., 115 Ohio St.3d 267, 2007 -Ohio- 4919, 874 N.E.2d 1177.....9, 18

In re Gault (1967) 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527.....15

In re Herring (July 10, 1996), Ohio App. 9 Dist. No. 17553, 1996 Ohio App. LEXIS 3017.....26

In re Ian Douglas Kirby, Richland App. Nos. 06-CA-6 & 06-CA-91, 2008-Ohio-876.....23

In re Nowak (1999), 133 Ohio App.3d 396, 728 N.E.2d 411.....23

In re Samara Dillard, Stark App. Nos. 2001CA00093 & 2001CA00121, 2001-Ohio-1897.....22

In re Schreiber (Sept. 30, 1999), Ohio App. 11 Dist. No. 98-A-0039, unreported, 1999 WL 959822.....26

In re Trent (1989), 43 Ohio St.3d 607, 539 N.E.2d 630.....12

In re Winship (1970), 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368.....11, 15

In the Interest of B.S. v. Wisconsin (April 2, 1991), 162 Wis.2d 378, 469 N.W.2d 860.....19

In the Interest of Doe (2001), 96 Hawaii 73, 26 P.3d 562.....24

Lassiter v. Dept. of Social Servs. of Durham Cty., North Carolina (1981), 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 40..... 19

Schall v. Martin (1984), 467 U.S. 253, 104 S. Ct. 2403, 81 L.Ed.2d 207.....8, 9, 18, 19, 21

State v. Consilio, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167.....9

State v. Louden (Oct. 24, 1997), Ohio App. 2 Dist. No. 97-CA-05, unreported, 1997 WL 666074.....24

State v. Ohly, 166 Ohio App.3d 808, 2006 -Ohio- 2353, 853 N.E.2d 675.....20

State v. Patton, Ohio App. 10 Dist. No. 06AP-665, 2007-Ohio-1296.....25

State v. Smith, Ohio App. 7 Dist. No. 01 CA 187, 2002-Ohio-6710.....25

STATE STATUTES

Ohio Rev. Code § 2152.01.....11, 21, 26

Ohio Rev. Code § 2152.02.....*passim*

Ohio Rev. Code § 2151.022.....14

Ohio Rev. Code § 2151.354.....14, 15

Ohio Rev. Code § 2152.19.....*passim*

Ohio Rev. Code § 2705.02.....10

Ohio Rev. Code § 2917.11.....1, 8

Ohio Rev. Code § 2921.31.....1, 8

OHIO RULES OF EVIDENCE

Evid. R. 101.....11

OHIO JUVENILE RULES OF COURT

Juv. R. 2.....20

Juv. R. 10.....16, 17

Juv. R. 33.....20

Juv. R. 35.....22, 26

STATEMENT OF FACTS

On June 5, 2005, Shardai Burt, age 13, was arrested and charged with the delinquency offenses of obstructing official business[1] and disorderly conduct[2], both misdemeanor criminal offenses if committed by an adult.[3]

Burt pleaded true to both charges, and the court accepted her plea and found her to be a delinquent child.[4] On July 14, 2005, instead of ordering incarceration or probation, the court placed Burt on community control in the form of a good behavior order in the home, at school, and in the community, to attend school (absent a medical excuse), and to complete mediation (if not already completed).[5]

1. Burt's first violation of a prior court order adjudication

The court gave Burt the opportunity to show her parents, the community, and the court that she had learned her lesson and no longer needed court involvement in her life. But over the next couple of months, Burt refused to follow the court's orders. She continuously left home without permission and often stayed away for days at a time with her whereabouts unknown. Obviously, Burt's actions were dangerous for a thirteen year-old girl and indicated that the court needed to graduate its sanctions in order to ensure Burt's safety and meet its goal of rehabilitation. Burt's actions were reported to the court, and on October 24, 2005, a juvenile court intake officer filed a violation of a prior court order (VPCO) complaint alleging that Burt

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[1] See R.C. 2921.31; a misdemeanor of the second degree criminal offense if committed by an adult.
[2] See R.C. 2917.11(A); a misdemeanor of the fourth degree criminal offense if committed by an adult.
[3] *In re Burt*, Stark App. No. 2006-CA-00328, 2007-Ohio-4034, ¶2.
[4] Id. at ¶2.
[5] Id. at ¶2.

violated the court's orders given on July 14, 2005 in violation of R.C. 2152.02(F) (2).[6] Specifically, the complaint alleged that Burt was leaving home without permission, staying out all night, and had left for school and did not return until a couple days later, with her whereabouts being unknown.[7] Burt did not object to the court's authority to proceed with a VPCO complaint. Instead, Burt pleaded true to the charge, and the court accepted her plea and found her delinquent.[8] The court again decided against incarcerating Burt, instead placing her on community control in the form of a good behavior order at home, at school, and in the community, mandatory school attendance (except for a medical excuse); ten (10) hours of community service to be performed within twenty (20) days; continued counseling at Quest[9]; and the court graduated its community control sanction to now include probation. The court also imposed a curfew (home by 7:00 p.m. each night, unless accompanied by an adult).[10] Burt did not object to the court's dispositional orders arising out of her VPCO delinquency adjudication. Nor does Burt now challenge the validity of the court's orders.

2. Burt's second VPCO

For the next several months, a juvenile court probation officer attempted to work with Burt, but she continued to thumb her nose at her parents, her probation officer, and the juvenile court. In September of 2006, Burt's probation officer filed a VPCO complaint for Burt's repeated violations of the court's community control sanctions, including conditions of her

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[6] Id. at ¶3.
[7] Id. at ¶3.
[8] Id. at ¶3.
[9] Quest Recovery and Prevention Services. See http://www.questrecoveryservices.com. (last visited 5-22-08). Quest's mission is to reduce the misuse of and addiction to alcohol and other drugs through a variety of prevention programs. Id. at ¶3.
[10] Id. at ¶3.

probation in violation of R.C. 2152.02(F) (2).[11] Specifically, the complaint alleged that Burt, age 14 at the time, left her home without her parents or her probation officer's permission, and stayed away for the weekend.[12] This case arises from Burt's second VPCO complaint.

Prior to trial, Burt moved to dismiss the complaint on the ground that the complaint did not allege a valid delinquency charge.[13] According to Burt, a VPCO is not a delinquency charge provided by statute; thus the court did not have jurisdiction to proceed.[14] Burt argued that the proper course of proceedings would have been to charge her with violation of her probation and to file a motion to revoke or modify her probation.[15] The Magistrate took Burt's motion under advisement.[16] At the pretrial hearing, the Magistrate overruled Burt's motion to dismiss and Burt requested a court trial.[17] The Magistrate specifically ruled:

> "Motion to dismiss is denied. Court believes R.C. 2152.02(F) (2) permits the court to proceed with a violation of court order complaint. This court does not agree with reasoning set forth within the brief submitted by the juvenile. Court supports the state's position opposing the motion to dismiss."[18]

Burt then filed an objection to the Magistrate's decision with the assigned Judge and requested the Magistrate's denial of the motion to dismiss be set aside. The Judge heard oral argument on October 10, 2006 and overruled Burt's objection.[19] At the court trial, Burt pled true to VPCO without waiving her right to appeal the jurisdictional and constitutional issues.[20] The Magistrate imposed court placement, remanding Burt to the Juvenile Attention Center until

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[11] Id. at ¶4.
[12] Id. at ¶4.
[13] Id. at ¶5.
[14] Id. at ¶5.
[15] Id. at ¶5.
[16] Id. at ¶5.
[17] Id. at ¶5.
[18] Id. at ¶6.
[19] Id. at ¶7.
[20] Id. at ¶7.

placement available, with placement to begin as soon as a bed was available.[21] In imposing the disposition, the Magistrate noted Burt's continued recalcitrant behavior:

> "Juvenile has been on probation for 11 months; little improvement-still disrespectful; not cooperative; Reasonable efforts were made to prevent the need for placement. The juvenile's continued residence or return to the home would be contrary to the juvenile's best interest and welfare."[22]

Burt again filed an objection to the Magistrate's decision and stipulated to waiving oral argument.[23] The Judge overruled the objection.[24] Burt appealed the judge's decision to the Fifth District Court of Appeals.[25]

As a result of Burt's second VPCO adjudication, the juvenile court ordered Burt into a court placement facility called the Residential Treatment Center (RTC).[26] At the time of her disposition, there were no beds available at RTC, so the court remanded Burt to the detention center until a bed became available.[27] Based upon Burt's history of running and violating court orders, the juvenile court did not believe it was it Burt's best interest to be released to the community.[28] After Burt had been in detention for approximately sixty days, the juvenile court held a hearing to review Burt's placement status.[29] The court determined that a bed would not be available until after Burt's ninety day detention period had ended, so the court ordered that Burt

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[21] *In re Burt*, Stark County Court of Common Pleas (Family Court Division) Case No. 2006-JCR-3114.
[22] Id. at (Appendix, hereinafter App. at A).
[23] *In re Burt*, Stark App. No. 2006-CA-00328, 2007-Ohio-4034, ¶8.
[24] Id. at ¶8.
[25] Id. at ¶9.
[26] *In re Burt*, Stark County Court of Common Pleas (Family Court Division) Case No. 2006-JCR-3114. (App. A). The Residential Treatment Center is not a group home as Burt contends, instead it is a comprehensive program that focuses on the rehabilitation of a delinquent child through various services including anger management counseling, drug treatment, and life skills.
[27] Id. at (App. A).
[28] Id. at (App. A).
[29] Id. at (App. B).

was to be released on her ninetieth day on electronically monitored house arrest until a court placement bed was available, then she was to report to RTC.[30] Burt was eventually placed into the RTC program.[31]

3. Fifth District Court of Appeals opinion

A. VPCO is a delinquency offense under R.C. 2152.02

In rejecting Burt's claim that there is no statutory authority to proceed with a violation of a prior court order complaint in Ohio, the Fifth District found that R.C. 2152.02 defines a delinquent child as one who disobeys a court order, and that the penalties for a violation of R.C. 2152.02(F) (2) are the dispositions available for delinquent children pursuant to disposition section R.C. 2152.19.[32] Additionally, the Fifth District held that a juvenile court has the inherent power to enforce its lawful court orders without regard to R.C. 2152.02.[33]

B. VPCO is not a status offense

The Fifth District rejected Burt's argument that charging a juvenile with a delinquency offense for violating a court order is improper, especially if the basis of the violation would otherwise result in an unruly status offender charge.[34] Burt essentially argued that the court should have ignored the fact that she was given court orders that prohibited the acts she committed. The Fifth District found that it was Burt's repeated doing of acts that she had been commanded not to do that caused her to be found delinquent, not the acts themselves.[35]

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[30] Id. at (App. B).
[31] Id.
[32] *In re Burt*, 2007-Ohio-4034, ¶32-¶33.
[33] Id. at ¶32.
[34] Id. at ¶58-59.
[35] Id. at ¶31.

Specifically, the Fifth District pointed out that Burt was not simply disobeying her parents by running away from home, her actions were a direct violation of the court's previous orders.[36]

C. Burt's procedural due process rights were not violated

Additionally, the Fifth District found that Burt's procedural due process rights were not violated.[37] Specifically, the Court found that Burt was notified in writing of the conduct that was alleged to be in violation of R.C. 2152.02(F) (2), filed September 18, 2006.[38] At all times during the case, Burt was represented by counsel.[39] The juvenile court informed Burt of her right to a trial in which the State would have to prove the allegations beyond a reasonable doubt.[40] The court further explained to Burt her right to remain silent or to testify; to subpoena witnesses; and to cross-examine the state's witnesses.[41] The court also explained the possible dispositions should Burt admit the violation or be found delinquent after the trial.[42]

D. Burt was not harmed when State of Ohio proceeded with VPCO

The Fifth District found that Burt was subject to the same dispositional alternatives whether the action was filed as a revocation of probation or as a VPCO.[43] Detention was permissible because VPCO is a delinquency offense, and because Burt's original adjudication was as a delinquent child, not a status offender.[44] Additionally, the Fifth District pointed out that

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[36] Id. at ¶31.
[37] Id. at ¶51.
[38] Id. at ¶51.
[39] Id. at ¶51.
[40] Id. at ¶51.
[41] Id. at ¶51.
[42] Id. at ¶51.
[43] Id. at ¶47.
[44] Id. at ¶47.

because Burt was originally adjudicated delinquent, her subsequent adjudications for VPCO did not transform a status offender into a delinquent.[45]

On January 23, 2008, this Court accepted Burt's case for review.[46]

[45] Id. at ¶58.
[46] *In re Burt*, 116 Ohio St.3d 1473, 2008-Ohio-153, 879 N.E.2d 782.

ARGUMENT

FIRST PROPOSITION OF LAW

Ms. Burt's violation of a prior court order adjudication was properly charged as a delinquency offense under R.C. 2152.02(F) (2), and thus Ms. Burt's constitutional right to due process under the Fifth and Fourteenth Amendments to the United States Constitution were not violated.

SECOND PROPOSITION OF LAW

Filing a new charge against a juvenile probationer for violation of a prior court order under R.C. 2152.02(F) (2) does not violate the juvenile's constitutional right to due process under the Fifth and Fourteenth Amendments to the United States Constitution.

1. Introduction

This case involves a juvenile court that did everything in its power to help and rehabilitate a delinquent juvenile, while the juvenile put her own safety at risk by thumbing her nose at the court's efforts. What this case doesn't involve is a juvenile court arbitrarily punishing a juvenile for engaging in problematic teenage behaviors like arguing with parents, not completing household chores, or failing to complete a homework assignment.

Juveniles are assumed to be under the control of their parents, and if parental control fails, the state must play its role as parent.[47] On June 5, 2005, Shardai Burt, age 13, was arrested and charged with the delinquency offenses of obstructing official business[48] and disorderly conduct[49], both misdemeanor criminal offenses if committed by an adult. That day, the State of Ohio stepped into its parental role over Burt after she exhibited a lack of respect for her parents

[47] *Schall v. Martin* (1984), 467 U.S. 253, 263, 104 S. Ct. 2403, 81 L.Ed.2d 207.
[48] Id. at ¶2.
[49] Id. at ¶2.

and the police officers who showed up to quell her disorderly behavior.[50] Burt's repeated violations of the court's orders over the next several months hampered the court's rehabilitation efforts and put Burt's safety at risk. Burt's delinquent actions ultimately led to her placement in a court-ordered residential treatment facility.[51]

Because Burt's arguments present similar issues, the State of Ohio will address them together.

2. Standard of Review

Burt argues that R.C. 2152.02(F) (2), the definition section for a delinquent child, does not provide the statutory authority to proceed with a VPCO complaint. Burt also argues that when a probation violation is alleged, R.C. 2152.02(F) (2) does not provide the statutory authority to proceed with a new charge for VPCO. Because these issues require the interpretation of statutory authority, which is a question of law, this Court's review is de novo.[52] Burt claims that her adjudications for VPCO violated her due process rights, therefore this Court reviews her claims under the fundamental fairness standard.[53]

3. VPCO is a delinquency offense

Burt's argument that there is no statutory authority in Ohio for filing a VPCO complaint is without merit. A juvenile who violates a court order meets the definition of a delinquent child in Ohio. The definition of a delinquent child is set forth in Ohio Revised Code Section 2152.02(F):

> "Delinquent child" includes any of the following:

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[50] Id. at ¶2.
[51] (App. at B).
[52] *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶8.
[53] See *In re C.S.*, 115 Ohio St.3d 267, 2007 -Ohio- 4919, 874 N.E.2d 1177.

> (1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;
>
> (2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

When an adult violates a lawful court order, it is treated as a criminal offense under R.C. 2705.02. R.C. 2705.02 states in relevant part:

> "A person guilty of any of the following acts may be punished as for a
>
> "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer..."

Therefore, when a juvenile violates a lawful court order, the juvenile is also delinquent for committing an act that would be a criminal offense if committed by an adult. Thus, R.C. 2152.02(F) (1) and (2) provide the statutory authority for the filing of a delinquency complaint for VPCO.

As a court of common pleas, a juvenile court has the inherent power to punish a contemptuous refusal to comply with its order by imposing appropriate sanctions without regard to any statutory grant of such power.[54] The contempt power is a bedrock principle of the American legal system.

> "The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the administration of justice. The moment the courts of the United States were called

[54] *In re Burt*, 2007 Ohio 4034 at ¶32, citing to *Harris v. Harris* (1979), 58 Ohio St.2d 303, 307, 12 O.O.3d 291, 390 N.E.2d 789.

> into existence and invested with jurisdiction over any subject, they became possessed of this power."[55]

Additionally, courts have traditionally been viewed as having very broad authority to use contempt proceedings to vindicate the authority of the court.[56]

In the adult context, sentences for criminal contempt are punitive in nature.[57] The goal of juvenile court dispositions is not to punish, but to hold juveniles accountable for their actions, with a focus on their rehabilitation and development as productive members of society.[58] R.C. 2152.01(A) states the purposes of delinquency dispositions:

> (A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

The juvenile court's contempt power prevents juveniles from ignoring the court's rehabilitation efforts with impunity. For the juvenile justice system to be successful, juveniles must heed the orders from the bench, and if they fail to do so, there must be consequences. R.C. 2152.19 provides the consequences for such delinquent behavior. Because VPCO is a delinquency offense that carries with it the possibility of incarceration, the State of Ohio has the burden of proving VPCO beyond a reasonable doubt.[59] Additionally, the Ohio Rules of Evidence apply to the adjudicatory hearing for a VPCO.[60]

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[55] *Ex parte Robinson* (1873), 86 U.S. 505, 510, 22 L.Ed. 205, 19 Wall. 505.
[56] *Denovchek v. Board of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14, 520 N.E.2d 1362.
[57] *In re Burt*, 2007 Ohio 4034 at ¶31.
[58] See R.C. 2152.01(A)
[59] *In re Winship* (1970), 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368.
[60] Evid. R. 101.

In 1989, this Court was presented with a case that involved the application of the Ohio Revised Code section defining a delinquent child.[61] In *In re Trent*, this Court dismissed the appeal, which was accepted to review the delinquency adjudication of a juvenile for escape from a shelter care facility.[62] Burt attempts to take comfort in Justice Craig Wright's dissent from the dismissal of the appeal as improvidently granted. In *In re Trent*, the juvenile was ordered into a shelter care facility as a result of being unruly for running away from what Justice Wright deemed a "clearly abusive home situation".[63] Justice Wright took issue with the so-called "bootstrapping" of an unruly status offense into a delinquency charge as a result of the juvenile's escape from the shelter care facility.[64] Perhaps most importantly for purposes of this case, Justice Wright acknowledged that a juvenile cannot ignore or disobey a court order, and such violation may be the basis for a delinquency adjudication:

> "Court orders should not be ignored with impunity by children, and violation of a court order may be the basis for a finding of delinquency. R.C. 2151.02(B)"[65].

Although acknowledging that the court did have the authority to proceed with a delinquency adjudication under the definition section for delinquent child, Justice Wright expressed that the court's contempt power should not have been utilized under the specific facts of *In re Trent*:

> "However, the contempt powers of a court should not be invoked quickly in this context and a status offender who has departed a

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[61] *In re Trent* (1989), 43 Ohio St.3d 607, 539 N.E.2d 630.
[62] Id. at 630.
[63] Id. at 631.
[64] Id. at 632.
[65] Id. at 632. At the time of *Trent* in 1989, the applicable statute that defined delinquent child was R.C. 2151.02. The statute was repealed in 2002 and replaced by the current version of R.C. 2152.02.

> shelter on one occasion should not be given the "taint" of criminality and adjudicated or treated as a juvenile delinquent."[66]

The facts that concerned Justice Wright are not present in this case.

2. Burt was never a status offender

Burt's first contact with the juvenile court was not a result of "unruly" behavior; instead she was adjudicated a juvenile delinquent by reason of committing the offenses of obstructing official business and disorderly conduct.[67] Having previously been adjudicated delinquent, the VPCO adjudication that gives rise to this case did not transform a status offender into a delinquent child.[68] Burt achieved the "taint" of criminality by way of her delinquent actions. The legislative policy of discouraging the incarceration of status offenders was not invoked in this case because Burt was a delinquent child.[69]

Burt contends that charging a juvenile with a delinquency offense for violating a court order is improper, especially if the basis of the violation would otherwise result in an unruly status offender charge.[70] Burt essentially argues that the juvenile court should ignore the fact that she was given prior court orders that prohibited the acts she committed. The Fifth District correctly found that it was Burt's repeated doing of acts that she had been commanded not to do that caused her to be found delinquent, not the acts themselves, therefore an unruly charge would not have been appropriate.[71]

Burt's contention that an unruly status offender complaint should have been filed in this case conflicts with her position that the definition section of R.C. 2152.02 does not provide

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[66] Id. at 632.
[67] *In re Burt*, 2007 Ohio 4034. ¶2.
[68] *In re Burt*, 2007 Ohio 4034. ¶58.
[69] Id. at ¶58.
[70] Id. at ¶16.
[71] Id. at ¶31.

statutory authority to proceed with a VPCO complaint.[72] An unruly status offender complaint is filed under the definition section for unruly child, specifically, R.C. 2151.022. Burt failed to cite to the definition section for an unruly child when making her argument.

A. The purpose of R.C. 2151.022

R.C. 2151.022 gives the juvenile court the ability to exercise jurisdiction over a juvenile who has ***not*** been given prior court orders and has committed an act that would ***not*** be a criminal offense if committed by an adult. Pursuant to Rule 10(A) of the Ohio Rules of Juvenile Procedure, a parent, guardian, teacher, police officer, or any person with knowledge that a juvenile appears to be unruly may file an unruly status offender complaint in the juvenile court that has jurisdiction over the juvenile. R.C. 2151.022 defines an unruly child as:

> (A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
>
> (B) Any child who is a habitual truant from school and who previously has not been adjudicated an unruly child for becoming an habitual truant;
>
> (C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;

An unruly adjudication allows the juvenile court to step in and provide assistance to the juvenile by way of court orders designed to prevent the juvenile from continuing down a wayward path and putting services in place to achieve that goal. R.C. 2151.354 outlines the dispositional orders available after unruly adjudications, including community control sanctions like probation, suspension of the juvenile's drivers license, community service may be ordered, or the juvenile may be placed in a detention facility for no longer than twenty-four (24) hours.

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[72] Id. at ¶17.

R.C. 2151.354(A) (6) indicates that the juvenile court may graduate the sanction to use delinquency dispositions if a juvenile fails to heed the court's prior orders and efforts at rehabilitation:

> "If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (4), (5), and (8) of section 2152.19 of the Revised Code that is consistent with sections 2151.312 and 2156.56 to 2151.61 of the Revised Code."

R.C. 2151.354(A) (6) demonstrates that a juvenile's rehabilitation must be pursued using a system of graduated sanctions by allowing delinquency dispositions for unruly behavior. Burt's original adjudication as a delinquent child showed the State of Ohio, and the juvenile court, that Burt was not amenable to unruly status offender dispositions. Burt's continued refusal to follow those delinquency dispositional orders further cemented that fact.

3. <u>Burt's Due Process Rights were not violated</u>

In 1967, the United States Supreme Court held that due process of law requires that in a juvenile delinquency proceeding where a juvenile may be committed to a state institution, many, if not most, of the rights afforded to adult criminal defendants must be afforded to a juvenile.[73] Specifically, the Court held that a juvenile's rights included the right to written notice of a specific charge, the right to counsel, the right to confrontation, and the privilege against self-incrimination.[74] The United States Supreme Court, in the case of *In re Winship*,[75] held that juvenile delinquency must be proven beyond a reasonable doubt.

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[73] *In re Gault* (1967) 387 U.S. 1, 30, 87 S.Ct. 1428, 18 L.Ed.2d 527.
[74] Id. at 31-56.
[75] *In re Winship* (1970), 397 U.S. 358, 90 S.Ct. 1068. 25 L.Ed.2d 368.

In this case, Burt was accorded all of the due process rights required in a juvenile delinquency proceeding. Burt was notified in writing of the conduct that was alleged to be in violation of R.C. 2152.02(F) (2), filed September 18, 2006.[76] At all times during the case, Burt was represented by counsel.[77] The juvenile court informed Burt of her right to a trial in which the State would have to prove the allegations beyond a reasonable doubt.[78] The court further explained to Burt her right to remain silent or to testify; to subpoena witnesses; and to cross-examine the state's witnesses.[79] The court also explained the possible dispositions should Burt admit the violation or be found delinquent after the trial.[80]

Burt's argument that her due process rights were violated because the VPCO complaint did not state an offense level is without merit. Burt's assertion that VPCO is treated as a misdemeanor of the first degree is also incorrect. The VPCO is treated as a delinquency offense[81]; upon adjudication, the delinquent juvenile is subject to the dispositional alternatives listed under R.C. 2152.19. In Ohio, the dispositional orders for misdemeanor delinquency adjudications are the same regardless of the level of the misdemeanor offense.[82] Thus, the level of the misdemeanor in juvenile cases in Ohio is irrelevant for notice and disposition purposes.

Further, the Ohio Rules of Juvenile Procedure do not require that a misdemeanor delinquency complaint include the level of the alleged offense. Juv. R. 10 (B) outlines the requirements for the filing of a juvenile delinquency or unruly status offender complaint:

> The complaint, which may be upon information and belief, shall satisfy all of the following requirements:

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[76] *In re Burt*, 2007 Ohio 4034 at ¶51.
[77] Id. at ¶51.
[78] Id. at ¶51.
[79] Id. at ¶51.
[80] Id. at ¶51.
[81] See R.C. 2152.02
[82] See R.C. 2152.19.

(1) State in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction of the court, and in juvenile traffic offense and delinquency proceedings, shall contain the numerical designation of the statute or ordinance alleged to have been violated;

(2) Contain the name and address of the parent, guardian, or custodian of the child or state the name or address as unknown;

(3) Be made under oath.

The complaint in this case meets all of the Juv. R. 10 (B) requirements.[83]

Burt's contention that she was held for longer than ninety days on her second VPCO adjudication is incorrect. As a result of Burt's second VPCO adjudication, the juvenile court ordered Burt into a court placement facility called the Residential Treatment Center (RTC).[84] At the time of her disposition, there were no beds available at RTC, so the court remanded Burt to the detention center until a bed became available.[85] Based upon Burt's history of running and violating court orders, the juvenile court did not believe it was it Burt's best interest to be released to the community.[86] After Burt had been in detention for approximately sixty days, the juvenile court held a hearing to review Burt's placement status.[87] The court determined that a bed would not be available until after Burt's ninety day detention period had ended, so the court ordered that Burt was to be released on her ninetieth day on electronically monitored house arrest

[83] *In re Burt*, 2007 Ohio 4034 at ¶4.
[84] *In re Burt*, Stark County Court of Common Pleas (Family Court Division) Case No. 2006-JCR-3114. (App. at B).
[85] (App. at A).
[86] (App. at A).
[87] (App. at B).

until a court placement bed was available, then she was to report to RTC.[88] Burt was eventually placed into the RTC program.[89]

A. **The State of Ohio's decision to pursue a VPCO adjudication for a probation violation accommodates the purposes of the juvenile justice system within the due process framework of fundamental fairness.**

In *Schall v. Martin*, the United States Supreme Court recognized that the due process clause applies to juvenile proceedings, but the Court noted that the state's interest in promoting the welfare of child makes a juvenile proceeding fundamentally different from an adult criminal trial.[90] In *Schall*, the Court upheld the constitutionality of a New York juvenile statute that authorized pretrial detainment of juveniles.[91] In reaching its conclusion, the *Schall* Court analyzed the New York statute in two steps.[92] First, the Court analyzed whether the pretrial detention of an alleged delinquent juvenile served a legitimate state objective, and whether detention was imposed to punish or is rationally related to another purpose and is not excessive in relation to that purpose.[93] Second, the Court analyzed whether the procedural safeguards contained in the statute were adequate to authorize pretrial detention.[94]

The two-step analysis set forth in *Schall* is the test for fundamental fairness.[95] The United States Supreme Court explained that due process has never been, nor may it ever be, precisely defined.[96] The Court reasoned that the phrase 'due process':

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[88] Id.
[89] Id.
[90] *Schall*, 467 U.S. at 263.
[91] Id. at 283.
[92] Id. at 263-264.
[93] Id.
[94] Id.
[95] Id.
[96] *In re C.S.*, 2007 -Ohio- 4919 at ¶80 (citing *Cafeteria & Restaurant Workers Union v. McElroy* (1961), 367 U.S. 886, 895, 81 S.Ct. 1743, 6 L.Ed.2d 1230).

> "expresses the requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty. Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake."[97]

In 1991, the Court of Appeals of Wisconsin upheld the Constitutionality of a statute that provided sanctions when a juvenile delinquent violated dispositional orders.[98] The court analyzed the statute using the two-step due process analysis set out in *Schall*.[99]

In evaluating the State of Ohio's decision to file VPCO charges against Burt for violating her court-ordered probation conditions, this Court should use the *Schall* two-step due process analysis.[100] In this case, the State of Ohio's objective in filing VPCO charges was not to punish Burt, but to save her from herself. During her involvement with the juvenile court, Burt was between 13 and 14 years old, clearly not old enough to provide for herself or make the types of decisions she was consistently making. Additionally, the State of Ohio and the juvenile court were concerned about Burt's lack of rehabilitation and blatant disregard for all forms of authority, including her parents, police officers, her probation officer, and perhaps most troubling, the juvenile court. In order to promote Burt's safety and well being, and in compliance with R.C. 2152.19, the juvenile court graduated Burt's sanctions each time she came back before the court.

The court's decision to order Burt into court placement at the Residential Treatment Center was not an excessive disposition considering Burt's continued delinquent behavior and

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[97] Id. (quoting *Lassiter v. Dept. of Social Servs. of Durham Cty., North Carolina* (1981), 452 U.S. 18, 24-25, 101 S.Ct. 2153, 68 L.Ed.2d 640) (internal quotation marks omitted).
[98] *In the Interest of B.S. v. Wisconsin* (April 2, 1991), 162 Wis.2d 378, 469 N.W.2d 860.
[99] Id. at 389.
[100] *Schall*, 467 U.S. 253.

refusal to rehabilitate after being given multiple chances. Furthermore, the court-ordered placement was not a punishment; in fact, court placement at the Residential Treatment Center gave Burt an opportunity to get her education and to get away from the negative influences she was consistently drawn to, while focusing on her development as a productive member of society. Thus, the State's legitimate interest in Burt's rehabilitation and the lack of excessive dispositional orders pass the first step of the *Schall* analysis.

The second step of the *Schall* analysis is also satisfied by the procedural safeguards accorded to Burt in the VPCO proceedings. If the State of Ohio had proceeded with probation revocation proceedings, Burt would have been accorded less procedural protections. There is no requirement to prove the facts supporting a probation revocation beyond a reasonable doubt.[101] Instead, the State must only prove "evidence of a substantial nature showing that revocation is justified."[102] Such evidence is more than a scintilla and less than a preponderance of evidence.[103] A probation revocation hearing is a dispositional hearing pursuant to Juv. R. 2(M).[104] Juv. R. 33(B)(2)[105] allows a juvenile court to admit evidence that is material and relevant, including hearsay during dispositional hearings. So, by filing a VPCO complaint, the State of Ohio accorded Burt more due process protections than if the State had filed a motion to revoke Burt's probation.

Burt expressed concern that she faced the possibility of a ninety-day disposition on each VPCO charge. For each of Burt's delinquency adjudications she did face the possibility of spending ninety days in the juvenile detention center, as well as any of the other dispositions

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[101] State v. Ohly, 166 Ohio App.3d 808 ¶18.
[102] Id.
[103] Id.
[104] Id.
[105] Id.

available under R.C. 2152.19. The juvenile court could have ordered Burt into court placement after her first adjudications for disorderly conduct and obstructing official business, but instead the court decided that it was in Burt's best interest to remain in the community. In this case, Burt was not ordered to do multiple ninety-day periods in detention. Instead, the juvenile court graduated its sanctions each time Burt came before the court. The court's dispositional orders were consistent with purposes and goals of R.C. 2152.01(A).

The United States Supreme Court found that the state's parental role in a delinquent juvenile's rehabilitation often outweighs a juvenile's substantial interest in freedom.[106] Specifically, the Court noted:

> The juvenile's countervailing interest in freedom from institutional restraints, even for the brief time involved here, is undoubtedly substantial...But that interest must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*. In this respect, the juvenile's liberty may, in appropriate circumstances, be subordinated to the State's "*parens patriae* interest in preserving and promoting the welfare of the child."[107]

In this case, when the court placed Burt on community control, she abused the court's leniency by running away from home and putting her safety at risk. The state's goal of Burt's rehabilitation could not be achieved with Burt running the streets. Burt's actions indicated that she needed to be court placed in order to make progress and remain safe.

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[106] *Schall*, 467 U.S. at 265-266.
[107] Id.

B. **The decision in Burt's case is not in conflict with other Fifth District decisions.**

Burt argues that the juvenile court loses its inherent contempt power when a juvenile is placed on community control in the form of probation. Burt believes that the only way that the juvenile court may address court order violations for a juvenile probationer is through probation revocation proceedings.

In support of her position, Burt contends that the Fifth District's decision in her case is in conflict with other Fifth District decisions on the same issue. Burt's contention is a misinterpretation of the other Fifth District cases. The cases that Burt relies upon involve situations where probation revocation hearings were conducted, but the trial court failed to conduct the hearings in compliance with Juv. R. 35 (B).

In 2001, in the case of *In re Dillard*[108], the Fifth District held that the trial court failed to meet the due process requirements under Juv. R. 35 (B) during a probation revocation hearing by failing to inform the juvenile of the specific court orders she was accused of violating. Burt's contention that the *Dillard* case stands for the proposition that VPCO is not a new charge but a condition of probation is incorrect based upon the Fifth District's following statement in the *Dillard* case:

> "Had the state brought a complaint for contempt of court order for violation of a prior court order that may be considered a new charge, but upon this record it appears the only crime charged against appellant was the original charge of arson."[109]

In February, 2008, the Fifth District was again presented with a juvenile case where the trial court failed to meet the due process requirements of Juv. R. 35 (B) when conducting a

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[108] *In re Samara Dillard*, Stark App. Nos. 2001CA00093 & 2001CA00121, 2001-Ohio-1897.
[109] Id. at ¶13.

probation revocation hearing.[110] Again, the trial court failed to advise the juvenile probationer of the grounds upon which the revocation of his probation was proposed.[111] Thus, the court's decision in Burt does not conflict with its previous decisions.

Additionally, the Fifth District's decision in *Burt* is not in conflict with the Eleventh District's decision in the case of *In re Nowak.*[112] In *Nowak*, the Eleventh District addressed the propriety of contempt proceedings in a juvenile case where a probation violation was alleged.[113] The *Nowak* court noted, "This court finds no authority for the juvenile court to proceed in contempt when the issue is a probation violation allegation."[114] In denying Burt's Motion to Certify the decision made by the Fifth District Court of Appeals in this case as being in conflict with the Eleventh District's decision in *Nowak*, the Fifth District found that the *Nowak Court* failed to look to R.C. 2152.02(F) as the authority for a juvenile court to proceed in contempt.[115] Additionally, the Eleventh District completely ignored the court's inherent power to enforce its court orders, regardless of any statutory authority.

C. Other states have found that juvenile probationers may be held in contempt for violating community control sanctions, including probation violations.

Courts around the country have addressed the importance of the juvenile court's contempt power in the development and rehabilitation of juvenile offenders. The Supreme Court of Kentucky held that a juvenile may be held in contempt for violating conditions of probation,

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[110] *In re Ian Douglas Kirby*, Richland App. Nos. 06-CA-6 & 06-CA-91, 2008-Ohio-876.
[111] Id. at ¶28.
[112] *In re Nowak* (1999), 133 Ohio App.3d 396, 728 N.E.2d 411.
[113] Id.
[114] Id. at 398.
[115] (App. at D).

and that the contempt sanction may go beyond the length of sentence that may be imposed on the underlying offense.[116] Additionally, the court noted:

> "The Juvenile Code simply does not allow a court to give up on the rehabilitation of a juvenile who refuses to perform the terms of probation. Thus, the contempt power exists for the purpose of compelling the juvenile to comply with the court's orders and to enable the court to help the juvenile become a productive citizen."[117]

In Florida, the Fifth District Court of Appeals denied a juvenile's habeas petition and held that the courts have the authority to issue contempt sanctions against juveniles who violate community control sanctions.[118]

The Supreme Court of Hawaii affirmed a delinquency adjudication for criminal contempt where a juvenile violated conditions of court ordered supervision.[119]

D. <u>In recent adult cases, Ohio appellate courts have found that adult probationers may be held in contempt for probation violations.</u>

In the adult context, Ohio courts are divided on whether an adult probationer is subject to contempt of court proceedings for violating a condition of probation, or if probation revocation is the sole remedy.[120] Ohio appellate courts have come to different conclusions, but in the most recent cases, the courts are finding that in such situations, it is discretionary whether to proceed with contempt or probation revocation proceedings.

In 1997, the Second District found that the proper procedure for punishing an adult offender for violation of probation is a probation revocation, not contempt.[121] In 1998, the

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[116] *A.W. v. Kentucky* (2005), 163 S.W.3d 4.
[117] Id. at 6-7.
[118] *G.S. v. State* (Fla.App.1998), 709 So.2d 122, 123.
[119] *In the Interest of Doe* (2001), 96 Hawaii 73, 26 P.3d 562, 571.
[120] *In re Burt*, 2007 Ohio 4034 at ¶34.
[121] *State v. Louden* (Oct. 24, 1997), Ohio App. 2 Dist. No. 97-CA-05, unreported, 1997 WL 666074.

Eighth District cited to *Louden* for the proposition that contempt proceedings were not appropriate for punishing an offender for a probation violation.[122] In 2002, the Seventh District found that a probation violation may only be addressed with a probation revocation hearing.[123] In 2006, the Second District changed its view by finding that indirect contempt proceedings may be appropriate when a probation violation is alleged.[124] In 2007, the 10th District found that probation revocation proceedings or contempt proceedings were appropriate when a probation violation was alleged.[125]

E. A juvenile probationer who commits a delinquency offense may face a delinquency adjudication as well as having their probation revoked.

R.C. 2152.19(A) (4) mandates that if a child, after being adjudicated delinquent, is placed on community control in the form of probation, the court must require, as a condition of probation, that the child abide by the law during the period of probation. Thus, when a juvenile probationer commits an act in violation of the Ohio Revised Code during their probation period, the juvenile is in violation of a condition of probation and of the Ohio Revised Code. Therefore, the juvenile court has the discretion to proceed with a delinquency adjudicatory hearing and the court may revoke the juvenile's probation as a part of disposition when a juvenile delinquent violates dispositional orders.[126]

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[122] *City of Shaker Heights v. Hairston* (Dec. 10, 1998), Ohio App. 8 Dist. No. 74435, unreported, 1998 WL 855601, *5.
[123] *State v. Smith*, Ohio App. 7 Dist. No. 01 CA 187, 2002-Ohio-6710.
[124] *State v. Daugherty*, 165 Ohio App.3d 115, 2006-Ohio-240, 844 N.E.2d 1236.
[125] *State v. Patton*, Ohio App. 10 Dist. No. 06AP-665, 2007-Ohio-1296.
[126] See *In re Schreiber* (Sept. 30, 1999), Ohio App. 11 Dist. No. 98-A-0039, unreported, 1999 WL 959822.

By violating the court's prior orders, Burt broke the law, specifically R.C. 2152.02(F) (2). Therefore, the State of Ohio could have proceeded with a delinquency complaint under R.C. 2152.02(F) (2) and with a motion to revoke Burt's probation under Juv. R. 35 (B).[127]

If the court adjudicates the juvenile delinquent for VPCO, the court may impose any of the delinquency dispositions available under the R.C. 2152.19. Additionally, at disposition the court could revoke the juvenile's probation in compliance with Juv. R. 35(B), and the court may impose any sentence it could have originally imposed for the juvenile's initial delinquency adjudication.[128] When making this decision, the juvenile court must consider what is in the juvenile's best interest and what option will best achieve the rehabilitation of the juvenile pursuant to R.C. 2152.01(A). In this case, that is exactly what the juvenile court did by graduating its sanctions each time Burt came back before the court.

CONCLUSION

Nowhere is the court's contempt power more important than in the context of juvenile court. The General Assembly recognized the importance of a juvenile having to follow court orders when it enacted R.C. 2152.02(F) (2), making the violation of a lawful court order a delinquency offense.

In this case, the State of Ohio and the juvenile court did everything in their power to meet their goal of rehabilitating Burt. In order to reach its goal, the State of Ohio accorded Burt every protection possible, and took on a much greater burden by filing VPCO charges instead of commencing community control or probation revocation proceedings for Burt's repeated violations of court orders. The State of Ohio did not pursue VPCO charges to punish Burt or to

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[127] See *In re Schreiber* (Sept. 30, 1999), Ohio App. 11 Dist. No. 98-A-0039, unreported, 1999 WL 959822. (App. at E).

[128] *In re Herring* (July 10, 1996), Ohio App. 9 Dist. No. 17553, 1996 Ohio App. LEXIS 3017. (App. at F).

extend the maximum amount of time she could spend in detention. The State of Ohio and the juvenile court worked to achieve Burt's rehabilitation through a system of graduated sanctions, and at no point was Burt harmed by the decisions of the State of Ohio or the juvenile court. In fact, those decisions prevented Burt's harm. Burt's case presents a great and successful example of the juvenile justice system at work. Therefore, this Court should adopt the State of Ohio's two propositions of law, and affirm the decision of the Fifth District Court of Appeals.

Respectfully submitted,

JOHN D. FERRERO, #0018590
STARK COUNTY PROSECUTOR

By: Aaron P. Howell
AARON P. HOWELL #0081347
Assistant Prosecuting Attorney
Stark County Prosecutor's Office
110 Central Plaza South-Suite 510
Canton, Ohio 44702-1413
(330) 451-7889
(330) 451-7482 Fax. No.

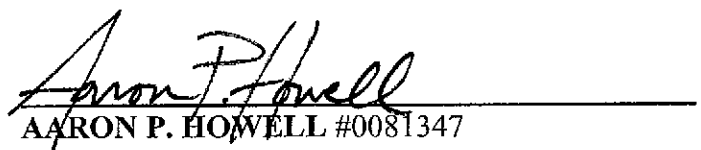
Counsel for Plaintiff-Appellee, State of Ohio

Ronald Mark Caldwell
RONALD MARK CALDWELL #0030663
(Counsel of Record)
Assistant Prosecuting Attorney
Stark County Prosecutor's Office
110 Central Plaza South-Suite 510
Canton, Ohio 44702-1413
(330) 451-7869
(330) 451-7965 Fax. No.

Counsel for Plaintiff-Appellee, State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief for Plaintiff-Appellee, State of Ohio has been sent by regular U.S. mail, postage prepaid, this 23rd day of May, 2008, to Attorney Angela Miller, Assistant Public Defender, Ohio Public Defender's Office, 8 East Long Street-11th Floor, Columbus, Ohio 43215.



AARON P. HOWELL #0081347
Assistant Prosecuting Attorney
110 Central Plaza South-Suite 510
Canton, Ohio 44702-1413
(330) 451-7889
(330) 451-7482 Fax. No.

IN THE COURT OF COMMON PLEAS, FAMILY DIVISION

STARK COUNTY, OHIO

IN THE MATTER OF
SHARDAI BURT
ALLEGED
DELINQUENT OFFENDER

2006 OCT 12 AM 11:52

CASE NO.: 2006JCR03114
TAPE NO.: CR8-74-0000
DATE: 10/11/2006 9:00 AM

MAGISTRATES DECISION

APPEARANCES
ATTY-ROBERT ABNEY, PROS-KRISTEN MLINAR, INTAKE-KITTY ZINDREN, PROBATION OFFICER-V. EARLY, QUEST RECOVERY , MOTHER

The pleas entered by the Juvenile and the findings of court are as follows. The Juvenile has entered a plea of True or No Contest and has waived her constitutional rights. The Juvenile was represented by attorney ROBERT ABNEY. The following parties have been served with a copy of this entry in court: ATTY-ROBERT ABNEY, PROS-KRISTEN MLINAR, INTAKE-KITTY ZINDREN, PROBATION-V. EARLY.

FINDINGS OF FACT

Rights waived reserving right to appeal.
7/14/05 obstructing DOC--Mediation; 11/20/05 VOPCO;
Juvenile has been on Probatoin for 11 months; little improvement--still disrespectful; not cooperative; Reasonable efforts were made to prevent the need for placement. The juvenile's continued residence in or return to the home would be contrary to the juvenile's best interest and welfare.

2006JCR03114 **Judge:** Hon. Michael L. Howard

This matter came before the Court for **Trial**, upon the filing of a complaint alleging the above named person to be a Juvenile **Delinquent** Offender by reason of:

Count	Charge	ORC	Degree	Plea	Adjudication
1	VIOLATION OF A PRIOR COURT ORDER	2152.02F2	M1	True	Delinquent

- The Juvenile is remanded to the Juvenile Attention Center for placement until a group home is available, placement begins immediately.
- Submit to counseling and follow any and all recommendations for treatment issued as a result.
- **Other Orders:** Motion to Dismiss is denied. Court believes ORC 2152.02 (F)(2) permits the court to proceed with a violation of court order complaint. Court Placement ordered

TOTAL DISPOSITION

SHARDAI BURT, you are hereby ordered by the court to comply with the following orders:

1. Submit to counseling and follow any and all recommendations for treatment issued as a result.
2. **Other Orders on case 2006JCR03114:** Motion to Dismiss is denied. Court believes ORC 2152.02 (F)(2) permits the court to proceed with a violation of court order complaint. Court Placement ordered

10/11/2006
Date

Hon. Sally A. Efremoff, Magistrate

NOTICE: A party may, pursuant to Ohio Civil Rules 53 or Juvenile Rule 40, file a written motion to set aside a Magistrate Order with ten (10) days of the filing of the order. Objections to a Magistrate Decision may be filed within fourteen (14) days of the filing of the decision. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in this decision unless the party timely and specifically objects to that finding or conclusion as described herein. The Court, having made an independent analysis of the issues and applicable law hereby approves and adopts the Magistrate Decision and orders it to be entered as a matter of record.

COURT OF COMMON PLEAS, JUVENILE DIVISION, STARK COUNTY, OHIO

JUDGMENT ENTRY

Magistrate's Order, ~~Decision~~

RE: SHARDAI BURT

Record: CR9-59-1607

CASE NO. J-2006-JCR-3114 ADDITIONAL CASE NO. J-

Appearances:

[X] Delinquent [ ] Unruly [ ] Traffic [ ] Child Support
[ ] Dependent / Neglect / Abuse [ ] Paternity [ ] Custody

JUVENILE, ATTY ABNEY, MOTHER, PROS-MLINAR

L.COLE,

his matter came before the court for hearing upon complaint(s) alleging:
Violation of Prior Court Order (M1)

indings of Fact:
Matter was set for a review hearing. The adjudication is on appeal with the 5th District; however, placement has become an issue. There are no beds available at court placement facility (RTC) until January 2007, and Juvenile has been in the AC since 9/18/2006.

After [ ] taking sworn testimony: [ ] admission / stipulation: [X] motion:
The court finds:

Disposition:

Juvenile to remain placed at the Attention Center until her 90th day (12/17/2006), and she shall remain on the court placement list. Upon her 90th day, she may be released on EMHA (mother to pay) until court placement becomes available.

Date: 11-16-2006

Magistrate Priscilla J. Cunningham

NOTICE: A party may, pursuant to Ohio Juvenile Rule 40 file a written motion to set aside a Magistrate Order within ten (10) days of the order. Objections to a Magistrate Decision may be filed within fourteen (14) days of the filing of the decision.
A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in this decision unless the party timely and specifically objects to that finding or conclusion as described herein.
The Court, having made an independent analysis of the issues and the applicable by law hereby approves and adopts the Magistrate Decision and orders it to be entered as a matter of record.

Date :

Judge

LEXSEE 2007 OHIO 4034

IN RE SHARDAI BURT, JUVENILE

Case No. 2006-CA-00328

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, STARK COUNTY

2007 Ohio 4034; 2007 Ohio App. LEXIS 3649

August 6, 2007, Date of Judgment Entry

SUBSEQUENT HISTORY: Discretionary appeal allowed by *In re Burt, 2008 Ohio 153, 2008 Ohio LEXIS 83 (Ohio, Jan. 23, 2008)*

PRIOR HISTORY: [**1]
CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Juvenile Division, Case No. 2006-JCR-03114.

DISPOSITION: Affirmed.

COUNSEL: For Plaintiff-Appellee: JOHN D. FERRERO, PROSECUTORING ATTORNEY, BY: MARK CALDWELL, Assist. Prosecuting Attorney, Canton, OH.

For Defendant-Appellant: ROBERT G. ABNEY, Canton, OH.

JUDGES: Hon W. Scott Gwin, P.J., Hon John W. Wise, J., Hon Patricia A. Delaney, J. By Gwin, P.J., Wise, J., and Delaney, J., concur.

OPINION BY: W. Scott Gwin

OPINION

Gwin, P.J.

[*P1] Defendant-appellant Shardi Burt, a juvenile, appeals her adjudication in the Stark County Court of Common Pleas, Juvenile Division, finding her delinquent on the charge of violating a prior court order. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE

[*P2] In 2003, Shardai Burt, age 13 at the time, was charged with delinquency as a result of committing the criminal offenses of obstructing official business, a misdemeanor of the second degree if committed by an adult in violation of *R.C. 2921.31*, and disorderly conduct, a misdemeanor of the fourth degree if committed by an adult in violation of *R.C. 2917.11(A)*. [*In re Burt*, Stark County Court of Common Pleas, Case No. 2005 JCR 137265]. Appellant pleaded true to these allegations, [**2] and was adjudicated delinquent on each count by the Stark County Juvenile Court. Upon adjudicating her a delinquent child, the court ordered that appellant exhibit good behavior at home, school, and the community; to attend school (absent a medical excuse); and, to complete mediation (if not already completed).

[*P3] In October 2005, another juvenile complaint was filed against appellant, who had turned 14 by then, charging her with delinquency for violating a prior court order (VPCO), in violation of *R.C. 2152.02(F)(2)*. [*In re Burt*, Stark County Court of Common Pleas, Case No. 2005 JCR 139459]. The complaint alleged that appellant had been leaving home without permission, staying out all night, and that on one occasion she left for school and did not return home until two days later, with her whereabouts being known. On November 18, 2005 Appellant pleaded true to this charge, and was found delinquent by the magistrate based upon her plea and admission. The magistrate's disposition was approved by the trial judge. The disposition for the violation of the prior court order charge was community control; a curfew (home by 7:00 p.m. each night, unless accompanied by an adult), good behavior [**3] at home, school, and the community; mandatory school attendance (except for medical excuse); 10 hours of community service to be performed within 20 days; and, continued counseling at Quest.

[*P4] In September of 2006, another VPCO complaint was filed against appellant, charging her with violation of a prior court order in violation of *R.C. 2152.02(F) (2)* for violating the conditions of her probation. [*In re Burt*, Stark County Court of Common Pleas, Case No. 2006 JCR 3114]. Appellant was specifically

charged with leaving home without parental permission or with her probation officer's permission and staying away over the weekend. This complaint gives rise to the instant appeal.

[*P5] Prior to trial, appellant moved to dismiss the complaint on the ground that the complaint did not allege a valid delinquency claim. According to appellant, a VPCO allegation is not a delinquency charge provided by statute, and thus the court did not have jurisdiction to proceed. Appellant argued that the proper course of proceedings would have been to charge appellant with violation of her probation and to file a motion to revoke or modify her probation. The Magistrate took appellant's motion to dismiss under advisement [**4] (T. at 4). At the pretrial hearing, the Magistrate overruled appellant's motion to dismiss and appellant requested a court trial (T. at 7). In his ruling, Magistrate Nist specifically held:

[*P6] "Motion to dismiss is denied. Court believes *ORC 2152.02(F) (2)* permits the court to proceed with a violation of court order complaint. This court does not agree with the reasoning set forth within the brief submitted by the juvenile. Court supports the state's position opposing the motion to dismiss."

[*P7] Prior to the court trial, appellant filed an objection to the Magistrate's decision with the assigned judge and requested the Magistrate's denial of the motion to dismiss be set aside. The judge heard oral argument on October 10, 2006 and overruled appellant's objection (T. at 44). At the court trial, appellant pled true to Violation of Prior Court Order without waiving her right to appeal the jurisdictional and constitutional issues. (T. at 47-49). The [**5] magistrate imposed court placement, remanding appellant to the Juvenile Attention Center for placement until a group home is available, with placement in the home to be immediate; mandatory counseling and compliance with all recommendations for treatment.

[*P8] Appellant filed another objection with the judge and stipulated to waiving oral argument, as the issues had already been argued before the judge. On October 27, 2006, the judge overruled appellant's objection. Ms. Burt filed her notice of appeal.

[*P9] It is from the trial court's denial of her motion to dismiss that appellant now appeals raising the following five assignments of error:

[*P10] "I. WHETHER THE STATE'S 'VIOLATION OF PRIOR COURT ORDER' CHARGE FOR VIOLATING A TERM OF PROBATION, ARISING FROM A DELINQUENCY ADJUDICATION, VIOLATED THE JUVENILE'S *FIFTH* AND *FOURTEENTH AMENDMENT* CONSTITUTIONAL RIGHT TO DUE PROCESS.

[*P11] "II. WHETHER FILING A NEW CHARGE AGAINST A JUVENILE FOR 'VIOLATION OF PRIOR COURT ORDER,' REGARDLESS OF THE ORIGINAL OFFENSE, IS A VIOLATION OF THE JUVENILE'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER THE *FIFTH* AND *FOURTEENTH AMENDMENT.*

[*P12] "III. WHETHER JUVENILES CHARGED WITH A 'VIOLATION OF PRIOR COURT ORDER' HAVE BEEN IMPROPERLY [**6] CHARGED IN VIOLATION OF THE *FIFTH* AND *FOURTEENTH AMENDMENT DOUBLE JEOPARDY CLAUSE* AND *ARTICLE 1 SECTION 10 OF THE OHIO CONSTITUTION.*

[*P13] "IV. WHETHER FAILING TO INFORM JUVENILES, AT THE ORIGINAL DISPOSITION, OF THE POTENTIAL PUNISHMENT FOR VIOLATING CONDITIONS OF PROBATION VIOLATES JUVENILES' *FIFTH* AND *FOURTEENTH AMENDMENT* RIGHT TO DUE PROCESS AS WELL AS *ARTICLE 1 SECTION 10 OF THE OHIO CONSTITUTION.*

[*P14] "V. WHETHER JUVENILES MAY BE ADJUDICATED DELINQUENT UNDER *O.R.C. 2152.02(F)(2)*, AS THE STATUTE IS UNCONSTITUTIONAL, IMPROPER, AND VOID FOR VAGUENESS, THEREFORE VIOLATES JUVENILES' *FIFTH* AND *FOURTEENTH AMENDMENT* RIGHT TO DUE PROCESS."

I. & II.

[*P15] Because we find the issues raised in appellant's first and second assignments of error are closely related for ease of discussion we shall address the assignments of error together.

[*P16] In her first assignment of error appellant argues that charging a juvenile with being delinquent by reason of violating a prior court order is improper, especially if the basis of the violation would otherwise result in an unruly charge. Appellant contends that an unruly charge is a status offense, i.e. an offense consisting of conduct that would not constitute an offense [**7] if engaged in by an adult.

[*P17] In her second assignment of error appellant argues that *R.C. 2152.02(F) (2)* which provides for delinquency adjudication for violation of a prior court order is only a definition section and thus any delinquency violation based upon that section violates due process. Appellant contends that the proper course of action is for the State to file a motion to revoke probation pursuant to *Juv. R. 35.*

[*P18] In Ohio, all crimes are statutory. *Municipal Court of Toledo v. State ex rel. Platter (1933), 126 Ohio*

St. 103, 184 N.E. 1; Eastman v. State (1936), 131 Ohio St. 1, 1 N.E.2d 140, appeal dismissed *299 U.S. 505, 57 S. Ct. 21, 81 L. Ed. 374; State v. Fremont Lodge, Loyal Order of Moose (1949), 151 Ohio St. 19, 84 N.E.2d 498; State v. Cimpritz (1953), 158 Ohio St. 490, 492, 110 N.E.2d 416, 417-18.* The elements necessary to constitute the crime must be gathered wholly from the statute and the crime must be described within the terms of the statute. *Davis v. State (1876), 32 Ohio St. 24, 28 State v. Cimpritz, supra.* Moreover, no act is a crime except an act done in violation of the express provisions of a statute or ordinance legally enacted. *Toledo Disposal Co. v. State (1914), 89 Ohio St. 230, 106 N.E. 6.*

[*P19] [**8] Defining crimes and fixing penalties are legislative, and not judicial, functions. *United States v. Evans (1948), 333 U.S. 483, 486, 68 S. Ct. 634, 636, 92 L. Ed. 823.* "[W]here Congress has exhibited clearly the purpose to proscribe conduct within its power to make criminal and has not altogether omitted provision for penalty, every reasonable presumption attaches to the proscription to require the courts to make it effective in accord with the evident purpose. This is as true of penalty provisions as it is of others". *United States v. Brown (1948), 333 U.S. 18, 68 S. Ct. 376, 92 L. Ed. 442; United States v. Evans, supra 333 U.S. at 486, 68 S. Ct. at 636.*

[*P20] *R.C. 2152.02* provides in relevant part:

[*P21] "(F) 'Delinquent child' includes any of the following:

[*P22] "(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

[*P23] "(2) Any child who violates any lawful order of the court made under this chapter or under *Chapter 2151. of the Revised Code* other than an order issued under *section 2151.87 of the Revised Code*;

[*P24] "(3) Any child who violates division (C) of section 2907.39 [**9] or division (A) of section 2923.211 or division (C) (1) or (D) of section 2925.55 of the Revised Code;

[*P25] "(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

[*P26] "(5) Any child who is a chronic truant".

[*P27] *Juv. R. 2 (I)* provides "'Delinquent child' has the same meaning as in *section 2152.02 of the Revised Code.*"

[*P28] In the case at bar, appellant was charged with violating a prior court order pursuant to *R.C. 2152.02(F) (2)*. In the adult context, violation of a court order is treated as contempt of court. *R.C. 2705.02* states in relevant part:

[*P29] "A person guilty of any of the following acts may be punished as for a

[*P30] "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer. . . ."

[*P31] In order to be found guilty of contempt it must be shown that the alleged contemptor had actual notice of the court's order and that the alleged contemptor intended to defy the court. *Midland Steel Products Co. v. U.A.W. Local 486 (1991), 61 Ohio St.3d 121, 127, 573 N.E.2d 98, 103.* In its simplest terms, contempt of court is disobedience of an order of a court. Sentences for criminal contempt [**10] are punitive in nature and are designed to vindicate the authority of the court. Accordingly it is the doing of the act which he has been commanded not to do that the contemptor is punished, not the act itself. In the case at bar, the juvenile was not simply disobeying her parent, custodian or guardian by running away from home; rather her actions were a direct affront to the juvenile court's previous orders.

[*P32] In the case at bar, *R.C. 2152.02(F) (2)* defines a delinquent child as a child who disobeys a court order. Accordingly, the elements of the offense are the same as for contempt pursuant to *R.C. 2705.02*, i.e., actual notice of the order and intent to defy the order. The penalties for a violation of *R.C. 2152.02(F) (2)* are the dispositions available for delinquent children pursuant to *R.C. 2152.19*. The dispositions for a delinquent-misdemeanant and an unruly child are similar. See, *R.C. 2152.19* and *R.C. 2151.354*. We would further note that a court of common pleas has inherent power to punish a contemptuous refusal to comply with its order by imposing appropriate sanctions without regard to any statutory grant of such power. *Harris v. Harris (1979), 58 Ohio St.2d 303, 307, 390 N.E.2d 789, 792*; [**11] *In re Cox (Nov. 8, 1993), 5th Dist. No. CA-9238, 1993 Ohio App. LEXIS 5461*. In other words a juvenile court has the inherent power to punish a juvenile for disobedience of its lawful orders without regard to *R.C. 2152.02*.

[*P33] Accordingly, appellant's contention that *R.C. 2152.02* is insufficient to charge an offense is rejected. However, the real issue raised by appellant is whether the juvenile court can punish a violation of a condition of probation as a violation of a prior court order.

[*P34] Again, using contempt of court as an analogy, "Ohio appellate courts appear to have divided on the issue. Some courts have assumed that probation revocation proceedings are the sole remedy. See, e.g., *State v. Smith, Mahoning App. No. 01 CA 187, 2002 Ohio 6710*

("The municipal court treated Smith's alleged failure to attend the counseling sessions as an act of contempt rather than a violation of probation. This was an error by the trial court."); *City of Shaker Heights v. Hairston (Dec. 10, 1998), Cuyahoga App. No. 74435, 1998 Ohio App. LEXIS 5955.* Other courts have assumed that contempt proceedings could be used in such cases. See, e.g. *State v. Daugherty (2006), 165 Ohio App.3d 115, 2006 Ohio 240, 844 N.E.2d 1236* ("While Daugherty claims that the appropriate [**12] course of action for the court was to consider revocation of probation under *Crim.R. 32.3*, we do not understand him to argue that this was the only course open to the court. In other words, indirect contempt proceedings, if conducted properly, may have been appropriate."); *State v. Deeds (Apr. 30, 1998), Coshocton App. No. 97 CA 21, 1998 Ohio App. LEXIS 2513". State v. Patton, 10th Dist. No. 06AP-665, 2007 Ohio 1296 at P 11.*

[*P35] Jurisdictions other than Ohio that have considered this issue "have come to three different conclusions. If a defendant violates a condition of his probation, Illinois case law states that he may be charged with contempt of court. *People v. Boucher, 179 Ill. App.3d 832, 834, 128 Ill. Dec. 842, 844, 535 N.E.2d 56, 58 (1989); People v. Patrick, 83 Ill. App.3d 951, 953, 39 Ill. Dec. 451, 453, 404 N.E.2d 1042, 1044 (1980); People v. Cook, 53 Ill. App.2d 454, 202 N.E.2d 674, 675 (1964).* An explanation for this rule may be that prior to 1963, the effective date of Illinois' current Code of Criminal Procedure, 'contempt of court was the only sanction permissible' for violations of conditions of probation. *Patrick, 39 Ill. Dec. at 453, 404 N.E.2d at 1044.* Maryland case law is directly in opposition [**13] to that of Illinois. In Maryland the defendant can be charged only with violation of his probation order, not contempt. *Williams v. State, 72 Md. App. 233, 528 A.2d 507, 508 (1987).* Tennessee has taken a middle ground, allowing the sentencing judge to choose either punishment, *State v. Williamson, 619 S.W.2d 145, 147 (Tenn.Crim.App.1981)*, and Alaska allows a court to use its contempt power in such a situation only if the defendant had notice, prior to violating the probation condition, that such a violation could result in a contempt of court charge. *Alfred v. State, 758 P.2d 130, 132 (Alaska Ct.App.1988).*

[*P36] "In *Williams [v. State]*, the Maryland court reviewed Maryland authority stating the foundations for the probation order and then explained:

[*P37] "[w]hen a probationer violates a condition of his probation, he is not subject to an additional punishment for that violation; but rather to the forfeiture of his conditional exemption from punishment for the original crime. Because probation involves a conditional exemption from punishment, rather than a part of the penalty, a court may condition probation upon acts or omissions which it otherwise lacks the authority to impose. [*528 A.2d at 508*; [**14] footnote and citations omitted]". *State v. Williams (1989), 234 N.J. Super. 84, 92, 560 A.2d 100, 104.*

[*P38] In *State v. Williams, supra*, the court drew "a distinction between an order directed to a defendant or another to do or refrain from doing a particular act (the violation of which could be the basis of a contempt of court citation by a judge or indictment by a grand jury), and a conditional order which either states the ramifications of its violation or has such consequences established by law. This distinction was recognized in an analogous bail-bond case. In *United States v. Hall, 198 F.2d 726 (2d Cir.1952), cert.* den. *345 U.S. 905, 73 S. Ct. 641, 97 L. Ed. 1341 (1953)*, the defendant was charged with criminal contempt of court for being outside the jurisdiction of the court, and for violating an order requiring him to surrender. The court ruled that the defendant could not be held in contempt for violating the order to remain in the jurisdiction (a condition of the bond which provided its own remedy), but could be held in contempt for not surrendering. *198 F.2d at 731.*

[*P39] "Contempt of court should not be superimposed as an additional remedy in a probation violation setting if the act [**15] that occasions the violation itself is not otherwise criminal". *Williams supra, 234 N.J. Super. at 91 560 A.2d at 103-104.* In the adult context,

[*P40] We agree that the more logical approach is that the courts should not use the inherent contempt power to punish a violation of a condition of probation that would not otherwise constitute an offense. We do not believe that when the Legislature expressly provided that the sanction for a violation of probation (other than for the inherent criminality of the act) would be a revocation of probation, it intended that a defendant would be subject to a new indictment for contempt in addition to the punishment for the original offense. That being said, we must now recognize that a debate has arisen among the courts as to whether that principal should be applied in the context of a juvenile proceeding.

Fifth District believes that more logical prob revoc

But, in juvenile context not so sure

[*P41] The Supreme Court of Kentucky has noted:

[*P42] "The Juvenile Code simply does not allow a court to give up on the rehabilitation of a juvenile who refuses to perform the terms of probation. Thus, the contempt power exists for the purpose of compelling the juvenile to comply with the court's orders and to enable the court to help the juvenile become a productive citizen. '*KRS Chapter 635* [**16] shall be interpreted to promote the best interests of the child through providing treatment and sanctions to reduce recidivism and assist in making the child a productive citizen. . . .' *KRS 600.010(2) (e).* Nor can it be said that the imposition of

pending court placement 90 days - were imposed

contempt sanctions for violations of specific conditions of probation, violates the Appellant's due process rights of fair treatment and/or double jeopardy. See, *Butts v. Commonwealth, 953 S.W.2d 943, 44 10 Ky. L. Summary 12 (Ky.1997)*, and *Commonwealth v. Burge, 947 S.W.2d 805, 43 9 Ky. L. Summary 12 (Ky.1997)*". *A.W. v. Kentucky (2005), 163 S.W.3d 4, 6-7*. See, also *G.S. v. State (Fla.Dist.Ct.App.1998), 709 So.2d 122, 123* (denying habeas petition and holding that courts have the authority to issue a contempt sanction against a juvenile for violating a community control order); *In the Interest of Doe (2001), 96 Hawaii 73, 26 P.3d 562, 571* (affirming adjudication of delinquency for criminal contempt where chronic truancy had placed the juvenile under protective supervision and juvenile subsequently violated conditions of court order of supervision); *State ex rel. L.E.A. v. Hammergren (Minn.1980), 294 N.W.2d 705, 707-08* (affirming dismissal of habeas petition, recognizing juvenile court's [**17] authority to find a juvenile in contempt of court, but cautioning that status offender normally should be placed in a shelter care facility, and only egregious circumstances warranted confinement of status offender in secure detention facility).

[*P43] The Court of Appeals for the Eleventh District has taken the opposite approach:

[*P44] "This court finds no authority for the juvenile court to proceed in contempt when the issue is a probation violation allegation. *R.C. 2151.412 (E) (1)* allows the court to proceed in contempt for a violation of a journalized case plan. However, that section specifically applies only to the parties involved in cases of abuse, neglect or dependency, temporary or permanent custody, protective supervision, or long-term foster care.

[*P45] "Further, in the prosecution of the violation of probation terms, the only remedy referred to under *R.C. 2151.355* is that of a probation revocation". *In re Norwalk (1999), 133 Ohio App. 3d 396, 398-99, 728 N.E.2d 411, 412-13*. (Footnotes omitted). See, also, *A.W. v. Kentucky, supra 163 S.W.3d at 7-11*. (Cooper, J. dissenting). ["a trial court's contempt powers should be narrowly defined and employed only when no other remedy is available. . . [**18] ."].

prefer revocation

[*P46] Unquestionably, the preferred method for dealing with actions such as those taken by appellant would be the institution of revocation proceedings. However, in the unique context of delinquency dispositions, the dispositions available to the juvenile court would be the same when, as in the case at bar, the juvenile is originally adjudicated as a delinquent child. However, we agree with the concern expressed by the Tenth Appellate District: "[w]e emphasize that the use of contempt proceedings is not without limitations, and thus should be used sparingly in situations where probation revocation or other sentencing provisions are available. In particular, we would closely consider any situation in which it appeared that a trial court was using contempt proceedings in an attempt to increase the maximum period of incarceration applicable for the offense in the underlying case. However, since in this case, the 30-days imposed for contempt is less than the maximum penalty of 90-days to which appellant could be sentenced for his underlying offense, that issue is not before us. Nor do we address the issue of whether any time served on a contempt citation in this situation would act to reduce [**19] the amount of time that could be imposed on the underlying sentence". *State v. Patton, supra 2007 Ohio 1296 at P 15*.

was using contempt with purpose to increase max per. of incarcer. for the offense in the underlying case

contempt time act to reduce

no answer for

[*P47] The issue of whether the juvenile court was using the violation of a prior court order proceedings in an attempt to increase the maximum period of incarceration applicable for the offense in the underlying case is not an issue before us in the case at bar. Nor do we address the issue of whether any time served on a violation of a prior court order citation in this situation would act to reduce the amount of time that could be imposed on the underlying sentence. In the case at bar, appellant was subject to the same dispositional alternatives whether the action was filed as a revocation of probation or as a violation of a prior court order. Detention was permissible because either charge was classified as a delinquency, not as a status offense.

[*P48] Because delinquency proceedings are fundamentally different from adult criminal proceedings, not all constitutional protections afforded to adult criminals have been extended to juveniles. *Schall v. Martin (1984), 467 U.S. 253, 263, 104 S. Ct. 2403, 2409, 81 L. Ed. 2d 207*. Because a juvenile has a liberty interest in freedom from institutional restraints, [**20] the *due process clause of the Fifth Amendment to the United States Constitution*, applicable to the several states pursuant to the *Fourteenth Amendment* thereto, is applicable to juvenile detention proceedings. *Schall, 467 U.S. at 263, 104 S. Ct. at 2409*; *In re Gault (1967), 387 U.S. 1, 13-14, 87 S. Ct. 1428, 1436-37, 18 L. Ed. 2d 527*. Pretrial detainment of juveniles is thus measured by the "fundamental fairness" due process standard established in *In re Gault, 387 U.S. at 29-30, 87 S. Ct. at 1444-45*, and *In re Winship (1970), 397 U.S. 358, 365-68, 90 S. Ct. 1068, 1073-75, 25 L. Ed. 2d 368. Schall, 467 U.S. at 263, 104 S. Ct. at 2409*. Decisions articulating due process standards for evaluating the circumstances wherein a juvenile may be detained have sought to accommodate the goals and philosophies of the juvenile system within the due process framework of fundamental fairness.

[*P49] The conclusion that liberty interests possessed by juveniles are not fundamental rights is based in part on the fact that unlike an adult, a juvenile is always

subject to some measure of custodial supervision. *Flores, 507 U.S. at 292, 301-303, 113 S. Ct. at 1447-48*; *Schall, 467 U.S. at 265, 104 S. Ct. at 2410*. Juveniles "are assumed to be subject [**21] to the control of their parents, and if parental control falters, the State must play its part as *parens patriae." Schall, 467 U.S. at 265, 104 S. Ct. at 2410*; see *New Jersey v. T.L.O. (1985), 469 U.S. 325, 336, 105 S. Ct. 733, 739-40, 83 L. Ed. 2d 720*. In addition, juveniles are not assumed to have the capacity to provide independently for themselves. *Schall, 467 U.S. at 265, 104 S. Ct. at 2410*; see *Flores, 507 U.S. at 301-303, 113 S. Ct. at 1447-48*.

[*P50] In the case at bar, appellant, prior to entering her admission to the charge, was never remanded to the detention center as a result of any dispositional order of the juvenile court. Rather, any detention of appellant was pre-adjudicatory and pre-dispositional. We note that the juvenile court conducted a detention hearing in accordance with *Juv. R. 7* on September 19, 2006. At that time the juvenile court remanded appellant to the juvenile attention center pending a pre-trial hearing scheduled for October 4, 2006. The juvenile court found pursuant to Juv. R. 7 (A) (2) and (3) that detention of appellant was necessary because she may abscond and further that appellant had no parent, guardian, custodian, or other person able to provide supervision and care [**22] for her and to return her to court when required. The trial court continued the detention after the pre-trial hearing finding that detention was necessary to protect the appellant and because she may abscond. (Magistrates Order, October 4, 2006). Trial was scheduled for October 11, 2006. On that date appellant entered an admission to the charge.

[*P51] In the case at bar, it does not appear that the appellant filed a motion for release pursuant to *Juv. R. 7(G)* alleging that she had been held in excess of ninety days in violation of *R.C. 2151.34* at any time prior to entering her admission to the charge. The juvenile court specifically noted that it would review the detention order if appellant's circumstances were to change. (T. at 6). At all times, appellant was represented by appointed counsel. Appellant was notified in writing of the conduct that was alleged to be in violation of the prior court order by the complaint filed September 18, 2006. (T. at 10). The juvenile court informed appellant of her right to a trial in which the State would have to prove the allegations beyond a reasonable doubt. (T. at 11). The court further explained to appellant her right to remain silent or to testify; [**23] to subpoena witnesses; and to cross-examination of the State's witnesses. (Id.). The juvenile court further explained the possible dispositions should appellant admit the violation or be found guilty after trial. (Id.). Accordingly, appellant's due process rights were not violated.

[*P52] Appellant's main disagreement with the use of delinquency adjudication for violation of a prior court order concerns the balance between the legislative policy of discouraging the incarceration of status offenders and the assurance of sufficient authority for courts to enforce orders. This view was espoused by Justices Sweeney, Wright and Herbert R. Brown in a case that the Ohio Supreme Court declined to decide:

[*P53] "Court orders should not be ignored with impunity by children, and violation of a court order may be the basis for a finding of delinquency. *R.C. 2151.02(B)*. However, the contempt powers of a court should not be invoked quickly in this context and a status offender who has departed a shelter on one occasion should not be given the 'taint' of criminality and adjudicated or treated as a juvenile delinquent. Under *R.C. 2151.354* an unruly child may be left in the status of an unruly child but treated [**24] as a delinquent and incarcerated in a detention facility because of failure of 'treatment or rehabilitation'. . . Before such a detention placement of an unruly child or the bootstrapping of status from unruly to delinquent occurs for violation of a court order, the following criteria should be met:

[*P54] "(1) The juvenile should be given sufficient notice to comply with the order and understand its provision;

[*P55] "(2) violation of a court order must be egregious;

[*P56] "(3) less restrictive alternatives must be considered and found to be ineffective; and

[*P57] "(4) special confinement conditions should be arranged so that the status offender is not put with underage criminals. See *Juv.R. 7(H)* and *In Interest of D.L.D. (1983), 110 Wis.2d 168, 182, 327 N.W.2d 682, 689*". *In re Trent (1989), 43 Ohio St. 3d 607, 609, 539 N.E.2d 630, 632*.

[*P58] In the case at bar, it must first be observed that appellant was initially detained on the basis of allegations that she committed the offenses of obstructing official business, a misdemeanor of the second degree if committed by an adult and disorderly conduct, a misdemeanor of the fourth degree if committed by an adult. These offenses are not status offenses. To the extent [**25] the juvenile's analysis is focused exclusively on the assumption that appellant was detained on the basis of an alleged status offense, the analysis is fundamentally flawed. Had the State pursued a motion to revoke probation as appellant suggests was the proper course of action, the sentence imposed on appellant would be as a reinstatement of her original sentence as punishment for the offenses of obstructing official business and disorderly conduct --not for running away from home. An

fundamentally flawed

If filed Not Revoke

Imposition of sentence original charge

probation conditional not final

impose any sentence it could have originally imposed

initial sentence of probation is deemed to be conditional and not final. *In re Kelly (Nov. 7, 1995), Franklin App. No. 95-APF05-613, 1995 Ohio App. LEXIS 4961.* (Citations omitted). Thus, where probation is conditioned on certain terms, the sentence can be modified for noncompliance with those terms. Id. Upon revocation of probation a court may impose any sentence that it could have originally imposed. *In re Herring (July 10, 1996), Summit App. No. 17553, 1996 Ohio App. LEXIS 3017*; *In the Matter of: Cordale R. (Jan. 10, 1997), Erie App. No. E-96-019, 1997 Ohio App. LEXIS 18.* In the case at bar, upon revocation of appellant's probation the juvenile court would be free to impose any of the dispositions available for a delinquent-misdemeanant pursuant to *R.C. 2152.19*. Having previously [**26] been adjudicated as a delinquent child at the original adjudicatory hearing, the subsequent adjudication for violation of a prior court order did not transform a status offender into a delinquent. The legislative policy, and the related procedures, to discourage incarceration of status offenders are not invoked with delinquent juveniles. The legislature intended to treat status offenders differently than delinquents. The legislature's intent was demonstrated by requiring application of distinct criteria before a status offender may be incarcerated. Appellant is not a status offender, and thus does not fall within the legislative concerns regarding the dispositions available for status offenders codified in *R.C. 2151.354.* -

[*P59] Accordingly, appellant's first and second assignments of error are overruled.

III.

[*P60] In her third assignment of error appellant claims that the trial court's actions in prosecuting her for violating a prior court order constitute multiple punishments in violation of his right to freedom from double jeopardy under the *Fifth* and *Fourteenth Amendments to the United States Constitution* and *Section 16, Article I, of the Ohio Constitution.*

[*P61] Application of the *Double Jeopardy Clause* [**27] depends upon the legitimacy of a defendant's expectation of finality in the judgment. *In re Kelly (Nov. 7, 1995), Franklin App. No. 95APF05-613.* In the instant case, as in *Kelly*, appellant did not have a legitimate expectation that her sentence of community control sanctions was complete at the time the court prosecuted the second violation of a prior court order charge because her sentence placing her under community control sanctions was conditioned upon his compliance with the terms and conditions of the community control sanctions and the orders of the court.

[*P62] In addressing the authority of a court to commit a juvenile to DYS for a probation violation, it has been held that a court may properly commit a delinquent minor to DYS for a probation violation, even though the minor was originally given only probation and a suspended commitment was not imposed at the time of the initial disposition. *In re Herring (July 10, 1996), Summit App. No. 17553, 1996 Ohio App. LEXIS 3017, at *6-7.* Further, committing a juvenile to a detention center after a probation violation does not punish that juvenile twice for the same offense. *In re Kelly, supra, 1995 Ohio App. LEXIS 4961, at *10-11.* A violation of a prior court order is a separate and distinct [**28] act for which punishment can be imposed. Such punishment does not constitute multiple punishments for the same offense.

[*P63] Appellant's third assignment of error is overruled.

IV.

[*P64] The appellant's contention in her fourth assignment of error that her due process rights were violated because the juvenile court failed to inform her at the time of her original disposition of the consequences of a violation of court's order is not properly before this court. Appellant has failed to provide a transcript of the original dispositional hearing and the 2005 dispositional hearing for appellant's first violation of a prior court order charge. "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." *Knapp v. Edwards Laboratories (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384*, citing *State v. Skaggs (1978), 53 Ohio St.2d 162, 163, 372 N.E.2d 1355.* This requirement is set forth in *App.R. 9(B)*, which provides, in pertinent part, as follows: "* * * the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he [**29] deems necessary for inclusion in the record * * *." Further, "[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp at 199.*

[*P65] In the case sub judice, appellant did not meet her burden, under *App.R. 9(B)*, and supply this Court with a transcripts of the proceedings from her original admission and the original disposition. Nor were transcripts provided from the 2005 adjudication for appellant's first violation of a prior court order charge. If such transcripts were unavailable other options were available to appellant in order to supply this Court with a transcript for purposes of review. Specifically, under *App.R. 9(C)*, appellant could have submitted a narrative

transcript of the proceedings, subject to objections from appellee and approval from the trial court. Also, under *App.R. 9(D)*, the parties could have submitted an agreed statement of the case in lieu of the record. The record in this matter indicates appellant did not attempt to avail herself [**30] of either *App.R. 9(C)* or *9(D)*.

[*P66] We further note that appellant was previously charged with violation of a prior court order on October 24, 2005 and plead true to that charge on November 18, 2005. Appellant did not appeal this sentence, which she could have, and challenged the trial court's failure to inform her of the potential punishment for violating the terms of her probation or of any of the court's orders. The filing of a timely notice of appeal is a prerequisite to establishing jurisdiction in a court of appeals. Therefore, while in the general sense, this court has jurisdiction to hear appeals in juvenile cases, that jurisdiction must be invoked by the timely filing of a notice of appeal. The failure to file a timely notice of appeal is a jurisdictional requirement that cannot be ignored. *State v. Alexander, 10th Dist. Nos. 05AP-129, 05AP-245, 2005 Ohio 5997 at P17.*

[*P67] Having previously been adjudicated a delinquent for violating a prior court order the appellant was keenly aware that her disregard for the terms of her probation or any court order would result in additional sanctions.

[*P68] Finally we would note that failure of the trial court to notify an offender of the potential prison [**31] sentence that may be imposed for a violation of community control sanctions only prohibits the court from sentencing the offender to prison; it does not prohibit the trial court from any other dispositional alternative in response to a defendant's violation of the terms of his or her community control sanctions. In the case at bar, appellant was not remanded to a term of detention in either the juvenile attention center or the Department of Youth Services.

[*P69] Accordingly, appellant's fourth assignment of error is overruled.

V.

[*P70] Appellant's argument in her fifth assignment of error that *R.C. 2152.02* is void for vagueness must also fail. It is not unreasonable to expect persons of ordinary intelligence to realize that disobedience of an order of the court will result in sanctions. As we have noted the State must prove that the individual had actual notice of the court's order, and further that the individual intended to defy the order. Criminal contempt must be proved beyond a reasonable doubt. *Brown v. Executive 200, Inc. (1980), 64 Ohio St.2d 250, 416 N.E.2d 610 at syllabus.* No where does the record reflect that appellant ever raised the defense that she did not know about the court's orders [**32] or that she was required to abide by the orders. The filing of a timely notice of appeal is a prerequisite to establishing jurisdiction in a court of appeals. Therefore, while in the general sense, this court has jurisdiction to hear appeals in juvenile cases, that jurisdiction must be invoked by the timely filing of a notice of appeal. The failure to file a timely notice of appeal is a jurisdictional requirement that cannot be ignored. *State v. Alexander, 10 th Dist. Nos. 05AP-129, 05AP-245, 2005 Ohio 5997 at P17.*

[*P71] No appeal having been taken by appellant from the original delinquency adjudication and disposition or the prior adjudication for violation of a prior court order, appellant can not now challenge the juvenile court's orders in those respective cases. *Boggs v. Boggs (1997), 118 Ohio App.3d 293, 692 N.E.2d 674.*

[*P72] Accordingly, appellant's fifth assignment of error is overruled.

[*P73] The judgment of the Stark County Court of Common Pleas, Juvenile Division, is affirmed.

By Gwin, P.J.,

Wise, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JOHN W. WISE

HON. PATRICIA A. DELANEY

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Stark County [**33] Court of Common Pleas, Juvenile Division, is affirmed. Costs to appellant.

HON. W. SCOTT GWIN

HON. JOHN W. WISE

HON. PATRICIA A. DELANEY

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN RE: SHARDAI BURT

NANCY S. HEINBOLD
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STARK COUNTY, OHIO
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JUDGMENT ENTRY

CASE NO. 2006-CA-00328

Defendant-Appellant, Shardai Burt has filed a Motion to Certify the decision entered in this case on August 6, 2007 in *In re Burt*, 5th Dist. No. 2006-CA-00328, 2007-Ohio-4034 as being in conflict with the decision of Eleventh District Court of Appeals: *In re* Nowak(1999), 133 Ohio App.3d 396, 728 N.E.2d 411. The Plaintiff-appellee, State of Ohio filed a response August 28, 2007.

Certification of a conflict is governed by Section 3(B)(4), Article IV of the Ohio Constitution, which reads as follows: "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."

In construing this constitutional provision, the Ohio Supreme Court stated: "[W]e hold that (1) pursuant to Section 3(B) (4), Article IV of the Ohio Constitution and S.Ct.Prac.R. III, there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper; and (2) when certifying a case as in conflict with the judgment

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of another court of appeals, either the journal entry or opinion of the court of appeals so certifying must clearly set forth the rule of law upon which the alleged conflict exists." *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 595, 599, 613 N.E.2d 1032, 1033, 1035-1036.

Further, there must be an actual conflict between appellate districts on a rule of law, not facts, before certification is proper. The asserted conflict must be on the same question. *Id.*

App.R. 25 states, in pertinent part, "[a] motion to certify a conflict under Article IV, Section 3(B) (4) of the Ohio Constitution shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of a motion to certify a conflict does not extend the time for filing a notice of appeal. A motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed."

Appellant argues that the Court in *Nowak* held that a Court does not have authority to find a juvenile in indirect contempt.

The *Nowak* decision does not address the applicability or import of R.C. 2152.02(F) (2). Apparently overlooking the applicability or existence of the statutory definition of "delinquent child," the *Nowak* court concluded that the only authority to proceed under was the probation provisions in the juvenile code. The court specifically noted, "This court finds no authority for the juvenile court to proceed in contempt when the issue is a probation violation allegation." The court did not look to then R.C. 2151.02

to find that authority. The Court in *Nowak* reviewed only then existing R.C. 2151.412(E)(1), that allowed the court to proceed in contempt for a violation of a journalized case plan. The Court reasoned "...that section specifically applies only to the parties involved in cases of abuse, neglect or dependency, temporary or permanent custody, protective supervision, or long-term foster care".

As a result, the *Nowak* court did not make any ruling relative to statutory definition of "delinquent child" pursuant to R.C. 2152.02 (F) as authority for a juvenile court to proceed.

Accordingly, the Court in *Nowak* reached different results based upon facts not present in appellant's case. Accordingly, the decision does not conflict with our decision in this case.

Appellant's Motion to Certify a Conflict is denied.

IT IS SO ORDERED.

HON. W. SCOTT GWIN

HON. JOHN W. WISE

HON. PATRICIA A. DELANEY

C
In re Schreiber
Ohio App. 11 Dist.,1999.
Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Eleventh District, Ashtabula County.
In the Matter of Kenneth SCHREIBER.
No. 98-A-0039.

Sept. 30, 1999.

Civil Appeal from the Court of Common Pleas Case No. 97 JA 1302.

Thomas L. Sartini, Ashtabula County Prosecutor, Linda G. Silakoski, Assistant Prosecutor, Jefferson, OH, for Plaintiff-Appellee, State of Ohio.
Marie Lane, Ashtabula County Public Defender, Nicholas K. Thomas, Assistant Public Defender, Ashtabula, OH, for Defendant-Appellant, Kenneth Schreiber.

CHRISTLEY, P.J., and NADER and MAHONEY,FN* JJ.

FN* Retired, Eleventh Appellate District, sitting by assignment.

OPINION

CHRISTLEY.
*1 This is an accelerated calendar appeal submitted to this court on the briefs of the parties. Appellant, Kenneth Schreiber, appeals from the judgment of the Juvenile Division of the Ashtabula County Court of Common Pleas revoking his probation from a prior conviction. For the reasons that follow, we affirm the judgment of the juvenile court.

The following facts are relevant to this appeal. On December 31, 1997, a complaint was filed in the juvenile court alleging that appellant had committed the crime of importuning, a violation of R.C. 2907.07. On February 12, 1998, the juvenile court held an adjudicatory hearing pursuant to Juv.R. 29 to determine the merits of the charge. Appellant was present at the hearing and represented by counsel.

After all of the evidence was presented, the court entered a finding of True to the charge and proceeded with the dispositional phase of the hearing. The court also noted that appellant was on probation from a previous offense. In light of the fact that appellant was already on probation, the state requested that the juvenile court impose the suspended sentence. Although no probation violation report had been filed with respect to the previous case, the juvenile court found that appellant had violated the terms of his probation and imposed the suspended sentence. Appellant perfected a timely appeal and asserts one assignment of error for our consideration:

"The trial court erred by revoking appellant's probation and committing him to the custody of the Department of Youth Services."

According to appellant, the juvenile court's revocation of probation violated Juv.R. 35 because appellant did not receive notice prior to the new adjudicatory hearing that his probation could be revoked as a result of the importuning charge. Furthermore, appellant also argues that because no probation violation had been filed, the only issue properly before the juvenile court was the adjudication and disposition of the alleged charge. We disagree.

Due process of law requires that in a juvenile delinquency proceeding where the juvenile may be committed to a state institution, many, if not most, of the rights afforded to adult criminal defendants should be provided to the juvenile. *In re Gault*

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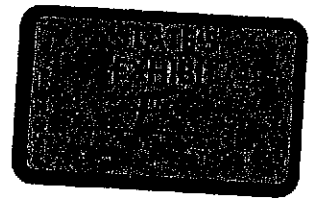

(1967), 387 U.S. 1, 30, 87 S.Ct. 1428, 18 L.Ed.2d 527. However, a juvenile proceeding is fundamentally different from those involving adults because the state has a *parens patriae* interest in the welfare of the child. *In re Davis* (Sept. 8, 1998), Warren App. No. CA97-12-016, unreported, at 2, 1998 WL 568679, citing *Santosky v. Kramer* (1982), 455 U.S. 745, 766, 102 S.Ct. 1388, 71 L.Ed.2d 599. A juvenile's rights are qualified because "juveniles, unlike adults, are always in some form of custody."*Schall v. Martin* (1984), 467 U.S. 253, 265, 104 S.Ct. 2403, 81 L.Ed.2d 207.

***2** Juv.R. 35(B) provides that:

"The court shall not revoke probation except after a hearing at which *the child shall be present and apprised of the grounds on which revocation is proposed.*The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv.R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified."(Emphasis added.)

While Juv.R. 35(B) recognizes a juvenile's due process rights, it does not specify what constitutes compliance with the aforementioned protections. *In re Royal* (Mar. 1, 1999), Mahoning App. No. 96 CA 45, unreported, at 18, 1999 Ohio App. LEXIS 854.

Appellant argues that the juvenile court failed to comply with Juv.R. 35 because it did not provide him with notice before the new adjudicatory hearing that either the probation department or the state intended to request that the juvenile court revoke his probation. He contends that Juv.R. 35(B) clearly indicates that a juvenile offender must be given written or oral notice that revocation of probation will be sought. Minimally, appellant believes that there must be some prehearing or precursory notification procedure before a juvenile's probation may be revoked.

Appellant cites no authority, and this court is unaware of any, to support the proposition that Juv.R. 35(B) requires that a juvenile offender be notified prior to any adjudication hearing on a new charge that his probation may be revoked if he is found true/guilty. Presuming appellant was adequately informed per Juv.R. 34(C) of the terms of his probation at the time it was imposed, nothing in Juv.R. 35(B) implies that a juvenile must be informed or notified prior to the new adjudication that a probation revocation could also result.*In re Davis* at 2, citing *In re John Collins* (Sept. 27, 1995), Medina App. No. 2364-M, unreported, 1995 WL 569116.

Instead, Juv.R. 35(B) requires that the juvenile court hold a hearing and that the juvenile must be present at the hearing and must be "apprised" of the grounds on which such action is proposed. Further, at such time the juvenile must be made aware of the condition of probation which he violated. Upon review of the record, it is apparent that appellant had to be aware that he had just been convicted of a new crime and that any such conviction violated his probation terms. If per chance he was not, the court specifically informed him of that state of affairs during the dispositional hearing. Thus, the court complied with the above procedures.

After finding appellant guilty of importuning, the juvenile court asked appellant's counsel if she wished to proceed with the disposition of the case after appellant was found to have committed a criminal act. Juv.R. 29(F)(2) provides in part that "[u]pon the determination of the issues, the court shall * * * (2)[i]f the allegations of the complaint are admitted or proved * * * (a) [e]nter an adjudication and proceed forthwith to disposition or; (b) [*e*]*nter an adjudication and continue the matter for disposition* * * *." (Emphasis added.)

***3** Appellant's counsel explicitly waived this opportunity to request a continuance and agreed to proceed with the disposition at that time.[FN1]Upon the request of the prosecutor, the trial court indicated that instead of imposing a new sentence for the importuning adjudication, he would revoke appellant's

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probation on the earlier charge.

FN1. We appreciate the fact that, at that moment, counsel did not realize that a request for revocation was about to be made. Nevertheless, there is no issue whether or not counsel knew appellant was, indeed, on probation.

Appellant's counsel protested the failure of the prosecution to file a probation violation report or to otherwise provide notice to her client of the possibility of revocation. Her objections were overruled, and the trial court proceeded to revoke appellant's probation.

The record shows that the juvenile court complied with the requirement that a hearing be conducted as part of a probation revocation. Under Juv.R. 2(O), a hearing is "any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses."This clearly includes a revocation as well as a dispositional hearing. Moreover, unlike adjudicatory and dispositional hearings in abuse, neglect or dependency proceedings, there is no authority which prevents the two phases from being combined if due process concerns are met. Appellant's counsel was, in fact, able to present evidence in mitigation.

Moreover, counsel does not now argue that somehow the conviction on the new charge has been invalidated by the revocation. Instead, the argument seems to be that only the maximum sentence for the new conviction could have been imposed. Frankly, even if we were to have found merit in appellant's assignment, there would be nothing to prevent the prosecutor from revisiting the issue of the probation revocation at a later time.

This is not an instance where appellant entered a plea and got blindsided with the probation revocation. When one is tried and found true or guilty, there are no promises to be kept by the prosecution. Further, there is no claim that appellant was unaware or misled as to his probationary status. In the briefing, appellant's counsel claims that she checked to see if a probation revocation had been filed. Usually, a pretrial hearing provides the opportunity to determine if an existing probation status is a factor which needs to be evaluated as part of the decision to go to trial.[FN2]

FN2. The docket reveals that a pretrial had been scheduled, but was continued to the day of the trial. The record does not reflect if that pretrial ever took place, or if it did, what transpired.

As to the second requirement, appellant was present at the hearing with his attorney during the trial of the new charge. It can hardly be argued that he was unaware of the grounds on which his probation was revoked. Furthermore, appellant does not claim that he was not fully aware of the effect that a new conviction could have on his probation.

Finally, there is no argument as to whether appellant was aware of the probation condition he violated. Juv.R. 34(C) requires that a juvenile be supplied with a written copy of the conditions of his probation. Nothing in the record indicates that this provision was not complied with. One of the conditions of appellant's probation was that he obey all laws of the state of Ohio. The juvenile court found that appellant's new conduct constituted a criminal offense. As a result, appellant failed to comply with the conditions of his probation.

*4 We decline to adopt appellant's proposition that Juv.R. 35(B) requires additional notification prior to an adjudicatory hearing on a new charge.[FN3]Instead, we find that Juv.R. 35(B) sets forth the procedural requirements to be followed where a juvenile's probation is revoked. Prehearing notice is not one of those requirements.

FN3.*See In the Matter of Cottrill* (June 25, 1998), Ross App. No. 97 CA2355, unreported, 1998 Ohio App. LEXIS 2975 (holding that the trial court's failure to either provide the appellant with explicit

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advance notice that the hearing also constituted his parole revocation hearing or provide him a separate parole revocation hearing did not constitute plain error). Distinguish *In the Matter of Nathan N.* (Aug. 9, 1996), Ottawa App. No. OT-95-060, unreported, 1996 Ohio App. LEXIS 3326 (holding that a person lacks sufficient notice when he appears in court without counsel to have a warrant withdrawn and the trial court subsequently goes forward with a probation revocation hearing).

In addition, we also note that appellant was present with counsel; that although the issue of notice was raised, no continuance was requested; that no impediment was claimed other than the lack of notice; and that appellant and his counsel were "apprised" at the time of the dispositional hearing of the specifics of the revocation. Thus, the juvenile court complied with the necessary due process requirements.

Appellant further argues that because no motion for revocation of probation had been filed, the only issue before the juvenile court was the adjudication and disposition of the alleged charge. We find this assignment to be without merit for all of the previously mentioned reasons. Pursuant to R.C. 2151.355(A)(12), the juvenile court may, after a child is adjudicated delinquent, "[m]ake any further disposition that the court finds proper," subject to limited exceptions which are not applicable to the present case.[FN4]

FN4. The General Assembly has since amended R.C. 2151.355, effective January 1, 1999. Subsection (A)(12) is now subsection (A)(22).

For the foregoing reasons, appellant's assignment of error is without merit. The judgment of the juvenile court is affirmed.

NADER and MAHONEY, JJ., concur.
Ohio App. 11 Dist.,1999.

In re Schreiber
Not Reported in N.E.2d, 1999 WL 959822 (Ohio App. 11 Dist.)

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In re Herring
Ohio App. 9 Dist.,1996.
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CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Summit County.
In re Demetrius HERRING, a Minor Child.
No. 17553

July 10, 1996.

Appeal from judgment entered in the Common Pleas Court County of Summit, Ohio

MAUREEN O'CONNOR, Prosecuting Attorney and PHILIP D. BOGDANOFF, Asst. Prosecuting Attorney, 53 University Ave., Akron, OH 44308 for Appellee.
MICHAEL E. GEORGE, Attorney at Law, 1655 W. Market St., Suite 400, Akron, OH 44313 for Appellant.

DECISION AND JOURNAL ENTRY

REECE, Presiding Judge.
***1** Appellant, Demetrius Herring, appeals his adjudication of delinquency due to a probation violation pursuant to R.C. 2151.02. We affirm.

I.

On October 18, 1994, Demetrius Herring, then aged fifteen (15), was adjudicated delinquent after admitting the unauthorized use of a motor vehicle in violation of R.C. 2913.03(A), Juvenile Case No. 94-10-4395. The court held the matter, a fourth degree felony, for disposition. On October 27, 1994, Herring was placed on six (6) months probation, was ordered to pay restitution, placed on house arrest until notified, and ordered "to be in Youth Outreach program, attend Child Guidance and the Ray program." The juvenile court's order was not journalized until November 30, 1994.

On May 18, 1995, a probation violation complaint was filed against Herring for truancy. Admitting the violation, Herring was again found to be delinquent. The May 23, 1995, journal entry stated all prior orders remained in full force and effect. This disposition also included an order of "5 days suspended, probation to terminate when he completes YOC [(Youth Outreach Center)] program."

On June 21, 1995, Herring's probation officer again filed a probation violation complaint against him, this time alleging failure to comply with the Youth Outreach Center (YOC) Program. A warrant for Herring's arrest was issued on July 10, 1995. The matter was heard on October 2, 1995, along with a separate two count complaint (Juvenile Case No. 95-10-4188) against Herring for knowingly possessing a counterfeit controlled substance in violation of R.C. 2925.37 and breaching the daytime curfew. Herring admitted all charges against him.

The court, believing the possession charge in Case No. 4188 was a third degree felony, committed Herring to the Department of Youth Services (DYS) for six (6) months. Upon realizing the offense was a misdemeanor, the court vacated its disposition and dismissedCase No. 4188. As to the probation violation on the original case (No. 4395), the court committed Herring to six (6) months at the DYS. At this same hearing, the judge also dismissed the aggravated menacing charge against Herring in Juvenile Case No. 95-6-2682. These orders were all journalized on October 2, 1995. This appeal followed.

II.

Herring raises three assignments of error: (1) his commitment to DYS violated the provisions against

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double jeopardy contained in the United States and Ohio Constitutions, (2) he was denied his right to counsel, and (3) the court erred both in informing him the possession charge against him was a felony and in considering the charge a felony during its disposition.

A.

Herring contends his probation period in Juvenile Case No. 94-10-4395 had expired when the court sentenced him to six months in the custody of the DYS. Herring argues the six months probation he was given on October 27, 1994 expired on April 25, 1995. Thus, his probation violation adjudicated on May 23, 1995, for which the juvenile court gave Herring a five day suspended sentence and extended his probation until completion of the YOC program, was entered in error because Herring was no longer on probation. Herring further argues that if the May 23, 1995 order was a nullity, then he could not have violated probation by not completing the YOC program.

***2** However, the juvenile court's order was not journalized until November 30, 1994. Ohio courts speak through their journal entries. *State ex rel. Worcester v. Donnellon* (1990), 49 Ohio St.3d 117, 118. An entry is effective only when it has been journalized. *State v. Ellington* (1987), 36 Ohio App.3d 76, 77-78. Therefore, Herring's probation period did not begin to run until November 30, 1994, and expired on May 29, 1995. See *State v. Battle* (June 28, 1989), Hamilton App. No. C-880131, unreported.[FN1] The May 23, 1995, probation violation occurred during Herring's probation period and the court was within its discretion to extend Herring's probation until he completed the YOC program.[FN2] While it may seem as though the court extended Herring's probation indefinitely, it was less than one month after Herring was ordered to complete the YOC program as a term of his probation that the probation violation complaint was filed against him.

FN1. This might seem to contradict our decision in *State v. Wetzel* (Feb. 9, 1994), Summit App. No. 16407, unreported. In *Wetzel,* appellant Anthony Wetzel was convicted of corruption of a minor and sentenced to probation on June 23, 1993. On June 26, 1993, Wetzel committed a probation violation. The journal entry regarding the proceedings of June 23, 1993 was not journalized until July 8, 1993. On July 16, 1993, Wetzel's probation was revoked due to the June 26, 1993 incident. Wetzel argued the trial court erred in revoking his probation because his conduct on June 26, 1993 predated the journalization of the sentencing order placing him on probation, thus he was not yet on probation at the time the alleged probation violation occurred.

> However, this court determined that although it perhaps was error for the trial court to find a violation of the terms of probation when the order imposing probation had not yet been journalized, based on the facts of the case any such error was harmless and the judgment revoking Wetzel's probation was affirmed. *Id.* at 4. Therefore, our holding in the instant case does not contradict our holding in *Wetzel.*

FN2. Although Herring argues the court did not extend his probation by its May 23, 1995 order, we find his argument unpersuasive. The court's order specifically states "*probation to terminate when he completes* YOC program." (Emphasis added.) Presuming the court was aware it had previously imposed a six month term of probation and that such term was within days of expiration, such language clearly indicates an intent to extend Herring's probation until completion of the required rehabilitation program.

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Herring also asserts the court could not commit him to the custody of the DYS for six months on the June 21, 1995 probation violation because the court had not ordered a suspended commitment to the DYS on the original October 18, 1994 adjudication of delinquency. Herring argues that because he was originally given only probation and no suspended period of commitment, the disposition of his case can not now be modified to a period of commitment. However, upon revocation of probation a court may impose any sentence that it could have originally imposed. See R.C. 2951.09; *State v. McMullen* (1983), 6 Ohio St.3d 244, 246. See, also, R.C. 2151.35.5(A)(11). Because Herring was originally adjudicated delinquent based on a fourth degree felony, he could have been sentenced to a minimum term of six months commitment to the custody of the DYS. R.C. 2151.35.5(A)(4). Thus, the juvenile court did not err in making such a disposition upon revocation of his probation.

Herring's first assignment of error is overruled.

B.

In his second assignment of error, Herring argues he was denied his constitutional right to counsel. Although the transcript of the proceedings reveals the court explained Herring's rights to him, and he then orally waived those rights, Herring now contends his waiver was neither knowing, intelligent nor voluntary.[FN3] However, "at a hearing for a *probation violation*Juv.R. 35(B) governs and does not impose a requirement upon the juvenile court to inform the juvenile that he or she is waiving certain rights." *In re Motley* (May 1, 1996), Summit App. No. 17509, unreported, at 3. (Emphasis added.) See, also, *In re Collins* (Sept. 27, 1995), Medina App. No. 2365-M, unreported. Therefore, not only did the juvenile court not err in accepting Herring's waiver of rights as to his probation violation, it did more than was required.

FN3. It should be noted that this was not Herring's first, or even second, appearance before the juvenile court. Presumably his previous experiences would lend to his awareness of his rights.

Herring's second assignment of error is overruled.

C.

In his final assignment of error, Herring contends the court erred in informing him the charge of possession of a counterfeit controlled substance was a third degree felony rather than a first degree misdemeanor. We fail to comprehend how Herring was prejudiced by the court's error. First, Herring was mistakenly informed that the possible penalty for his actions was more serious than it actually was. It is completely illogical that such an error would have a negative affect on his decision to admit the charge against him. Had the reverse occurred and Herring been told the minimum possible penalty was less than what it actually was, then his decision to waive his rights and admit the charge based on inaccurate information might be flawed. Second, the juvenile court realized its mistake, vacated its disposition and dismissed the case. Thus, the point is moot.

*3 Herring also claims the six month commitment to the DYS based on the probation violation was improperly made in reaction to the court's inability to impose such a disposition on the possession charge. There is no evidence of this in the record. The disposition as to the probation violation was properly made and within statutory limits. See R.C. 2151.35.5(A)(4). That the court mistakenly made the same disposition on a separate complaint against Herring is of no relevance.

Herring's third assignment of error is overruled.

III.

Herring's three assignments of error are overruled and the disposition of the juvenile court committing him to six months in the custody of the DYS is af-

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firmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the County of Summit Common Pleas Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to appellant.

Exceptions.

MAHONEY, J., concurs.DICKINSON, Judge, concurs, saying.
I concur in the majority's opinion. I write separately to note that my concurrence in the overruling of Herring's second assignment of error is based solely on *stare decisis*. See *In re Collins* (Sept. 27, 1995), Medina App. No. 2365-M, unreported, (Dickinson, J., dissenting.)

Ohio App. 9 Dist.,1996.
In re Herring
Not Reported in N.E.2d, 1996 WL 385611 (Ohio App. 9 Dist.)

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R.C. § 2151.022

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Construction; Definitions

2151.022 "Unruly child" defined

As used in this chapter, "unruly child" includes any of the following:

(A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;

(C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;

(D) Any child who violates a law, other than division (C) of section 2907.39, division (A) of section 2923.211, division (C)(1) or (D) of section 2925.55, or section 2151.87 of the Revised Code, that is applicable only to a child.

(2006 H 23, eff. 8-17-06; 2006 S 53, eff. 5-17-06; 2000 S 179, § 3, eff. 1-1-02; 2000 S 218, eff. 3-15-01; 2000 S 181, eff. 9-4-00; 1995 H 4, eff. 11-9-95; 1969 H 320, eff. 11-19-69)

UNCODIFIED LAW

1995 H 4, § 3: See Uncodified Law under 2151.02.

HISTORICAL AND STATUTORY NOTES

Ed. Note: The legal review and technical services staff of the Legislative Service Commission has issued an opinion regarding the treatment of multiple amendments. The opinion is neither legally authoritative nor binding, but is provided as a general indication that the amendments of the several acts [2006 H 23, eff. 8-17-06 and 2006 S 53, eff. 5-17-06] may be harmonized pursuant to the rule of construction contained in **R.C.** 1.52(B) requiring all amendments be given effect if they can reasonably be put into simultaneous operation. See *Baldwin's Ohio Legislative Service Annotated*, 2006, pages 3/L-1243 and 1/L-220, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

Amendment Note: 2006 H 23 inserted "division (C) of section 2907.39," in division (D).

Amendment Note: 2006 S 53 inserted ", division (C)(1) or (D) of section 2925.55," in division (D).

Amendment Note: 2000 S 179, § 3, eff. 1-1-02, rewrote this section, which prior thereto read:

"As used in this chapter, 'unruly child' includes any of the following:

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"(A) Any child who does not subject the child's self to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

"(B) Any child who is persistently truant from home;

"(C) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;

"(D) Any child who so deports the child's self as to injure or endanger the child's own health or morals or the health or morals of others;

"(E) Any child who attempts to enter the marriage relation in any state without the consent of the child's parents, custodian, or legal guardian or other legal authority;

"(F) Any child who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons;

"(G) Any child who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to the child's own health or morals or the health or morals of others;

"(H) Any child who violates a law, other than division (A) of section 2923.211 of the Revised Code, that is applicable only to a child."

Amendment Note: 2000 S 218 inserted "or section 2151.87" in division (H).

Amendment Note: 2000 S 181 substituted "persistently" for "an habitual", and deleted "or school" from the end of, division (B); added new division (C); redesignated former divisions (C) through (G) as new divisions (D) through (H); and made changes to reflect gender neutral language.

Amendment Note: 1995 H 4 substituted "this chapter" for "sections 2151.01 to 2151.54, inclusive, of the Revised Code" and "of the following:" for "child" in the first paragraph; substituted "Any child who" for "Who" in divisions (A) through (F); added "the health or morals of" to divisions (C) and (F); rewrote division (G), which formerly read "Who has violated a law applicable only to a child."; and made changes to reflect gender neutral language and other nonsubstantive changes throughout.

R.C. § 2151.022, OH ST § **2151.022**

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R.C. § 2152.01

C
Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
General Provisions (Refs & Annos)

2152.01 Purposes; applicability of law

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

(2000 S 179, § 3, eff. 1-1-02)

R.C. § 2152.01, OH ST § **2152.01**

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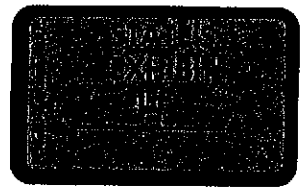

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition

2151.354 Disposition of unruly child; driver's license suspension; habitual truants

(A) If the child is adjudicated an unruly child, the court may:

(1) Make any of the dispositions authorized under section 2151.353 of the Revised Code;

(2) Place the child on community control under any sanctions, services, and conditions that the court prescribes, as described in division (A)(4) of section 2152.19 of the Revised Code, provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;

(3) Suspend the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court and suspend the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(4) Commit the child to the temporary or permanent custody of the court;

(5) Make any further disposition the court finds proper that is consistent with sections 2151.312 and 2151.56 to 2151.61 of the Revised Code;

(6) If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (4), (5), and (8) of section 2152.19 of the Revised Code that is consistent with sections 2151.312 and 2151.56 to 2151.61 of the Revised Code.

(B) If a child is adjudicated an unruly child for committing any act that, if committed by an adult, would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, or a violation of division (B) of section 2917.11 of the Revised Code, in addition to imposing, in its discretion, any other order of disposition authorized by this section, the court shall do both of the following:

(1) Require the child to participate in a drug abuse or alcohol abuse counseling program;

(2) Suspend the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of time prescribed by the court. The court, in its discretion, may terminate the suspension if the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program as described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license, and

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the court shall return the permit or license if it terminates the suspension.

(C)(1) If a child is adjudicated an unruly child for being an habitual truant, in addition to or in lieu of imposing any other order of disposition authorized by this section, the court may do any of the following:

(a) Order the board of education of the child's school district or the governing board of the educational service center in the child's school district to require the child to attend an alternative school if an alternative school has been established pursuant to section 3313.533 of the Revised Code in the school district in which the child is entitled to attend school;

(b) Require the child to participate in any academic program or community service program;

(c) Require the child to participate in a drug abuse or alcohol abuse counseling program;

(d) Require that the child receive appropriate medical or psychological treatment or counseling;

(e) Make any other order that the court finds proper to address the child's habitual truancy, including an order requiring the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year and including an order requiring the child to participate in a truancy prevention mediation program.

(2) If a child is adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, in addition to any order of disposition authorized by this section, all of the following apply:

(a) The court may require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school attended by the child.

(b) The court may require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program.

(c) The court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being an habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919.24 of the Revised Code.

(2002 H 400, § 4, eff. 1-1-04; 2002 H 400, § 1, eff. 4-3-03; 2002 S 123, eff. 1-1-04; 2002 H 393, eff. 7-5-02; 2001 H 57, eff. 2-19-02; 2000 S 179, § 3, eff. 1-1-02; 2000 S 181, eff. 9-4-00; 1997 S 35, eff. 1-1-99; 1996 H 265, eff. 3-3-97; 1996 H 274, eff. 8-8-96; 1992 H 154, eff. 7-31-92; 1990 S 258, S 131; 1989 H 381, H 330, H 329; 1988 H 643; 1969 H 320)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2002 H 400 changed "(A)(3)" to "(A)(4)" in division (A)(2); and changed "(A)(1), (3), (4), and (7)" to "(A)(1), (4), (5), and (8)" in division (A)(6).

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Amendment Note: 2002 S 123 rewrote divisions (A) and (B) of this section, which prior thereto read:

"(A) If the child is adjudicated an unruly child, the court may:

"(1) Make any of the dispositions authorized under section 2151.353 of the Revised Code;

"(2) Place the child on community control under any sanctions, services, and conditions that the court prescribes, as described in division (A)(3) of section 2152.19 of the Revised Code, provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;

"(3) Suspend or revoke the driver's license, probationary driver's license, or temporary instruction permit issued to the child and suspend or revoke the registration of all motor vehicles registered in the name of the child. A child whose license or permit is so suspended or revoked is ineligible for issuance of a license or permit during the period of suspension or revocation. At the end of the period of suspension or revocation, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

"(4) Commit the child to the temporary or permanent custody of the court;

"(5) Make any further disposition the court finds proper that is consistent with sections 2151.312 and 2151.56 to 2151.61 of the Revised Code;

"(6) If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (3), (4), and (7) of section 2152.19 of the Revised Code that is consistent with sections 2151.312 and 2151.56 to 2151.61 of the Revised Code.

"(B) If a child is adjudicated an unruly child for committing any act that, if committed by an adult, would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, or a violation of division (B) of section 2917.11 of the Revised Code, then, in addition to imposing, in its discretion, any other order of disposition authorized by this section, the court shall do both of the following:

"(1) Require the child to participate in a drug abuse or alcohol abuse counseling program;

"(2) Suspend or revoke the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of time prescribed by the court or, at the discretion of the court, until the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending the program, the court shall retain any temporary instruction permit, probationary driver's license, or driver's license issued to the child and shall return the permit or license when the child satisfactorily completes the program."

Amendment Note: 2002 H 393 inserted ", provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;" in division (A)(2).

Amendment Note: 2001 H 57 inserted new division (A)(5), redesignated former division (A)(5) as new division (A)(6); and rewrote new division (A)(6), which as former division (A)(5) read:

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"If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (3), (4) and (7) of section 2152.19 of the Revised Code, except that the child may not be committed to or placed in a secure correctional facility, and commitment to or placement in a detention facility may not exceed twenty-four hours unless authorized by division (C)(3) of section 2151.312 or sections 2151.56 to 2151.61 of the Revised Code."

Amendment Note: 2000 S 179, § 3, eff. 1-1-02, substituted "community control" for "probation" and inserted "sanctions, services, and" and "as described in division (A) of section 2152.19 of the Revised Code" in division (A)(2); and substituted "divisions (A)(1), (3), (4), and (7) of section 2152.19" for "divisions (A)(1), (2), and (A)(8) to (12) of section 2151.355", "facility" for "home", and "division (B)(3)" for "division (C)(3)", in division (A)(5).

Amendment Note: 2000 S 181 substituted "(A)(8) to (12)" for "(A)(7) to (11)" in division (A)(5); and added division (C).

Amendment Note: 1997 S 35 inserted "probationary driver's license, or temporary instruction permit" and added the second and third sentences in division (A)(3); rewrote division (B)(2); and made other nonsubstantive changes. Prior to amendment, division (B)(2) read:

"(2) Suspend or revoke the temporary instruction permit or probationary operator's license issued to the child until the child attains the age of eighteen years or, at the discretion of the court, attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending the program, the court shall retain any temporary instruction permit or probationary license issued to the child and shall return the permit or license when the child satisfactorily completes the program."

Amendment Note: 1996 H 265 substituted "(A)(1), (2), and (A)(7) to (11)" for "(A)(1) to (3) and (A)(6) to (10)" and inserted ", except that the child may not be committed to or placed in a secure correctional facility, and commitment to or placement in a detention home may not exceed twenty-four hours unless authorized by division (C)(3) of section 2151.312 or sections 2151.56 to 2151.61 of the Revised Code" in division (A)(5).

Amendment Note: 1996 H 274 added division (A)(4); and redesignated former division (A)(4) as division (A)(5).

CROSS REFERENCES

Adjudicatory hearing, Juv R 29

Deception to obtain matter harmful to juveniles, 2907.33

Dispositional hearing, procedure, Juv R 34

Foster caregivers, information regarding delinquent children provided to, 2152.72

Registrar of motor vehicles, revocation of probationary driver's license, 4507.162

LIBRARY REFERENCES

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
General Provisions (Refs & Annos)

2152.02 Definitions

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C)(1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the places at which the person may be held under that disposition are not limited to places authorized under this

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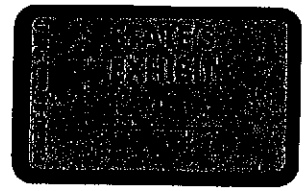

chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211, or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in section 2925.01 of the Revised Code.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in section 2929.01 of the Revised Code.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

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Title XXI. Courts--Probate--Juvenile
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders

2152.19 Additional disposition orders for delinquent children

(A) If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

(1) Any order that is authorized by section 2151.353 of the Revised Code for the care and protection of an abused, neglected, or dependent child;

(2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2152.41 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under section 2151.65 of the Revised Code;

(3) Place the child in a detention facility or district detention facility operated under section 2152.41 of the Revised Code, for up to ninety days;

(4) Place the child on community control under any sanctions, services, and conditions that the court prescribes. As a condition of community control in every case and in addition to any other condition that it imposes upon the child, the court shall require the child to abide by the law during the period of community control. As referred to in this division, community control includes, but is not limited to, the following sanctions and condi- tions:

(a) A period of basic probation supervision in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(b) A period of intensive probation supervision in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment programs as the order of disposition;

(c) A period of day reporting in which the child is required each day to report to and leave a center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center;

(d) A period of community service of up to five hundred hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult, up to two hundred hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult, or up to thirty hours for an act that would be a minor misdemeanor if committed by an adult;

(e) A requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocation-

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al training, or employment;

(f) A period of drug and alcohol use monitoring;

(g) A requirement of alcohol or drug assessment or counseling, or a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court;

(h) A period in which the court orders the child to observe a curfew that may involve daytime or evening hours;

(i) A requirement that the child serve monitored time;

(j) A period of house arrest without electronic monitoring or continuous alcohol monitoring;

(k) A period of electronic monitoring or continuous alcohol monitoring without house arrest, or house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act.

A period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, imposed under this division shall not extend beyond the child's twenty-first birthday. If a court imposes a period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, upon a child under this division, it shall require the child: to remain in the child's home or other specified premises for the entire period of house arrest with electronic monitoring or continuous alcohol monitoring or both except when the court permits the child to leave those premises to go to school or to other specified premises. Regarding electronic monitoring, the court also shall require the child to be monitored by a central system that can determine the child's location at designated times; to report periodically to a person designated by the court; and to enter into a written contract with the court agreeing to comply with all requirements imposed by the court, agreeing to pay any fee imposed by the court for the costs of the house arrest with electronic monitoring, and agreeing to waive the right to receive credit for any time served on house arrest with electronic monitoring toward the period of any other dispositional order imposed upon the child if the child violates any of the requirements of the dispositional order of house arrest with electronic monitoring. The court also may impose other reasonable requirements upon the child.

Unless ordered by the court, a child shall not receive credit for any time served on house arrest with electronic monitoring or continuous alcohol monitoring or both toward any other dispositional order imposed upon the child for the act for which was imposed the dispositional order of house arrest with electronic monitoring or continuous alcohol monitoring. As used in this division and division (A)(4)(l) of this section, "continuous alcohol monitoring" has the same meaning as in section 2929.01 of the Revised Code.

(l) A suspension of the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court, or a suspension of the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

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(5) Commit the child to the custody of the court;

(6) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year;

(7)(a) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant, do either or both of the following:

(i) Require the child to participate in a truancy prevention mediation program;

(ii) Make any order of disposition as authorized by this section, except that the court shall not commit the child to a facility described in division (A)(2) or (3) of this section unless the court determines that the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 of the Revised Code or division (A)(6) of this section.

(b) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, do either or both of the following:

(i) Require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program;

(ii) Require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school attended by the child.

(8) Make any further disposition that the court finds proper, except that the child shall not be placed in any of the following:

(a) A state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held;

(b) A community corrections facility, if the child would be covered by the definition of public safety beds for purposes of sections 5139.41 to 5139.43 of the Revised Code if the court exercised its authority to commit the child to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to this chapter.

(B) If a child is adjudicated a delinquent child, in addition to any order of disposition made under division (A) of this section, the court, in the following situations and for the specified periods of time, shall suspend the child's temporary instruction permit, restricted license, probationary driver's license, or nonresident operating privilege, or suspend the child's ability to obtain such a permit:

(1) If the child is adjudicated a delinquent child for violating section 2923.122 of the Revised Code, impose a class four suspension of the child's license, permit, or privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code or deny the child the issuance of a license or permit in accordance with division (F)(1) of section 2923.122 of the Revised Code.

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(2) If the child is adjudicated a delinquent child for committing an act that if committed by an adult would be a drug abuse offense or for violating division (B) of section 2917.11 of the Revised Code, suspend the child's license, permit, or privilege for a period of time prescribed by the court. The court, in its discretion, may terminate the suspension if the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license, and the court shall return the permit or license if it terminates the suspension as described in this division.

(C) The court may establish a victim-offender mediation program in which victims and their offenders meet to discuss the offense and suggest possible restitution. If the court obtains the assent of the victim of the delinquent act committed by the child, the court may require the child to participate in the program.

(D)(1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created a risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition under this section, shall order the preparation of a victim impact statement by the probation department of the county in which the victim of the act resides, by the court's own probation department, or by a victim assistance program that is operated by the state, a county, a municipal corporation, or another governmental entity. The court shall consider the victim impact statement in determining the order of disposition to issue for the child.

(2) Each victim impact statement shall identify the victim of the act for which the child was adjudicated a delinquent child, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information related to the impact of the act upon the victim that the court requires.

(3) A victim impact statement shall be kept confidential and is not a public record. However, the court may furnish copies of the statement to the department of youth services if the delinquent child is committed to the department or to both the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney. The copy of a victim impact statement furnished by the court to the department pursuant to this section shall be kept confidential and is not a public record. If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the court shall make available to the officer, for use in preparing the report, a copy of any victim impact statement regarding that person. The copies of a victim impact statement that are made available to the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney pursuant to this division shall be returned to the court by the person to whom they were made available immediately following the imposition of an order of disposition for the child under this chapter.

The copy of a victim impact statement that is made available pursuant to this division to an officer preparing a criminal presentence investigation report shall be returned to the court by the officer immediately following its use in preparing the report.

(4) The department of youth services shall work with local probation departments and victim assistance programs to develop a standard victim impact statement.

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(E) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, in addition to any order of disposition it makes under this section, the court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being a habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919. 24 of the Revised Code.

(F)(1) During the period of a delinquent child's community control granted under this section, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the delinquent child, the place of residence of the delinquent child, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the delinquent child has a right, title, or interest or for which the delinquent child has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court that places a delinquent child on community control under this section shall provide the delinquent child with a written notice that informs the delinquent child that authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of community control if they have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court also shall provide the written notice described in division (E)(2) of this section to each parent, guardian, or custodian of the delinquent child who is described in that division.

(2) The court that places a child on community control under this section shall provide the child's parent, guardian, or other custodian with a written notice that informs them that authorized probation officers may conduct searches pursuant to division (E)(1) of this section. The notice shall specifically state that a permissible search might extend to a motor vehicle, another item of tangible or intangible personal property, or a place of residence or other real property in which a notified parent, guardian, or custodian has a right, title, or interest and that the parent, guardian, or custodian expressly or impliedly permits the child to use, occupy, or possess.

(G) If a juvenile court commits a delinquent child to the custody of any person, organization, or entity pursuant to this section and if the delinquent act for which the child is so committed is a sexually oriented offense or is a child-victim oriented offense, the court in the order of disposition shall do one of the following:

(1) Require that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code;

(2) Inform the person, organization, or entity that it is the preferred course of action in this state that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code and encourage the person, organization, or entity to provide that treatment.

(2007 S 10, eff. 1-1-08; 2004 H 163, eff. 9-23-04; 2003 S 5, § 3, eff. 1-1-04; 2003 S 5, § 1, eff. 7-31-03; 2003 H 95, § 3.13, eff. 1-1- 04; 2003 H 95, § 1, eff. 9-26-03; 2002 H 490, eff. 1-1-04; 2002 H 400, § 4, eff. 1-1-04; 2002 H 400, § 1, eff. 4-3-03; 2002 S 123, eff. 1-1-04; 2002 H 393, eff. 7-5-02; 2002 H 247, eff. 5-30-02; 2001 S 3, eff. 1-1-02; 2000 S 179, § 3, eff. 1-1-02)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXVII. Courts--General Provisions--Special Remedies
Chapter 2705. Contempt of Court (Refs & Annos)

2705.02 Acts in contempt of court

A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer;

(B) Misbehavior of an officer of the court in the performance of official duties, or in official transactions;

(C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;

(D) The rescue, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by the officer;

(E) A failure upon the part of a person recognized to appear as a witness in a court to appear in compliance with the terms of the person's recognizance;

(F) A failure to comply with an order issued pursuant to section 3109.19 or 3111.81 of the Revised Code;

(G) A failure to obey a subpoena issued by the department of job and family services or a child support enforcement agency pursuant to section 5101.37 of the Revised Code;

(H) A willful failure to submit to genetic testing, or a willful failure to submit a child to genetic testing, as required by an order for genetic testing issued under section 3111.41 of the Revised Code.

(2000 S 180, eff. 3-22-01; 1999 H 470, eff. 7-1-00; 1997 H 352, eff. 1-1-98; 1996 H 710, § 7, eff. 6-11-96; 1995 H 167, eff. 6-11-96; 1953 H 1, eff. 10-1-53; GC 12137)

UNCODIFIED LAW

1996 H 710, § 15, eff. 6-11-96, reads, in part:

(A) The amendments to sections 2151.231, 2301.34, 2301.35, 2301.351, 2301.358, **2705.02**, 3111.20, 3111.21, 3111.22, 3111.23, 3111.241, 3111.242, 3111.27, 3111.28, 3111.99, 3113.21, 3113.214, 3113.215, 3113.99, 4723.07, and 4723.09 of the Revised Code by Sub. H.B. 167 of the 121st General Assembly take effect, and their existing interim versions are correspondingly repealed, on the date this act takes effect and not on November 15, 1996 [.]

HISTORICAL AND STATUTORY NOTES

Ed. Note: 2705.02 contains provisions analogous to former 2917.26, repealed by 1972 H 511, eff. 1-1-74.

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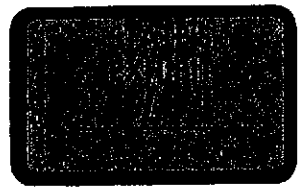

Baldwin's Ohio Revised Code Annotated Currentness
Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)
Chapter 2917. Offenses Against The Public Peace
Disorderly Conduct

2917.11 Disorderly conduct

(A) No person shall recklessly cause inconvenience, annoyance, or alarm to another, by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or offensively coarse utterance, gesture, or display, or communicating unwarranted and grossly abusive language to any person;

(3) Insulting, taunting, or challenging another, under circumstances in which such conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act which serves no lawful and reasonable purpose of the offender;

(5) Creating a condition which is physically offensive to persons or which presents a risk of physical harm to persons or property, by any act which serves no lawful and reasonable purpose of the offender.

(B) No person, while voluntarily intoxicated shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if he were not intoxicated, should know is likely to have such effect on others;

(2) Engage in conduct or create a condition which presents a risk of physical harm to himself or another, or to the property of another.

(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of division (B) of this section.

(D) When to an ordinary observer a person appears to be intoxicated, it is probable cause to believe such person is voluntarily intoxicated for purposes of division (B) of this section.

(E) Whoever violates this section is guilty of disorderly conduct, a minor misdemeanor, except that if the offender persists in disorderly conduct after reasonable warning or request to desist, or if the offender is within one thousand feet of the boundaries of any school, school premises, or school building, disorderly conduct is a misdemeanor of the fourth degree.

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(F) As used in this section, "school," "school premises," and "school building" have the same meanings as in section 2925.01 of the Revised Code.

(1990 H 51, eff. 11-8-90; 1972 H 511)

R.C. § 2917.11, OH ST § **2917.11**

Current through 1995 File 49 of the 121st GA (1995-1996) apv. 8/10/95

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C
Baldwin's Ohio Revised Code Annotated Currentness
Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)
Chapter 2921. Offenses Against Justice and Public Administration
Obstructing and Escape

2921.31 Obstructing official business

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

(B) Whoever violates this section is guilty of obstructing official business, a misdemeanor of the second degree.

(1972 H 511, eff. 1-1-74)

R.C. § 2921.31, OH ST § **2921.31**

Current through 1995 File 49 of the 121st GA (1995-1996) apv. 8/10/95

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***134442 Evid. R. Rule 101**

BALDWIN'S OHIO REVISED CODE ANNOTATED OHIO RULES OF EVIDENCE ARTICLE I. GENERAL PROVISIONS

Current with amendments received through 1/15/08

Evid R 101 Scope of rules: applicability; privileges; exceptions

(A) Applicability

These rules govern proceedings in the courts of this state, subject to the exceptions stated in division (C) of this rule.

(B) Privileges

The rule with respect to privileges applies at all stages of all actions, cases, and proceedings conducted under these rules.

(C) Exceptions

These rules (other than with respect to privileges) do not apply in the following situations:

(1) Admissibility determinations. Determinations prerequisite to rulings on the admissibility of evidence when the issue is to be determined by the court under Evid. R. 104.

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous criminal proceedings. Proceedings for extradition or rendition of fugitives; sentencing; granting or revoking probation; proceedings with respect to community control sanctions; issuance of warrants for arrest; criminal summonses and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt. Contempt proceedings in which the court may act summarily.

(5) Arbitration. Proceedings for those mandatory arbitrations of civil cases authorized by the rules of superintendence and governed by local rules of court.

(6) Other rules. Proceedings in which other rules prescribed by the Supreme Court govern matters relating to evidence.

(7) Special non-adversary statutory proceedings. Special statutory proceedings of a non-adversary nature in which these rules would by their nature be clearly inapplicable.

***134443** (8) Small claims division. Proceedings in the small claims division of a county or municipal court.

(Adopted eff. 7-1-80; amended eff. 7-1-90, 7-1-96, 7-1-99)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Amendment Note: The 7-1-99 amendment inserted "proceedings with respect to community control sanctions;" in division (C)(3).

Amendment Note: The 7-1-96 amendment deleted "and before court-appointed referees and magistrates of this state" after "courts of this state" in division (A).

STAFF NOTES

1999:

(C) Exceptions

The phrase "community control sanctions" was added to division (C)(3) of the rule in accordance with changes resulting from the adoption of Senate Bill 2, effective July 1, 1996, and in order to make the rule conform to current Ohio criminal practice.

1996:

The amendment deleted the rule's reference to proceedings "before court-appointed referees and magistrates." The deleted language was redundant, since proceedings before these judicial officers are "proceedings in the courts of this state." The amendment also

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C
Baldwin's Ohio Revised Code Annotated Currentness
Rules of Juvenile Procedure (Refs & Annos)

→ **Juv** R **35** Proceedings after judgment

(A) Continuing jurisdiction; invoked by motion

The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

(B) Revocation of probation

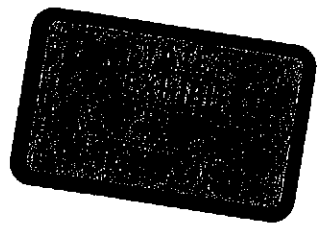
The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to **Juv.** R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to **Juv.** R. 34(C), been notified.

(C) Detention

During the pendency of proceedings under this rule, a child may be placed in detention in accordance with the provisions of Rule 7.

(Adopted eff. 7-1-72; amended eff. 7-1-94)

HISTORICAL AND STATUTORY NOTES

Amendment Note: The 7-1-94 amendment made changes to reflect gender-neutral language.

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