IN THE SUPREME COURT OF OHIO

IN RE: J.F., a minor child	:	CASE NO. 07-2239
	:	On appeal from the Greene County Court of Appeals, Second Appellate District

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REPLY BRIEF OF APPELLANT J.F.

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SUPREME COURT OF OHIO

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STATEMENT OF THE CASE AND FACTS

Appellant rests on his Statement of the Case and Facts as were raised in his Merit Brief.

PROPOSITION OF LAW I

A juvenile's suspended commitment may not be imposed after the juvenile has successfully completed his period of probation and has been released therefrom.

I. J.F. successfully completed probation and probation was terminated by the juvenile court on March 1, 2006. Thus, the court could not impose J.F.'s suspended commitment to the Department of Youth Services six months later.

In its Answer, the State concedes that "Appellant's status on community control was terminated at his March 1, 2006 Probation Termination Hearing." Answer, p. 3. Later, the State asserts that "Monitored Time is essentially non-reporting probation." Answer, p. 11. Thus, if the juvenile court terminated J.F.'s probation, his prior suspended commitment could no longer be imposed. See *In re Cross*, 96 Ohio St.3d 328, 2002 Ohio 4183, 774 N.E.2d 258.

The General Assembly enacted Chapter 2152.19 to give courts a variety of dispositions for handling delinquency cases. Specifically, community control can be structured several different ways depending upon the nature of the case and the child. R.C. 2152.19(A)(4). Community control may involve: intensive or basic probation; day reporting; community service; attendance at work or school; curfew; monitored time; and abiding the law. Notably, monitored time is specifically listed as a form of community control within the juvenile statute. R.C. 2152.19(A)(4)(i).

II. The cases cited by the State were either overruled by *In re Cross*, rely on the reasoning expressly rejected in *Cross* or are inapplicable to J.F.'s case.

The State argues that J.F.'s suspended commitment could be imposed because monitored time (non-reporting probation) was not extinguished with the termination of probation. Answer, p. 7. The State believes this extended ability to impose suspended commitments is supported by the fact that "[i]n Ohio, juvenile courts are authorized to retain jurisdiction over a delinquent child until the child attains the age of 21." Answer, p. 4. To support this rationale, the State

cites cases that were either directly overruled by this Court's decision in *Cross*, or sets forth reasoning rejected by *Cross*.

The State cites *In re Bracewell* (1998), 126 Ohio App.3d 133, 709 N.E.2d 938, for the proposition that appellate courts "have held that a juvenile court's jurisdiction to reinstate commitment may continue even after the juvenile is released from probation." Answer, p. 8. First, *Bracewell* was overruled by this Court in *Cross*. *Bracewell* had erroneously extended the juvenile court's role in abuse, neglect and dependency cases into the realm of juvenile delinquency so that the "child's welfare" was always subject to court review. In rejecting this expansive role in juvenile delinquency matters, this Court stated:

> There is a clear difference between the role and power of the juvenile court in delinquency matters as opposed to matters involving abused or neglected children. The criminal aspects of juvenile delinquency proceedings require greater constraints on juvenile courts. We therefore reject the holding the *Bracewell* court making R.C. 2151.353(E)(1) applicable to matters arising under former R.C. 2151.355.

Cross at ¶ 25. Indeed, the continuing jurisdiction in abuse, neglect and dependency cases is distinct from that in delinquency matters where the threat of actual incarceration lasts only as long as the probation lasts. Id. at ¶ 27.

Likewise, the State's reliance on *In re Braun*, 4th Dist. App. No. 01CA42, 2002-Ohio-3021, *In the Matter of Ravenna T.* (Aug. 1, 1997), Lucas App. No. L-96-371, 1997 Ohio App. LEXIS 3370, and *In re Proctor* (Dec. 24, 1997), Summit App. No. 18257, 1997 Ohio App. LEXIS 5761, is misplaced. As an initial matter, all of the cases cited pre-date *Cross*. Second, all of the cases rely on the faulty reasoning of *Bracewell*, i.e., that the jurisdiction of the juvenile court continues until the child reaches age 21, regardless of whether probation was successfully terminated.

Lastly, the State cites to *In re Walker*, Franklin App. No. 02AP-421, 2003-Ohio-2137, in support of its position that J.F. did not have a legitimate expectation that his suspended commitment terminated as he was still subject to monitored time. *Walker* is inapplicable to J.F.'s case. In *Walker*, the juvenile court never officially discharged Defendant Walker from probation. Id. at ¶ 20. Rather, the court clearly stated that probation would not terminate until all conditions were completed and kept extending probation for Walker. Thus, the threat of actual incarceration continued. In J.F.'s case, however, he successfully completed community control and his community control period was officially terminated on March 1, 2006. (3/1/06 Tp. 7-8). And, because community control was terminated, J.F. did have a legitimate expectation that his suspended commitment was terminated and could not be imposed.

III. Continuing jurisdiction is unnecessary in juvenile delinquency cases.

The State cites no statutory authority for the proposition that a juvenile court maintains continuing jurisdiction in a delinquency case. There is no provision for extending the court's jurisdiction past a child's successful completion of community control and the termination of that community control solely for the purpose of "monitored time."

Abuse, neglect, and dependency cases are different from delinquency cases and are monitored differently. Indeed, the General Assembly took special care in drafting the relevant code sections to provide for abused, neglected and dependent children during their minority. Specifically, R.C. 2151.353(E)(1) provides that the court retains continuing jurisdiction over abused, neglected or dependent children until the child turns eighteen or is adopted.[1] Id. By its very nature, R.C. 2151.353(E)(1) does not apply to delinquent children. In delinquency cases

[1] R.C. 2151.353(E)(1) extends jurisdiction to age twenty-one for a child adjudicated abused, neglected and/or dependent when that child is mentally retarded or physically impaired. Where Children's Services has custody over an older child, the court may retain jurisdiction for a specified period of time to enable the child to graduate from high school or vocational school.

continuing jurisdiction is unnecessary. The court retains jurisdiction over a juvenile on community control (probation and parole) and can effectuate the juvenile's rehabilitation while the juvenile is reporting to the court. If a juvenile is not on community control, the juvenile becomes subject to the court's jurisdiction if he commits an offense. The juvenile who has not committed a new offense and is not on community control does not require the "guiding hand" of the court. Had the general assembly intended to bestow never-ending jurisdiction in delinquency cases, it would have done so just as it did in abuse, neglect, and dependency cases.

Ohio Revised Code 2152.22(D) and Juv. R. 35 bestow jurisdiction on the juvenile court to impose a suspended commitment upon a violation of post-release terms and conditions (if the youth was released from the Department of Youth Services on judicial or early release) or violation of the terms and conditions of community control. No other means to impose a suspended commitment exist. Thus, "monitored time" cannot be utilized to extend the court's jurisdiction. See *Cross* at ¶ 27 (There is no statutory authority that allows a juvenile court to suspend a DYS commitment outside of probation.).

After successfully completing community control, paying restitution costs, and completing counseling, J.F. was released from community control on March 1, 2006. On August 31, 2006, J.F. entered an admission to one count of possession of controlled substance (R.C. 2925.11(A), minor misdemeanor if committed by an adult) and one count of possession of drug paraphernalia (R.C. 2925.14, misdemeanor of the fourth degree if committed by an adult).[2] The dispositional options for low-level misdemeanors do <u>not</u> include incarceration in a Department of Youth Services Facility. J.F., however, was sent to the Department of Youth Services for a

[2] J.F. entered this admission without counsel. This issue is addressed in the amicus brief filed with this Court on May 27, 2008.

minimum of six months and a maximum of his 21st birthday immediately after admitting to the drug offenses, because the prior suspended commitment was imposed by the juvenile court.

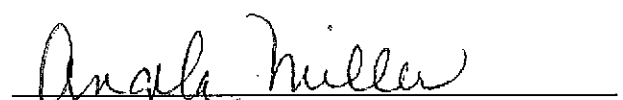
CONCLUSION

A juvenile's suspended commitment may not be imposed after the juvenile has successfully completed his period of community control and has been released therefrom. Accordingly, the imposition of J.F.'s suspended commitment under the guise of "monitored time" after his period of community control ended, violated his rights to notice, due process and equal protection.

The State's arguments to the contrary are without merit. The decision below must be reversed and J.F. discharged from any community control in effect as a result of the underlying theft offenses.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER



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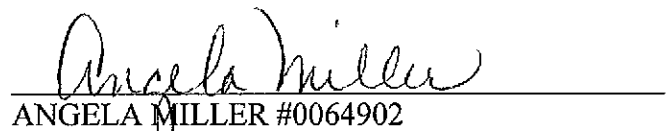
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded by regular U.S. Mail this 28th day of July, 2008 to the office of Ms. Elizabeth Ellis, Assistant Greene County Prosecutor, 61 Greene St., 2nd Floor, Xenia, Ohio 45385.



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IN THE SUPREME COURT OF OHIO

IN RE: J.F., a minor child	:	CASE NO. 07-2239
	:	On appeal from the Greene County Court of Appeals, Second Appellate District

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APPENDIX TO

REPLY BRIEF OF APPELLANT J.F.

LEXSEE 2002 OHIO 3021

In re: Jeffery Braun, a.k.a., Jeffrey Braun, Adjudicated delinquent child, Appellant.

Case No. 01CA42

COURT OF APPEALS OF OHIO, FOURTH APPELLATE DISTRICT, WASHINGTON COUNTY

2002 Ohio 3021; 2002 Ohio App. LEXIS 3069

June 19, 2002, Filed

DISPOSITION: [**1] Juvenile court's judgment was affirmed.

COUNSEL: Teresa D. Schnittke, Lowell, Ohio, for appellant, Jeffery Braun. [1]

1 Different counsel represented Braun in the trial court.

Mark Kerenyi, Marietta, Ohio, for appellee, the State of Ohio.

JUDGES: Harsha, J.: Concurs with Concurring Opinion Evans, J.: Concurs in Judgment and Opinion Roger L. Kline, Judge.

OPINION BY: Roger L. Kline

OPINION

DECISION AND JUDGMENT ENTRY

Kline, J.:

[*P1] Jeffery Braun appeals his commitment to the Ohio Department of Youth Services ("DYS") by the Washington County Juvenile Court. The trial court initially sentenced Braun to both a suspended commitment to DYS, conditioned upon Braun's good behavior, and to a period of probation. The court later released Braun from probation. After his release from probation, however, Braun misbehaved and the court lifted the suspension on the initial commitment to DYS. Braun contends on appeal that the trial court committed plain error in imposing the suspended commitment, violating his right to equal protection, due process, and freedom from double jeopardy. Because the trial court retained jurisdiction over Braun until the age of twenty-one, and further because the trial court originally [**2] imposed probation in addition to the suspended DYS commitment, not as an alternative to the DYS commitment, we disagree. Braun also contends that his trial counsel was ineffective in failing to object to the DYS commitment. Having found no error with the commitment, and further noting that Braun's counsel acted in accordance with the wishes Braun expressed at his hearing, we disagree. Accordingly, we overrule each of Braun's assignments of error and affirm the judgment of the trial court.

I.

[*P2] On June 16, 1998, Braun admitted to an allegation of delinquency arising from actions that, if committed by an adult, would constitute assault, a fifth degree felony violation of *R.C. 2903.13(A)*. In its journal entry the trial court stated:

> [*P3] 1. The child is committed to the legal custody of the Ohio Department of Youth Services for institutionalization for an indefinite term consisting of a minimum period of six (6) months and a maximum period not to exceed the child's attainment of the age of twenty-one, pursuant to *O.R.C. 2151.355(A)(4)*.
>
> [*P4] 2. The above order committing the child to the legal custody [**3] of the Ohio Department of Youth Services is hereby Suspended upon condition he be of good behavior;
>
> [*P5] 3. The child is placed on probation;
>
> [*P6] * *.

[*P7] On January 19, 1999, the trial court found that Braun had satisfactorily abided by the terms of his

probation and, therefore, ordered him discharged from probation. The journal entry did not mention Braun's suspended commitment to DYS.

[*P8] Following his discharge from probation, the trial court adjudicated Braun delinquent on a second, unrelated assault charge, and committed him to the Washington County Juvenile Center ("WCJC.") While at the WCJC, Braun received 130 incident reports, escaped from the facility, and accumulated 4,695 negative points for his behavior. Additionally, he was charged with a third assault arising from an incident at the WCJC on October 16, 2001.

[*P9] On October 25, 2001, a Washington County Juvenile Probation Officer filed a motion for further disposition in Braun's original assault case, alleging that Braun had not been of good behavior as required by the DYS suspension. The trial court held a hearing at which Braun was accompanied by his mother and his attorney. [**4] Braun admitted that he was not of good behavior, whereupon the following dialogue occurred:

> [*P10] THE COURT: Do you understand by admitting to this motion that you will be sent to the [DYS] for a minimum period of six months to a maximum age of twenty-one?
>
> [*P11] BRAUN: Yes, sir.
>
> [*P12] THE COURT: The other case, 2001-DE-1020, alleges a misdemeanor assault which occurred on or about October 16th, 2001 * * *. It's the court's desire, Jeff, to have you admit to that, put you back in the [WCJC] program, and hopefully get you to complete it. But you'd rather admit to the suspended - or to the motion in the DYS case, is that correct?
>
> [*P13] BRAUN: Yes, sir.
>
> [*P14] THE COURT: Do you understand that you have a choice of completing that [WCJC] program at the Juvenile Center, as long as you make significant progress during the next sixty days, I would not send you to DYS?
>
> [*P15] BRAUN: I understand.
>
> [*P16] THE COURT: But you still wish to just admit and be sent in the DYS case and terminate from the Juvenile Center, is that correct?
>
> [*P17] BRAUN: Yes, sir.

[*P18] Based upon Braun's admission, the trial court imposed the previously [**5] suspended commitment to DYS. Additionally, the court dismissed the new misdemeanor assault allegation in case number 2001-DE-1020 and terminated Braun's probation and commitment to the WCJC in his second assault case.

[*P19] Braun now appeals, asserting the following assignments of error:

> [*P20] THE TRIAL COURT COMMITTED PLAIN ERROR IN IMPOSING A SUSPENDED COMMITMENT AFTER THE JUVENILE APPELLANT'S PERIOD OF PROBATION HAD ENDED.
>
> [*P21] THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO EQUAL PROTECTION OF THE LAW AS GUARANTEED BY THE *FOURTEENTH AMENDMENT TO THE UNITED STATES CONSITIUTION* AND *ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION*, BY IMPOSING APPELLANT'S SUSPENDED COMMITMENT AFTER HIS DISCHARGE FROM PROBATION.
>
> [*P22] THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO NOTICE AND DUE PROCESS OF LAW AS GUARANTEED BY THE *FIFTH* AND *FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION* AND BY ARTICLE I, SECTION 16, OF THE OHIO CONSITTUTION BY IMPOSING APPELLANT'S SUSPENDED COMMITMENT AFTER HIS DISCHARGE FROM PROBATION.
>
> [*P23] THE TRIAL COURT VIOLATED APPELLANT'S RIGHT NOT TO BE PUNISHED TWICE FOR THE SAME OFFENSE AS GUARANTEED BY THE *DOUBLE JEOPARDY CLAUSES* [**6] *OF THE FIFTH* AND *FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION* AND BY *ARTICLE I, SECTION 10,OF THE OHIO CONSTITUTION*, BY IMPOSING APPELLANT'S SUSPENDED COMMITMENT AFTER HIS DISCHARGE FROM PROBATION.

[*P24] APPELLANT'S TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO THE IMPOSITION OF A SUSPENDED COMMITMENT AFTER APPELLANT'S DISCHARGE FROM PROBATION.

II.

[*P25] In his first through fourth assignments of error, Braun challenges the constitutionality of the trial court imposing a suspended commitment upon him after the court had discharged his period of probation. Braun acknowledges that he did not object to the commitment at trial, but asserts that the trial court's action amounts to plain error, as well as a violation of his rights to equal protection, due process, and freedom from double jeopardy.

III.

[*P26] The version of *R.C. 2151.355(A)* that was in effect at the time of the trial court's initial dispositional order in this case provided the court with numerous dispositional options. These options included probation (*R.C. 2151.355(A)(2)*), and commitment to the DYS (*R.C. 2151.355(A)(4)* [**7]). Additionally, *R.C. 2151.355(A)(12)* authorized the court to "make any further disposition that the court finds proper." The General Assembly did not list these dispositional options in the alternative in the statute. Therefore, the court possessed the authority to issue any number of the dispositional orders listed.

[*P27] In this case, the trial court imposed both a suspended term of commitment to the DYS and a period of probation. The two dispositions were listed in separate paragraphs and were not made contingent upon one another. Thus, contrary to Braun's contention, his suspended DYS commitment in this case was never contingent upon him successfully completing the terms of his probation. Rather, the suspended DYS commitment was contingent upon Braun's good behavior through the age of twenty-one, regardless of his probation status.

[*P28] Within this analytical framework, we consider each of Braun's assignments of error in turn.

A.

[*P29] In asserting that the trial court committed plain error by lifting the suspension of his commitment to the DYS, Braun first challenges the trial court's subject matter jurisdiction. Braun notes [**8] that several Ohio courts have held that when a period of probation ends, the subject matter jurisdiction of the sentencing court terminates. See *State v. Jones (1997), 123 Ohio App.3d 144, 703 N.E.2d 833*; *State v. Jackson (1995), 106 Ohio App.3d 345, 666 N.E.2d 255*; *State v. Jackson (1988), 56 Ohio App.3d 141, 565 N.E.2d 848*. However, a juvenile court's jurisdiction to reinstate an order of commitment may continue even after the juvenile is released from probation. See *In re Bracewell (1998), 126 Ohio App.3d 133, 137, 709 N.E.2d 938*, citing *In re Ravanna T. (Aug. 1, 1997), 1997 Ohio App. LEXIS 3370*, Lucas App. No. L-96-371. See, also, *In re Cross (Dec. 11, 2000), 2000 Ohio App. LEXIS 5814*, Stark App. No. 2000CA00122, discretionary appeal allowed (2001), *91 Ohio St. 3d 1513, 746 N.E.2d 614*; *In re DaCosta (Mar. 6, 2002), 2002 Ohio App. LEXIS 917*, Lorain App. No. 01CA007877.

[*P30] In *Bracewell*, the majority reasoned that because dispositions in delinquency proceedings are not punitive in nature, but rehabilitative, the trial court retained jurisdiction to rehabilitate the child even after the period of probation ended. The dissenting judge argued for a narrower view of the juvenile [**9] court's jurisdiction, reasoning that the court could impose the suspended commitment after successful completion of probation only "if the court conditioned the suspended commitment on a separate order of unlimited duration in addition to probation * * *." *Bracewell 126 Ohio App. 3d at 142*, (Painter, J., dissenting), citing *Ravanna T., supra*, and *In re Proctor (Dec. 24, 1997), 1997 Ohio App. LEXIS 5761*, Summit App. No. 18257. Thus, even the dissenting viewpoint, upon which Braun relies in his brief, holds that juveniles may, in some instances, be subject to the jurisdiction of the juvenile court even after they have been discharged from probation. Likewise, in *Ravanna T.*, the appellate court held that the trial court's suspension of a DYS commitment continued to age twenty-one despite the juvenile's successful completion of his probation period, because the trial court conditioned the suspension not only on the completion of probation, but also on the juvenile's continued compliance with the law.

[*P31] In this case, the court conditioned Braun's suspended commitment on a separate order requiring Braun to be of good behavior in addition to the probation order. Thus, we find that the court retained jurisdiction [**10] over Braun and was free to lift the suspended DYS commitment upon Braun's admission that he was not of good behavior. Accordingly, we overrule Braun's first assignment of error.

B.

[*P32] In his second assignment of error, Braun asserts that the trial court's commitment of him after releasing him from probation violates equal protection because a court cannot revoke an adult's probation after the adult's term of probation expires. However, as noted above, the trial court did not revoke Braun's probation in

this case. Rather, the court imposed a suspended commitment. While juveniles facing commitment are protected by the Constitution, *In re Gault (1967), 387 U.S. 1, 18 L. Ed. 2d 527, 87 S. Ct. 1428, 40 Ohio Op. 2d 378*, Braun has not argued that the court's jurisdiction over him until the age of twenty-one, nor the court's power to suspend a commitment until the age of twenty-one, is unconstitutional. See *R.C. 2151.49*; *Bracewell* 126 Ohio App. LEXIS at 142. In imposing the suspended commitment, the court merely exercised its continuing jurisdiction over Braun. Therefore, this case is not analogous to that of an adult who has completed a period of probation. We find [**11] that the trial court did not violate Braun's right to equal protection. Accordingly, we overrule Braun's second assignment of error.

C.

[*P33] In his third assignment of error, Braun asserts that the trial court violated his rights to notice and due process of law by imposing his suspended commitment after his discharge from probation. Braun asserts that, because the trial court discharged him from probation, he had no way of knowing that the conditions of his probation were still enforceable against him.

[*P34] Again, we note that the trial court lifted the suspension on Braun's commitment to the DYS not based upon a probation violation, but based upon Braun's violation of the condition of good behavior. The language of the original disposition reveals that trial court clearly issued the good behavior requirement separate and apart from the probation requirement, giving Braun notice that the good behavior requirement continued through the age of twenty-one.

[*P35] Moreover, while the terms of Braun's probation are not in the record, probation generally includes restrictions and requirements, such as reporting to a probation officer, which are lifted when one [**12] is discharged from probation. Given the clarity of the trial court's original order, the lifting of these restrictions and requirements could not have reasonably signaled to Braun that he no longer needed to be of good behavior to continue the suspension of his commitment.

[*P36] Thus, we find that the trial court did not violate Braun's rights to notice and due process when it lifted the suspension upon his commitment to DYS. Accordingly, we overrule Braun's third assignment of error.

D.

[*P37] In his fourth assignment of error, Braun asserts that the trial court violated his right not to be punished twice for the same offense when it lifted the suspension on his DYS commitment after he had completed a period of probation for the same offense.

[*P38] As we noted above, *R.C. 2151.355(A)*, as it existed at the time of the original dispositional order in this case, provided the court with numerous dispositional options, including probation, commitment to the DYS, and any other disposition that the court deemed proper. See *R.C. 2151.355(A)*. The General Assembly did not list these dispositional options in the [**13] alternative in the statute. Therefore, pursuant to *R.C. 2151.355(A)*, the court possessed the authority to issue any number of the dispositional orders listed. Braun has not challenged the constitutionality of *R.C. 2151.355(A)* on its face, and we presume the constitutionality of legislative enactments. See *Anderson Twp. Bd. of Trustees v. Tracy (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174*, citing *State ex rel. Dickman v. Defenbacher (1955), 164 Ohio St. 142, 57 Ohio Op. 134, 128 N.E.2d 59*, paragraph one of the syllabus.

[*P39] In this case, the trial court imposed a suspended term of commitment to the DYS in one paragraph of its dispositional order and a period of probation in a separate paragraph of its dispositional order. Thus, the trial court's dispositional order, imposing both a suspended commitment contingent upon good behavior and a period of probation, complied with *R.C. 2151.355(A)*. Therefore, we find that the trial court did not violate Braun's constitutional protection from double jeopardy by ordering both dispositions. Accordingly, we overrule Braun's fourth assignment [**14] of error.

IV.

[*P40] In his fifth and final assignment of error, Braun asserts that he did not receive effective assistance of counsel in the trial court because his counsel failed to object to the trial court lifting the DYS suspension on the grounds that Braun had already been released from probation.

[*P41] In *State v. Ballew (1996), 76 Ohio St. 3d 244, 255, 667 N.E.2d 369*, the Ohio Supreme Court stated the following:

> [*P42] Reversal of a conviction or sentence based upon ineffective assistance requires (a) deficient performance, "errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment"; and (b) prejudice, "errors * * * so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland v. Washington (1984), 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052.*

[*P43] As to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland 466 U.S. at 689*. Furthermore, "the defendant must overcome the presumption that, under [**15] the circumstances, the challenged action might be considered sound trial strategy." *Id.*

[*P44] In this case, Braun can demonstrate neither deficient performance nor prejudice. With regard to prejudice, as we have found in our analysis of Braun's first four assignments of error, the trial court did not err in imposing the suspended DYS commitment and, therefore, the outcome would not clearly have been different but for counsel's failure to object. As to deficient performance, given Braun's statement of his wishes before the trial court, counsel's actions were geared toward obtaining the result Braun desired. Thus, counsel's actions constituted sound trial strategy.

[*P45] Accordingly, we overrule Braun's final assignment of error, and we affirm the judgment of the trial court.

JUGDMENT AFFIRMED.

Harsha, J.: Concurs with Concurring Opinion

Evans, J.: Concurs in Judgment and Opinion

For the Court

BY: Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

CONCUR BY: Harsha

CONCUR

Harsha, [**16] J., concurring:

[*P46] I agree with the principle opinion that the grant of probation and the imposition of commitment are separate and divisible terms of the appellant's disposition. As noted above, *R.C. 2151.355(A)* provides for both. Moreover, *R.C. 2151.49* Suspension of Sentence (.) expressly provides that "where imprisonment is imposed as part of the punishment, the juvenile judge may suspend sentence . . . upon such condition as the juvenile judge imposes." Thus, a stay of commitment and a grant of probation are not one and the same. Appellant was required to comply with the conditions of both the stay and probation. His failure to do so properly results in the imposition of his commitment.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of [**17] the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 for the Rules of Appellate Procedure.

Exceptions.

LEXSEE 1997 OHIO APP LEXIS 5761

IN RE: JEREMY PROCTOR

C.A. NO. 18257

COURT OF APPEALS OF OHIO, NINTH APPELLATE DISTRICT, SUMMIT COUNTY

1997 Ohio App. LEXIS 5761

December 24, 1997, Decided

PRIOR HISTORY: [*1] APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT. COUNTY OF SUMMIT, OHIO. CASE NO. 95-8-3751.

DISPOSITION: Judgment affirmed.

COUNSEL: DONALD J. MALARCIK, JR., Attorney at Law, Akron, Ohio, for Appellant.

MAUREEN O'CONNOR, Prosecuting Attorney, and PAUL MICHAEL MARIC, Assistant Prosecuting Attorney, Akron, Ohio, for Appellee.

JUDGES: WILLIAM R. BAIRD, Judge. DICKINSON, P. J. SLABY, J. CONCUR.

OPINION BY: WILLIAM R. BAIRD

OPINION

DECISION AND JOURNAL ENTRY

Dated: December 24, 1997

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Judge.

On September 5, 1995, Jeremy Proctor, a juvenile, was adjudicated delinquent by reason of Robbery, in violation of *R.C. 2911.02*, which would be a second degree felony if committed by an adult. A magistrate recommended that Proctor be ordered into the Youth Outreach Program, that he be committed to the Ohio Department of Youth Services ("DYS") for a minimum of one year, and that the commitment be suspended for one year pursuant to *R.C. 2151.49*, pending good behavior and completion of the program. The juvenile judge adopted the magistrate's decision, therefore [*2] it became an order of the court. *R.C. 2151.49* provides in part:

Where imprisonment is imposed as part of the punishment, the juvenile judge may suspend sentence, before or during commitment, *upon such condition as he imposes.*

(Emphasis added.) Proctor was also placed on probation for a period of six months. This probationary period ended in May 1996.

On June 9, 1996, Proctor violated the court's order by engaging in disorderly conduct, in violation of *R.C. 2917.11(A)*, a minor misdemeanor if committed by an adult, and criminal damaging, in violation of *R.C. 2909.06*, a misdemeanor of the second degree if committed by an adult. He was adjudicated delinquent on September 13, 1996. On that same day, a complaint alleging that Proctor had violated an order of the court was filed by Proctor's probation officer. On September 30, 1996, the juvenile court reimposed Proctor's suspended term of commitment. Proctor was admitted to a DYS detention center for a minimum of one year and a maximum period not to exceed his attainment of twenty-one years of age. Proctor appeals, assigning one error.

Proctor's assignment of error states:

THE TRIAL COURT LACKED AUTHORITY AND OR JURISDICTION [*3] TO REIMPOSE APPELLANT'S TERM OF COMMITMENT.

Proctor argues that because his probationary period had ended before the June 9, 1996 incident which led to his adjudication as a delinquent by reason of disorderly conduct and criminal damaging, the juvenile court had no jurisdiction to reimpose his suspended commitment. Proctor also argues that the juvenile court's order suspending his term of commitment pending good behavior

for one year had also expired before he was adjudicated delinquent on September 13, 1996. Although he was charged prior to September 5, 1996, Proctor argues that he was presumed innocent and therefore no violation of the court order occurred until after he was adjudicated delinquent on September 13, 1996.

Proctor's reasoning is faulty. As an initial matter, we must note that Proctor's probation and his suspended sentence are two different things. While it is true that Proctor's *probationary* period had expired before he engaged in the delinquent conduct of June 9, 1996, the juvenile court's *order* requiring good behavior had not yet expired. That his adjudication as a delinquent child by reason of disorderly conduct and criminal damaging did not occur until [*4] after the court order expired does not negate the fact that the *conduct* underlying the adjudication occurred within that year.

"There is a stark contrast between criminal and juvenile law. The juvenile code allows more discretion in fashioning dispositional sentences. *R.C. 2151.355(A)(12)* [1] permits the court, subject to certain exceptions, to make 'any further disposition that the court finds proper.'" *In re Kelly (Nov. 7, 1995), 1995 Ohio App. LEXIS 4961*, Franklin App. No. 95APF05-613, unreported. The juvenile court's September 5, 1995 order states that the term of commitment was suspended pending Proctor's "good behavior." The order does not say "pending no adjudication of delinquency." In plain English, the court's order means that Proctor may have his freedom from commitment as long as he behaves well. Proctor did not comply. He behaved badly on June 9, 1996, by involving himself in a fight and breaking the rear window of a car with a brick. [2] The juvenile court may order reinstatement of a suspended commitment for lack of good behavior. *In re Griffin (Sept. 27, 1996), 1996 Ohio App. LEXIS 4299*, Union App. No. 14-96-14, unreported.

1 This provision was formerly found in section (A)(11).

[*5]

2 In the complaint alleging that Proctor had violated a court order, Proctor's probation officer commented that Proctor had acquired *four* new referrals since being placed on probation. Some of these referrals did not result in formal charges.

Among the stated purposes of *R.C. 2151.01 et seq.* are the supervision, care and rehabilitation of children committing delinquent acts. *R.C. 2151.01(B)*. These purposes cannot be fulfilled if the juvenile is allowed to violate a court order and then use the time it takes to investigate the allegations and initiate the juvenile processes as a shield.

Another purpose of *R.C. 2151.01 et seq.* is to achieve the above-stated purposes, *whenever possible,* in a family environment, separating the child from his parents only where such separation is necessary for his welfare or in the interests of public safety. *R.C. 2151.01(C)*. Where an attempt to rehabilitate an adjudicated delinquent in a family environment proves unworkable, the juvenile court may impose a term with DYS. *In re Kelly, supra.*

Proctor violated an express order of the juvenile [*6] court by engaging in delinquent conduct. A trial court has the power to incarcerate an individual for violating a court order. *Id.* The juvenile court determined that because Proctor continued to get into trouble, his interests and the interests of the public could be better served if he were committed.

Because Proctor violated an order of the juvenile court and was charged before that order had expired, the juvenile court did not lack jurisdiction to reimpose Proctor's term of commitment to DYS. Proctor's assignment of error is overruled and the judgment of the trial court is affirmed.

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.

WILLIAM [*7] *R. BAIRD*

FOR THE COURT

DICKINSON, P. J.

SLABY, J.

CONCUR

LEXSEE 1997 OHIO APP LEXIS 3370

In the matter of: Ravanna T. Alleged Delinquent/Unruly Child

Court of Appeals No. L-96-371

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY

1997 Ohio App. LEXIS 3370

August 1, 1997, Decided

PRIOR HISTORY: [*1] Trial Court No. 96030247.

DISPOSITION: JUDGMENT AFFIRMED.

COUNSEL: Penny H. Nasatir, for appellant.

Julia R. Bates, prosecuting attorney, and Perry F. Driscoll, for appellee.

JUDGES: George M. Glasser, J., James R. Sherck, J., Richard W. Knepper, J., CONCUR.

OPINION BY: JAMES R. SHERCK

OPINION

OPINION AND JUDGMENT ENTRY

SHERCK, J. This appeal comes to us from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division in a delinquency case. Because we conclude that the trial court did not abuse its discretion when it rescinded its stay of a prior dispositional order, we affirm.

In December 1994, appellant, Ravanna T., who was then fourteen years old, was found to be delinquent by the juvenile court. On disposition, the court committed appellant to the Department of Youth Services ("DYS") for a minimum period of one year until age twenty-one. However, appellant was placed on probation and the commitment order was stayed "on condition of no violation of court order, probation or any law." In November 1995 appellant's probation was officially terminated.

In February 1996, appellant was charged with delinquency based on an alleged violation of a local safe school ordinance. [*2] In September 1996, he again was found to be delinquent. On disposition, the trial court rescinded the stay given on the prior disposition and reinstated the one year commitment to DYS.

Appellant now appeals, setting forth the following sole assignment of error:

"THE COURT COMMITTED REVERSIBLE ERROR BY RESCINDING THE STAY ON A CASE, AND COMMITTING THE JUVENILE TO DYS, EVEN THOUGH HIS PROBA TION ON THE UNDERLYING CASE HAD BEEN TERMI NATED. THE COMMITMENT WAS NOT IN THE JUVE NILE'S BEST INTEREST."

As we have previously recognized, the purpose of *R.C. Chapter 2151* is to provide

"for the care, protection, and mental and physical development of children * * * to protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation." *R.C. 2151.01(A)-(B).*

A child is not a criminal by reason of any juvenile court adjudication, and civil disabilities ordinarily following adult conviction do not attach. *R.C. 2151.35.* Therefore, while a juvenile court must observe some due process requirements (i.e., right to counsel, [*3] right against self-incrimination, notice of charges and the conduct of a hearing), wide latitude is given to the juvenile court in conducting its proceedings. See *In re Gault (1967), 387 U.S. 1, 27, 18 L. Ed. 2d 527, 87 S. Ct. 1428.* A juvenile court's dispositional order is a "discretionary act." See *In re: Joseph S.* (Apr. 19, 1996), Lucas App. No. L-95-148, unreported; *In re Anthony M. (Mar. 10, 1995), 1995 Ohio App. LEXIS 840,* Lucas App. No. L-94-204, unreported. As a result, an appellate court will only reverse such an order where the juvenile court abuses that discretion. *Id.*

R.C. 2151.355(A) sets forth the dispositional options available to a juvenile court upon an adjudication of delinquency. Among those options are the commitment of the child to DYS for an indefinite period of time from six months up until the child reaches the age of twenty-one. *R.C. 2151.355(A)(4)-(6)*. The juvenile court may also stay the execution of such commitments and either place the child on probation subject to certain conditions or simply return the child to the custody of his or her parents, subject to certain conditions. *R.C. 2151.355(A)(1),(2)* and*(11)*.

In this case, appellant essentially argues that the termination of his probation constituted [*4] an end to his "sentence" for the first delinquency charge. However, the trial court reserved jurisdiction over appellant until his twenty-first birthday by conditioning the stay not only on appellant's compliance with the conditions of probation, but also on his not violating "any law." Therefore, despite appellant's successful completion of his probation period, the stay continued until age twenty-one and could be revoked if appellant violated any other laws. Upon review of the record in this case, we cannot say that the trial court abused its discretion in rescinding its prior dispositional stay when appellant was again adjudicated delinquent in violation of its original order.

Accordingly, appellant's sole assignment of error is not well-taken.

The judgment of the Lucas County Court of Common Pleas, Juvenile Division is affirmed. Court costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to *App.R. 27*. See, also, *6th Dist.Loc.App.R. 4*, amended 7/1/92.

George M. Glasser, J.

James R. Sherck, J.

Richard W. Knepper, J.

CONCUR.

LEXSEE 2003 OHIO 2137

In the Matter of: Christopher M. Walker, Delinquent Minor child, (Appellant).

No. 02AP-421

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN COUNTY

2003 Ohio 2137; 2003 Ohio App. LEXIS 2019

April 29, 2003, Rendered

SUBSEQUENT HISTORY: Discretionary appeal not allowed by *In re Walker, 795 N.E.2d 681, 2003 Ohio LEXIS 2265 (Ohio, Sept. 10, 2003)*

PRIOR HISTORY: [**1] APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch. (C.P.C. No. 98JU10-10765).

DISPOSITION: Affirmed.

COUNSEL: Ron O'Brien, Prosecuting Attorney, and Katherine J. Press, for appellee.

Yeura R. Venters, Public Defender, and Paul Skendelas, for appellant.

JUDGES: PETREE, P.J. BRYANT and BROWN, JJ., concur.

OPINION BY: PETREE

OPINION

(REGULAR CALENDAR)

PETREE, P.J.

[*P1] This is an appeal by appellant, Christopher M. Walker, from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, wherein the court granted appellee State of Ohio's objections to a magistrate's decision.

[*P2] On October 23, 1998, appellant, then 12 years old, entered an admission to one count of raping his then nine-year-old biological sister, in violation of *R.C. 2907.02(A)(1)(b)*, which would be a first degree felony if committed by an adult. After a December 1, 1998 dispositional hearing, a magistrate issued a decision, which stated, in relevant part:

[*P3] "On December 1, 1998 it is the decision of the magistrate that the following orders shall issue:

[*P4] "* * * Place [**2] [appellant] on official probation until December 1, 2000, subject to the rules and regulations attached. Order that probation not terminate, but continue until further court hearing, if during the probation term Christopher Walker truants home or placement, removes himself from the jurisdiction of the court, or if a motion alleging violation of probation is filed.

[*P5] "Make Christopher Walker a ward of the court and temporarily commit [him] to the temporary custody of Franklin County Children Services. Said temporary custody to continue until further order of the court. * * *"

[*P6] The magistrate's decision was filed December 8, 1998. Attached to and filed with the magistrate's decision were the "Terms and Conditions of Probation," which indicated, in pertinent part, that appellant "was placed on probation for a period of 24 months, under the following terms and conditions until 12/1/2000 or until all conditions have been completed." Among the terms and conditions listed were that appellant: not truant placement (Condition # 3); follow all rules of placement (Condition # 4); and "cooperate & complete all sexual offender counseling; end as necessary." (Condition [**3] # 9E). In its judgment entry filed the same day, the trial court incorporated by reference the thereto attached magistrate's decision and made it the judgment of the court.

[*P7] Pursuant to an annual review conducted in October 1999, the court maintained wardship of appellant and extended the temporary commitment order. In April 2000, the court, on motion of the state, terminated the temporary commitment order and replaced it with a planned permanent living arrangement ("PPLA") order

through Franklin County Children Services ("FCCS.") Pursuant to a second annual review conducted on December 1, 2000, the court maintained its wardship and extended the PPLA order.

[*P8] On February 21, 2001, appellant's probation officer filed a motion requesting the court to exercise its continuing jurisdiction, alleging that appellant had violated Condition # 3 of his probation because he had truanted placement. After a March 21, 2001 hearing, at which appellant entered an admission to the violation, a magistrate issued a decision finding that appellant had violated Condition # 3 of his probation. The magistrate also ordered that probation be maintained "subject to the rules and regulations [**4] previously imposed" and added the condition that appellant complete anger management counseling. By judgment entry filed April 2, 2001, the trial court adopted the magistrate's decision.

[*P9] On June 11, 2001, appellant's probation officer filed a second motion requesting the court to exercise its continuing jurisdiction, alleging that appellant had violated Condition # 4 of his probation because he had stolen $ 60 from his foster parent and was found with a bag of marijuana. Appellant admitted the probation violation. The state maintained that appellant should be permanently committed to the Ohio Department of Youth Services. Appellant's counsel requested that the magistrate consider a placement where appellant could receive treatment for his inappropriate sexual behaviors. By decision filed July 10, 2001, the magistrate found that appellant had violated Condition # 4, ordered FCCS to research available residential treatment options, and set the matter for hearing. The trial court adopted the magistrate's decision by judgment entry filed July 10, 2001. At the hearing held on July 13, 2001, the state informed the magistrate that appellant had been accepted into the Cove Prep [**5] residential treatment program for sexual offenders in Pennsylvania. By decision filed July 26, 2001, the magistrate extended probation until November 30, 2001, "subject to the rules and regulations previously imposed," maintained the PPLA, and agreed that FCCS could place appellant in the Cove Prep treatment facility. By judgment entry filed July 26, 2001, the trial court adopted the magistrate's decision

[*P10] On November 14, 2001, appellant's probation officer filed a third motion requesting that the court exercise its continuing jurisdiction to "consider an alternative disposition," i.e., to extend appellant's probation past November 30, 2001, on grounds that he would not be able to complete treatment at Cove Prep until after that date.

[*P11] After a hearing on November 30, 2001, a magistrate recommended that the court dismiss the request to extend probation on grounds that appellant had not violated a condition of probation. The magistrate's decision was filed December 12, 2001. The state filed timely objections to the decision. Appellant filed a memorandum contra the state's objections. Therein, appellant argued that he had not violated any of the terms of his [**6] probation, which, according to appellant, was to terminate on November 30, 2001. Appellant contended that "without any violations to consider, the Magistrate allowed his probation to terminate as previously ordered." (Jan. 16, 2002 Memo Contra, at 2.)

[*P12] A hearing on the state's objections was held on February 1, 2002, during which the court heard oral arguments from counsel for the prosecution, counsel for FCCS, and counsel for appellant, two probation officers, appellant's Cove Prep therapist, and appellant's mother. With the exception of appellant's counsel, all recommended that the court extend appellant's probation and order him to complete the Cove Prep treatment program; in addition, all maintained that the structure provided through probation was necessary for appellant to successfully complete the program and to provide additional support as appellant transitioned back into the community. Appellant's counsel argued that the court was without jurisdiction to extend appellant's probation because appellant had not violated the terms of his probation.

[*P13] The court filed a decision on April 8, 2002, in which it sustained the state's objections to the magistrate's [**7] decision. The court extended appellant's probation until August 1, 2002, "in accordance with [appellant's] December 8, 1998 filed terms and conditions of probation." (Apr. 8, 2002 Decision, at 7.) The court's decision included findings of fact and conclusions of law. In its findings of fact, the court found that appellant had been placed on probation until December 1, 2000, or until all probation conditions were completed; that one of the conditions of probation required that appellant complete sexual offender counseling; that appellant had not yet completed that counseling; that the prosecutor and appellant's therapist, probation officers, FCCS representative and mother all agreed that the structure provided through probation was necessary for appellant's successful completion of counseling and that he had previously failed to complete two prior treatment programs, in part due to his inability to self-regulate; and that it was in appellant's best interest to continue the Cove Prep counseling and have his probation extended until August 1, 2002.

[*P14] In its conclusions of law, the court determined, inter alia, that it had jurisdiction over the matter pursuant to *Juv.R. 35(A)*; [**8] that because the state's motion was not one to revoke probation made pursuant to *Juv.R. 35(B)*, there was no requirement that the state prove that appellant had violated a condition of probation; and that *R.C. 2151.355(A)(12)* gave the court au-

thority to "make any further disposition that the court finds proper." The court granted the state's objection on the basis that the state sought to extend probation in order to permit appellant to complete counseling and that appellant had not fully completed the terms and conditions of his probation imposed at the December 1, 2000 dispositional hearing. The court journalized its decision on April 8, 2002.

[*P15] Appellant timely appealed and advances two assignments of error for our review:

[*P16] "[1.] The trial court erred in extending Appellant's probation after it expired on December 1, 2000. This act violated Appellant's rights under the state and federal Constitutions.

[*P17] "[2.] The trial court erred in granting the State's November 14, 2001 motion to exercise continuing jurisdiction to extend Appellant's probation in the absence of a finding that he violated a condition of probation. [**9] "

[*P18] By his first assignment of error, appellant contends that the trial court erred in extending appellant's probation period past December 1, 2000. Appellant asserts that the trial court's actions constituted a violation of his rights to equal protection, due process, and freedom from double jeopardy.

[*P19] The version of *R.C. 2151.355(A)* in effect at the time of the trial court's initial dispositional order in this case provided the court with numerous dispositional options. These options included "any order that is authorized by *section 2151.353 of the Revised Code*," (*R.C. 2151.355[A][1]*), and "probation under any conditions that the court prescribes." (*R.C. 2151.355[A][2].*) In addition, *R.C. 2151.355(A)(12)* authorized the court to "make any further disposition that the court finds proper." Because the General Assembly did not list these dispositional options in the alternative, the court possessed the authority to issue any number of the options listed. *In re Braun, Washington App. No. 01CA42, 2002 Ohio 3021, at P26.* [**10]

[*P20] In the instant case, the trial court both committed appellant to the temporary custody of FCCS under *R.C. 2151.353(A)(2)* and imposed a period of probation upon him under *R.C. 2151.355(A)(2)*. Appellant contends that the order placing appellant on probation expressly set the termination date at December 1, 2000; therefore, because the court did not take some action prior to the expiration of the probation period, the court was without jurisdiction to adjudicate a probation violation or extend probation past December 1, 2000. Appellant notes that several Ohio courts have held that when no action is taken to commence a probation violation hearing during the original probation period, the court's subject matter jurisdiction ends when the period of probation ends. See, e.g., *State v. Jackson (1988), 56 Ohio App.3d 141, 565 N.E.2d 848*; *State v. Simpson (1991), 2 Ohio App.3d 40, 2 Ohio B. 44, 440 N.E.2d 617*; *State v. Yates (1991), 58 Ohio St.3d 78, 567 N.E.2d 1306*; and *State v. Sapp (June 11, 1983), Wood App. No. 92WD094, 1993 Ohio App. LEXIS 2896.* Appellant further points to *In re Cross, 96 Ohio St.3d 328, 2002 Ohio 4183, 774 N.E.2d 258,* [**11] wherein the Ohio Supreme Court recently held that "[a] juvenile court does not have the jurisdiction to reimpose a suspended commitment to a Department of Youth Services facility after a juvenile has been released from probation." Id. at syllabus. We find appellant's reliance on these cases misplaced. None contain conditional language such as that set forth in the court's order in the instant case. Further, in the juvenile cases upon which appellant relies, i.e., *Cross* and *Sapp*, the trial court had officially released or discharged the juveniles from probation prior to the time the disputed disposition was imposed.

[*P21] In *In re Caldwell (1996), 76 Ohio St.3d 156, 1996 Ohio 410, 666 N.E.2d 1367*, the Ohio Supreme Court clarified the purposes and goals underlying the juvenile court system: "to provide for the care, protection, and mental and physical development of children, to protect the public from the wrongful acts committed by juvenile delinquents, and to rehabilitate errant children and bring them back to productive citizenship, or, as the statute states, to supervise, care for and rehabilitate those children." *Id. at 157*, citing *R.C. 2151.01* [**12] . As such, the juvenile court is given the discretion to take any steps "necessary to fully and completely implement the rehabilitative disposition of a juvenile under *R.C. 2151.355*." *Id. at 159*. The juvenile court is awarded wide latitude because it has the "opportunity to see and hear the delinquent child, to assess the consequences of the child's delinquent behavior, and to evaluate all the circumstances involved. The statute authorizes the court to issue orders of disposition appropriate to each child." *Id. at 160-161*. Absent an abuse of discretion, the juvenile court's judgment will not be reversed on appeal. Id.

[*P22] Because the juvenile court has broad discretion in fashioning orders specifically tailored to address each juvenile's particular treatment and rehabilitative needs, review of the court's orders must involve a careful reading of the language contained therein. See *Braun, supra*; *In re Herring (July 10, 1996), Summit App. No. 17553, 1996 Ohio App. LEXIS 3017*, and *In re Proctor (Dec. 24, 1997), Summit App. No. 18257, 1997 Ohio App. LEXIS 5761*. In this case, the court placed appellant on probation until December 1, 2000, "subject to the rules and regulations [**13] attached." Attached to the court's judgment entry were the "Terms and Conditions

of Probation," which required appellant to serve 24 months of probation until December 1, 2000 "or until all conditions have been completed." One of the conditions required appellant to complete all sexual offender counseling. We agree with the state's contention that the "Terms and Conditions of Probation," which were signed by appellant and attached to and filed with the order placing appellant on probation, were that to which the court referred when it ordered appellant's probation "subject to the rules and regulations attached." Language utilized in a court's order is given its ordinary meaning. *Trifiletti v. Wolford (Nov. 8, 2000), Lorain App. No. 99CA007513, 2000 Ohio App. LEXIS 5163.* Further, a court has the right "to construe and clarify its own judgment * * *." Id.

[*P23] Upon review of the facts and circumstances involved in this case, we cannot agree with appellant's contention that his period of probation expired on December 1, 2000. The record contains no indication that the trial court released or discharged appellant from probation on December 1, 2000. To the contrary, the record contains ample evidence [**14] suggesting that both the magistrate and the trial court did not consider appellant's term of probation to be complete until all terms and conditions of his probation had been satisfied, including the completion of sexual offender counseling. Indeed, the magistrate found that the court had continuing jurisdiction to adjudicate two separate probation violations after December 1, 2000. It is clear that the magistrate relied on the "until all conditions have been completed" language to bridge the gap between the alleged termination date of December 1, 2000 and the magistrate's first adjudication of probation violation in February 2001. The record contains no evidence that appellant objected to either the magistrate's finding of continuing jurisdiction or the probation violation adjudications. Indeed, the record establishes that appellant admitted both violations and did not file objections to either of the magistrate's decisions. In fact, the record reflects that appellant did not object to the magistrate's statement at the hearing on the second probation violation that he was "currently on probation." Further, appellant did not appeal the trial court's orders adopting the magistrate's [**15] decisions. Moreover, in its April 8, 2002 judgment, the trial court specifically found that appellant's probation period did not terminate until all the conditions of probation were completed. As noted previously, a trial court has the inherent right to interpret and explain its own orders.

[*P24] Under the facts and circumstances of the instant case, and particularly in light of the serious nature of appellant's action and his obvious need for structured sexual offender counseling, we find it clear that appellant's probation period was conditioned upon his completion of sexual offender counseling and, therefore, did not expire on December 1, 2000.

[*P25] We also find no merit to appellant's contention that the trial court's actions constituted a violation of his rights to equal protection, due process, and freedom from double jeopardy. Initially, we note that appellant's constitutional arguments are premised upon the faulty assumption that his probation period expired on December 1, 2000, and that the court imposed additional dispositions upon him (probation violation findings and extensions of probation) after he was released from probation. As we have previously determined, [**16] appellant's probation period did not expire on December 1, 2000, but continued until all conditions of his probation were completed.

[*P26] Appellant first contends that the trial court's actions violated the *Equal Protection Clause of the Fourteenth Amendment to the United States Constitution* and *Section 2, Article I of the Ohio Constitution* because he, a juvenile, was treated differently than a similarly situated adult probationer.

[*P27] In *In re Cundiff* (Jan. 13, 2000), Franklin App. No. 99AP-364, 2000 Ohio App. LEXIS 95, this court discussed the application of the *Equal Protection Clause* to a juvenile's claim of disparate treatment:

[*P28] "The guarantee of equal protection of the laws means that 'no person or class of persons shall be denied the same protection of the law which is enjoyed by other persons or other classes in the same place and under like circumstances.' * * * ' The *Equal Protection Clause* does not * * * require that the state never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious.' * * * We find that juveniles adjudicated delinquent and adults convicted of a crime are not groups that are similarly situated. [**17] Courts have recognized in a variety of contexts that the state is justified in treating juveniles differently than adults because of its interest in preserving and promoting the welfare of the child. * * * This proposition is particularly applicable in the context of delinquency proceedings. Juveniles are entitled to proceedings that 'measure up to the essentials of due process and fair treatment.' * * * However, 'the Constitution does not mandate elimination of all differences in the treatment of juveniles.' The state's interest in the welfare of children makes 'a juvenile proceeding fundamentally different from an adult criminal trial.' * * * As a consequence, juveniles have never been treated as a suspect class and legislation aimed at juveniles has never been subjected to the test of strict scrutiny. * * *" Id., quoting *In re Vaughn (Aug. 13, 1990), Butler App. No. CA89-11-162, 1990 Ohio App. LEXIS 3456.* (Citations omitted.)

[*P29] In short, this court has held that "juveniles are not a suspect class for purposes of equal protection analysis." *Cundiff*, supra. Thus, appellant's suggestion that this court "should apply the strict scrutiny test" in determining whether the state has a "compelling [**18] governmental interest that justifies treating juvenile probationers differently from adult probationers" (appellant's brief, at 11), is without merit.

[*P30] We further find unpersuasive appellant's contention that his right to notice and due process under the *Fifth* and *Fourteenth Amendments to the United States Constitution* and *Section 16, Article I, of the Ohio Constitution* was violated because he was not "on notice" that his period of probation continued after December 1, 2000.

[*P31] The United States Supreme Court has held that juvenile proceedings must comply with the requirements of due process. Due process in a juvenile court proceeding must include adequate written notice, advice as to the right to counsel, retained or appointed, confirmation and cross-examination of witnesses and the privilege against self-incrimination. *Application of Gault (1967), 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, 40 Ohio Op.2d 378.* In addition, *Juv.R. 34(C)* requires that a juvenile receive a written statement of the conditions of probation. As we have previously noted, appellant signed the "Terms and Conditions of Probation," indicating his awareness that probation was to continue [**19] until counseling was complete. As such, we perceive no due process violation.

[*P32] Finally, appellant claims that the trial court's actions in prosecuting him for probation violations and extending his probation after December 1, 2000, 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.*

[*P33] Application of the Double Jeopardy Clause 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, 1995 Ohio App. LEXIS 4961. In the instant case, as in *Kelly,* appellant did not have a legitimate expectation that his sentence of probation was complete at the time the court prosecuted the probation violations and extended his probation because his sentence of probation was conditioned upon his compliance with the terms and conditions of his probation, including completion of sexual offender counseling. Accordingly, appellant's first assignment of error is not well taken.

[*P34] By the second assignment of error, appellant contends that the [**20] trial court erred in granting the state's November 14, 2001 motion to extend appellant's probation past November 30, 2001, in the absence of a finding that he violated a condition of probation.

[*P35] Appellant contends that because he did not willfully violate any of the conditions of his probation, the court was therefore without authority to extend his probation. The state concedes that it did not assert a probation violation in its November 14, 2001 motion and does not argue that appellant willfully violated any of the conditions of his probation. The state asserts, however, that the goal of treating and rehabilitating appellant in order to help him avoid repeating his history of sexual abuse provided a rational basis for extending his probation until he completed the sexual offender counseling program at Cove Prep. We agree.

[*P36] The terms and conditions of appellant's probation, including the requirement that he complete sexual offender counseling, were still in effect at the time the state moved to extend appellant's probation. There is no dispute that appellant had not yet completed the program. At the February 1, 2002 hearing, counsel for the prosecution, counsel [**21] for FCCS, two probation officers, appellant's Cove Prep therapist and appellant's mother all urged the court to extend the appellant's probation period and order him to complete the treatment program. In addition, all maintained that the structure provided through probation was necessary for appellant to successfully complete the program to provide additional support as appellant transitioned back to the community. We find the foregoing provided the court with a rational basis for extending probation and that the court did not err in ordering probation extended past November 30, 2001, in order for appellant to complete the sexual offender counseling at Cove Prep. See *State v. Puhl (May 2, 1997), Wood App. No. WD-96-059, 1997 Ohio App. LEXIS 1770* (counselor's recommendation that probation be extended to allow probationer to continue needed therapy provided rational basis for trial court's extension of probation). Accordingly, the second assignment of error is not well-taken.

[*P37] For the foregoing reasons, appellant's two assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is hereby affirmed.

Judgment [**22] *affirmed.*

BRYANT and BROWN, JJ., concur.

LEXSTAT ORC 2151.353

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
DISTRICT DETENTION HOMES

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ORC Ann. 2151.353 (2008)

§ 2151.353. Disposition of abused, neglected or dependent child

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of *section 2151.414 [2151.41.4] of the Revised Code* that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of *section 2151.414 [2151.41.4] of the Revised Code* that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of *section 2151.414 [2151.41.4] of the Revised Code*, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in *section 2151.031 [2151.03.1] of the Revised Code* against the child, who caused or allowed the child to suffer neglect as described in *section 2151.03 of the Revised Code*, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with *section 2151.414 [2151.41.4] of the Revised Code.*

(C) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

(1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;

(2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;

(3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(D) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in *section 2151.412 [2151.41.2] of the Revised Code.*

(E) (1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to *section 2151.414 [2151.41.4]* or *2151.415 [2151.41.5] of the Revised Code* until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under *section 2151.414 [2151.41.4]* or *2151.415 [2151.41.5] of the Revised Code* for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or *section 2151.414 [2151.41.4]* or *2151.415 [2151.41.5] of the Revised Code.* The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with *section 2151.42 of the Revised Code.*

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to *section 2151.415 [2151.41.5] of the Revised Code*, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.

(G) (1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with *section 2151.419 [2151.41.9] of the Revised Code* and includes in the dispositional order the findings of fact required by that section.

(I) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

(1) Notice and a copy of the motion or application;

(2) The grounds for the motion or application;

(3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;

(4) An opportunity to be represented by counsel at the hearing.

(J) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

(1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;

(2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.*

HISTORY:

133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 139 v H 440 (Eff 11-23-81); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 145 v H 152 (Eff 7-1-93); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 146 v H 265 (Eff 3-3-97); 147 v H 484 (Eff 3-18-99); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332. Eff 1-1-2001; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06.

LEXSTAT ORC ANN. 2152.22

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

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ORC Ann. 2152.22 (2008)

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

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

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

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

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

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

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

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

If the court approves the release, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY:

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

LEXSTAT ORC ANN. 2925.11

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2925. DRUG OFFENSES
DRUG ABUSE

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ORC Ann. 2925.11 (2008)

Legislative Alert: LEXSEE 2007 Ohio HB 195 -- See sections 1 and 2.

§ 2925.11. Possession of drugs

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," *52 Stat. 1040 (1938), 21 U.S.C.A. § 301,* as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code.*

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender under a community control sanction, as defined in *section 2929.01 of the Revised Code*, that requires the offender to perform supervised community service work pursuant to division (B) of *section 2951.02 of the Revised Code.*

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds twenty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds five grams but is less than twenty-five grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, possession of cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds twenty-five grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, possession of cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code.*

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second de-

gree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code.*

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code.*

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or

liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and *sections 2929.13, 2929.14, 2929.22, 2929.24,* and *2929.25 of the Revised Code* and in addition to any other sanction that is imposed for the offense under this section, *sections 2929.11* to *2929.18,* or *sections 2929.21* to *2929.28 of the Revised Code,* the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) (a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of *section 2929.18 of the Revised Code* unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code,* the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of *section 2929.18 of the Revised Code* in accordance with and subject to the requirements of division (F) of *section 2925.03 of the Revised Code.* The agency that receives the fine shall use the fine as specified in division (F) of *section 2925.03 of the Revised Code.*

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with *section 2925.38 of the Revised Code.*

(F) It is an affirmative defense, as provided in *section 2901.05 of the Revised Code,* to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with *section 2901.05 of the Revised Code,* an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of *section 2925.03 of the Revised Code* applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

HISTORY:

138 v S 184, § 5 (Eff 6-20-84); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v H 298 (Eff 7-26-91); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v H 249 (Eff 7-17-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 2 (Eff 6-20-97); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241. Eff 5-17-2000; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

LEXSTAT ORC ANN. 2925.14

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 23, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2925. DRUG OFFENSES
DRUG ABUSE

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ORC Ann. 2925.14 (2008)

§ 2925.14. Drug paraphernalia offenses

(A) As used in this section, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;

(6) A scale or balance for weighing or measuring a controlled substance;

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(11) A container or device for storing or concealing a controlled substance;

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use;

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;

(3) The proximity of the equipment, product, or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product, or material;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom the owner or person in control of the equipment, product, or material knows intends to use the object to facilitate a violation of any provision of this chapter. A finding that the owner, or anyone in control, of the equipment, product, or material, is not guilty of a violation of any other provision of this chapter does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;

(12) Expert testimony concerning the use of the equipment, product, or material.

(C) (1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if the person knows that the purpose of the advertisement is to promote the illegal sale in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by *section 3719.172 [3719.17.2] of the Revised Code.*

(E) Notwithstanding Chapter 2981. of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (B) of *section 2981.12 of the Revised Code.*

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with *section 2925.38 of the Revised Code.*

HISTORY:

143 v H 182 (Eff 11-2-89); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v H 241 (Eff 5-17-2000); 149 v H 7. Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v S 154, § 1, eff. 5-17-06; 151 v H 241, § 1, eff. 7-1-07.