

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 2007-0693
 :
 v. : On Discretionary Appeal from the
 : Fulton County Court of Appeals,
 JAMES C. BLOOMER, : Sixth Appellate District,
 : Case No. 06FU12
 Defendant-Appellant. :

APPELLANT JAMES C. BLOOMER'S REPLY BRIEF

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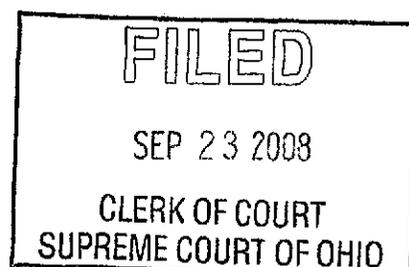


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Argument

Proposition of Law No. I:

A trial court may not add postrelease control to a sentence except as ordered by a court of appeals on a timely direct appeal.

Proposition of Law No. II:

Once a defendant nears completion of his judicially-imposed but illegal sentence, the State cannot increase his punishment because he gains a legitimate expectation of finality under the Due Process and Double Jeopardy Clauses of the United States Constitution.

This case is not identical to State v. Simpkins, 117 Ohio St.3d 420, 2008-Ohio-1197, as the State suggests. As Mr. Bloomer explains in his merit brief, and as the State essentially failed to refute, Mr. Bloomer has demonstrated why the delay in resentencing him was prejudicial. Merit Brief at 4-5. Mr. Simpkins did not create such a record.

The State is correct that Mr. Bloomer was notified in writing about the potential for postrelease control during the plea process. Notice, Sept. 19, 2002. But notice is not imposition. When actually imposing sentence, trial courts can and do depart from what a defendant is told during the plea process. Mr. Bloomer had no way of knowing that he faced the additional sanction until 1415 days into his 1461-day sentence.

Proposition of Law No. III:

Revised Code Section 2929.191, part of H.B. 137, violates the Double Jeopardy Clause of the Fifth Amendment.

H.B. 137 applies retroactively.

As Mr. Bloomer noted in his merit brief, “On first look, it might appear that H.B. 137 does not apply to Mr. Bloomer because his sentencing proceeding was held after the effective date of the statute. But the first look is wrong.” Unfortunately, the State’s brief takes only the “first look.” In addition, the State does not rebut that the uncodified provision says what Appellant claims. In fact, the State ignores the uncodified law entirely.

The State is correct that, in the codified language, parts of H.B. 137 appear to apply only prospectively. And if the bill had stopped there, it would have been less problematic. But the General Assembly added uncodified law that expressly stated that the entire law applies retroactively. The uncodified law states that “the amendments made to sections 2929.14, 2929.19, and 2967.28 and the enactment of section 2929.191 of the Revised Code . . . are not substantive in nature and merely clarify that . . . convicted offenders described . . . always are subject by operation of law and without need for any prior notification or warning to a period of post-release control after their release from imprisonment. . . .” Am. H.B. 137, uncodified law, ¶5(B). So on its own terms, H.B. 137 applies retroactively to Mr. Bloomer.

The Eighth District correctly noted the retroactive intent of H.B. 137 when it held that the uncodified law created a retroactive duty to follow postrelease terms even before H.B. 137 was enacted:

According to Section 5(A) of Am. Sub. H.B. 137, R.C. 2929.191 was enacted for the purpose of “reaffirm[ing] that, under the amended sections [of the Ohio Criminal Code] as they existed prior to [July 11, 2006]: by operation of law and without any need for prior notification or warning, every convicted offender sentenced to a prison term . . . for a felony sex offense . . . always is subject to a period of post-release control after the offender’s release from imprisonment pursuant to and for the period of time described in division (B) of section 2967.28 of the Revised Code;” Section (B) of Am. Sub. H.B. 137 states the enactment and its related statutory amendments were intended as “remedial in nature.”

State v. Fitzgerald, Cuyahoga App. No. 86443, 2006-Ohio-6575, at ¶42, emphasis supplied by court of appeals, discretionary appeal not allowed, 113 Ohio St.3d 1514, 2007-Ohio-2208, reconsideration denied, 114 Ohio St.3d 1484, 2007-Ohio-3699. The Eighth District’s decision clearly runs afoul of ex post facto and due process protections, but it is an absolutely correct explanation of Ohio statute. The General Assembly intended H.B. 137 to apply retroactively.

Mr. Bloomer’s resentencing was not de novo.

While the trial court remade the findings necessary for a criminal sentence, the trial judge stated that he “really has no leeway at this point. I’m going to modify—I’m going to correct [the] sentence which was rendered on November 22nd, 2002.” T.p. 5. A de novo sentencing requires a new sentence, not a mere modification or correction of the initial attempt to sentence. As this Court required in State v. Bezak, 114 Ohio St. 3d 94, 2007-Ohio-3250, at ¶12, the trial court must conduct the de novo sentence “as though [the first sentencing] had never occurred” The trial court modified or corrected Mr.

Bloomer's previous sentence. The trial court did not sentence Mr. Bloomer de novo.

Proposition of Law No. IV:

H.B. 137 violates the Single Subject Rule.¹

Background

"[T]he one-subject provision is not directed at plurality but at disunity in subject matter." State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd., 104 Ohio St.3d 122, 2004-Ohio-6363, at ¶28, quoting State ex rel. Dix v. Celeste (1984), 11 Ohio St.3d 141, 146. A bill runs afoul of the single subject rule when no common purpose or relationship exists between the topics. . . [,]" and when "the bill includes a disunity of subject matter such that there is "no discernible practical, rational or legitimate reason for combining the provisions in one Act." State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd., at ¶28, quoting Beagle v. Walden (1997), 78 Ohio St.3d 59, 62, 1997-Ohio-234.

The General Assembly did not have a common purpose when it enacted legislation to seal juvenile records and impose adult punishment.

Here, the State asserts that H.B. 137 has a common purpose—criminal justice. But the only parts of the bill involving criminal justice were the parts involving postrelease control, and those are the parts in question. The rest of the bill involves sealing the records of juvenile dependency and delinquency

¹ Section 15(D), Article II of the Ohio Constitution, "no bill shall contain more than one subject. . . ."

proceedings, and juvenile proceedings are civil, not criminal. This Court has long recognized the fundamental differences between children in the juvenile civil delinquency system and the adult criminal justice system:

The Juvenile Court stands as a monument to the enlightened conviction that wayward boys may become good men and that society should make every effort to avoid their being attained as criminal before growing to the full measure of adult responsibility. Its existence, together *** with the substantive provisions of the Juvenile Code, reflects the considered opinion of society that childish pranks and other youthful indiscretions, as well as graver offenses, should seldom warrant adult sanctions and that the decided emphasis should be upon individual, corrective treatment.

State v. Agler (1969), 19 Ohio St.2d 70, 71. The court in Agler went on to recognize that a child is not a criminal by reason of any juvenile court adjudication, and that civil disabilities ordinarily following convictions do not attach to children. Id. at 73. See, also, R.C. 2151.357(H). This Court further noted that the very purpose of the juvenile code is to avoid treating children as criminals and insulating them from the reputation and answerability of criminals. Id. at 80. Further, under current precedent, the law is clear: “juvenile court proceedings are civil, rather than criminal, in nature.” In re Anderson (2001), 92 Ohio St.3d 63.

While some juvenile provisions are similar to adult punishment, H.B. 137 does not contain any provisions imposing any type of sanctions on juveniles. To the contrary, it created an official mechanism and procedure for juveniles to use to seal or expunge adjudications. See, Section 1, changes to R.C. 2151.355, 2151.356, 2151.357. 2151.358, 2151.362.

The State's argument puts virtually no limits on the single-subject rule. Under the State's theory, a bill involving sealing juvenile delinquency records could be tacked onto a bill amending the Uniform Commercial Code because both involve "civil justice."

A tangential connection is not enough to satisfy the single-subject rule. The right for public employees to join a union clearly impacts the state budget because it affects "the pay schedules applicable to" the employees. State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd., 104 Ohio St.3d 122, 2004-Ohio-6363, at ¶34. But this Court held that measures disqualifying a group of state employees from unionizing could not be made part of a larger appropriations bill because the link between public employee unionization and appropriations was too tenuous. *Id.* Similarly, this Court held that the addition of a voucher program, which clearly involves the allocation of resources, to an appropriations bill violates the single-subject rule. Simmons-Harris v. Goff, 86 Ohio St.3d 1, 37-8, 1999-Ohio-77.

A provision that purports to retroactively add a criminal sanction to adult prison terms has even less to do with sealing juvenile adjudication records than vouchers or public-employee unionization have to do with appropriations. The provisions this Court struck down fairly directly concerned the appropriations of state funds. By contrast, imposing postrelease control on an adult has nothing to do with sealing a juvenile record.

Proposition of Law No. V:

Am. Sub. H.B. 137 renders postrelease control unconstitutional because it permits the executive to impose the sanction without a court order.

As explained in Proposition of Law No. III, the State fails to cite the uncodified law that makes H.B. 137 apply retroactively.

CONCLUSION

This Court should vacate Mr. Bloomer's term of postrelease control.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



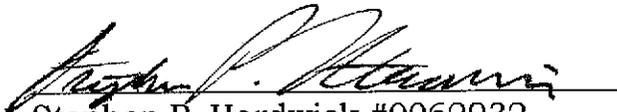
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Appellant James C. Bloomer's Reply Brief** was sent via regular U.S. mail, postage prepaid to the office of Paul H. Kennedy, Assistant Fulton County Prosecuting Attorney, 123 Courthouse Plaza, Wauseon, Ohio 43567 this 23rd day of September, 2008.


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APPENDIX TO

APPELLANT JAMES C. BLOOMER'S REPLY BRIEF

LEXSTAT ORC 2151.355

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
SEALING AND EXPUNGEMENT OF RECORDS CONCERNING DELINQUENT AND UNRULY CHILDREN
AND JUVENILE TRAFFIC OFFENDERS

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ORC Ann. 2151.355 (2008)

§ 2151.355. Definitions

As used in *sections 2151.356 [2151.35.6] to 2151.358 [2151.35.8] of the Revised Code*:

(A) "Expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(B) "Seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court.

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ORC Ann. 2151.356 (2008)

§ 2151.356. Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders

(A) The records of a case in which a person was adjudicated a delinquent child for committing a violation of *section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code* shall not be sealed under this section.

(B) (1) The juvenile court shall promptly order the immediate sealing of records pertaining to a juvenile in any of the following circumstances:

(a) If the court receives a record from a public office or agency under division (B)(2) of this section;

(b) If a person was brought before or referred to the court for allegedly committing a delinquent or unruly act and the case was resolved without the filing of a complaint against the person with respect to that act pursuant to *section 2151.27 of the Revised Code*;

(c) If a person was charged with violating division (E)(1) of *section 4301.69 of the Revised Code* and the person has successfully completed a diversion program under division (E)(2)(a) of *section 4301.69 of the Revised Code* with respect to that charge;

(d) If a complaint was filed against a person alleging that the person was a delinquent child, an unruly child, or a juvenile traffic offender and the court dismisses the complaint after a trial on the merits of the case or finds the person not to be a delinquent child, an unruly child, or a juvenile traffic offender;

(e) Notwithstanding division (C) of this section and subject to *section 2151.358 [2151.35.8] of the Revised Code*, if a person has been adjudicated an unruly child, that person has attained eighteen years of age, and the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.

(2) The appropriate public office or agency shall immediately deliver all original records at that public office or agency pertaining to a juvenile to the court, if the person was arrested or taken into custody for allegedly committing a delinquent or unruly act, no complaint was filed against the person with respect to the commission of the act pursuant to *section 2151.27 of the Revised Code*, and the person was not brought before or referred to the court for the commission of the act. The records delivered to the court as required under this division shall not include fingerprints, DNA specimens, and DNA records described under division (A)(3) of *section 2151.357 [2151.35.7] of the Revised Code*.

(C) (1) The juvenile court shall consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of *section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code*, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after two years after the later of the following:

(a) The termination of any order made by the court in relation to the adjudication;

(b) The unconditional discharge of the person from the department of youth services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

(2) In making the determination whether to seal records pursuant to division (C)(1) of this section, all of the following apply:

(a) The court may require a person filing an application under division (C)(1) of this section to submit any relevant documentation to support the application.

(b) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.

(c) The court shall promptly notify the prosecuting attorney of any proceedings to seal records initiated pursuant to division (C)(1) of this section.

(d) (i) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings.

(ii) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(iii) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(e) After conducting a hearing in accordance with division (C)(2)(d) of this section or after due consideration when a hearing is not conducted, except as provided in division (B)(1)(c) of this section, the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(i) The age of the person;

(ii) The nature of the case;

(iii) The cessation or continuation of delinquent, unruly, or criminal behavior;

(iv) The education and employment history of the person;

(v) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(D) (1) (a) The juvenile court shall provide verbal notice to a person whose records are sealed under division (B) of this section, if that person is present in the court at the time the court issues a sealing order, that explains what sealing a record means, states that the person may apply to have those records expunged under *section 2151.358 [2151.35.8] of the Revised Code*, and explains what expunging a record means.

(b) The juvenile court shall provide written notice to a person whose records are sealed under division (B) of this section by regular mail to the person's last known address, if that person is not present in the court at the time the court issues a sealing order and if the court does not seal the person's record upon the court's own motion, that explains what sealing a record means, states that the person may apply to have those records expunged under *section 2151.358 [2151.35.8] of the Revised Code*, and explains what expunging a record means.

(2) Upon final disposition of a case in which a person has been adjudicated a delinquent child for committing an act other than a violation of *section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code*, an unruly child, or a juvenile traffic offender, the juvenile court shall provide written notice to the person that does all of the following:

(a) States that the person may apply to the court for an order to seal the record;

(b) Explains what sealing a record means;

(c) States that the person may apply to the court for an order to expunge the record under *section 2151.358 [2151.35.8] of the Revised Code*;

(d) Explains what expunging a record means.

(3) The department of youth services and any other institution or facility that unconditionally discharges a person who has been adjudicated a delinquent child, an unruly child, or a juvenile traffic offender shall immediately give notice of the discharge to the court that committed the person. The court shall note the date of discharge on a separate record of discharges of those natures.

LEXSTAT ORC ANN. 2151.357

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ORC Ann. 2151.357 (2008)

§ 2151.357. Effects of order sealing records; index of sealed records; inspection of sealed records

(A) If the court orders the records of a person sealed pursuant to *section 2151.356 [2151.35.6] of the Revised Code*, the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, except as provided in division (D) of this section, shall do all of the following:

(1) Order that the proceedings in a case described in divisions (B) and (C) of *section 2151.356 [2151.35.6] of the Revised Code* be deemed never to have occurred;

(2) Except as provided in division (C) of this section, delete all index references to the case and the person so that the references are permanently irretrievable;

(3) Order that all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected pursuant to *section 2152.74 of the Revised Code*, and DNA records derived from DNA specimens pursuant to *section 109.573 [109.57.3] of the Revised Code*, be delivered to the court;

(4) Order each public office or agency, upon the delivering of records to the court under division (A)(3) of this section, to expunge remaining records of the case that are the subject of the sealing order that are maintained by that public office or agency, except fingerprints, DNA specimens, and DNA records described under division (A)(3) of this section;

(5) Send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record;

(6) Seal all of the records delivered to the court under division (A)(3) of this section, in a separate file in which only sealed records are maintained.

(B) Except as provided in division (D) of this section, an order to seal under *section 2151.356 [2151.35.6] of the Revised Code* applies to every public office or agency that has a record relating to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Except as provided in division (D) of this section, upon the written request of a person whose record has been sealed and the presentation of a copy of the order and compliance with division (A)(3) of this section, a public office or agency shall expunge its record relating to the

case, except a record of the adjudication or arrest or taking into custody that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order.

(C) The court that maintains sealed records pursuant to this section may maintain a manual or computerized index of the sealed records and shall make the index available only for the purposes set forth in division (E) of this section.

(1) Each entry regarding a sealed record in the index of sealed records shall contain all of the following:

- (a) The name of the person who is the subject of the sealed record;
- (b) An alphanumeric identifier relating to the person who is the subject of the sealed record;
- (c) The word "sealed";
- (d) The name of the court that has custody of the sealed record.

(2) Any entry regarding a sealed record in the index of sealed records shall not contain either of the following:

- (a) The social security number of the person who is subject of the sealed record;
- (b) The name or a description of the act committed.

(D) Notwithstanding any provision of this section that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under *sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code* is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under *section 2151.356 [2151.35.6] of the Revised Code* to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of an adjudication that an individual is a delinquent child may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and *sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code*, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to division (F) of this section.

(E) Inspection of records that have been ordered sealed under *section 2151.356 [2151.35.6] of the Revised Code* may be made only by the following persons or for the following purposes:

(1) By the court;

(2) If the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for any valid law enforcement or prosecutorial purpose;

(3) Upon application by the person who is the subject of the sealed records, by the person that is named in that application;

(4) If the records in question pertain to an alleged violation of division (E)(1) of *section 4301.69 of the Revised Code*, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for the purpose of determining whether the person is eligible for diversion under division (E)(2) of *section 4301.69 of the Revised Code*;

(5) At the request of a party in a civil action that is based on a case the records for which are the subject of a sealing order issued under *section 2151.356 [2151.35.6] of the Revised Code*, as needed for the civil action. The party also may copy the records as needed for the civil action. The sealed records shall be used solely in the civil action and are otherwise confidential and subject to the provisions of this section;

(6) By the attorney general or an authorized employee of the attorney general or the court for purposes of determining whether a child is a public registry-qualified juvenile offender registrant, as defined in *section 2950.01 of the Revised Code*, for purposes of Chapter 2950. of the Revised Code.

(F) No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any depart-

ment, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to *section 2151.356 [2151.35.6] of the Revised Code* and the release, dissemination, or making available of which is not expressly permitted by this section. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(G) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest or taking into custody for which the records were sealed. If an inquiry is made in violation of this division, the person may respond as if the sealed arrest or taking into custody did not occur, and the person shall not be subject to any adverse action because of the arrest or taking into custody or the response.

(H) The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication, and no child shall be charged with or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court shall not operate to disqualify a child in any future civil service examination, appointment, or application. Evidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding. Otherwise, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in *section 2929.01 of the Revised Code*.

LEXSTAT ORC ANN. 2151.358

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH SEPTEMBER 10, 2008 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2151. JUVENILE COURT
SEALING AND EXPUNGEMENT OF RECORDS CONCERNING DELINQUENT AND UNRULY CHILDREN
AND JUVENILE TRAFFIC OFFENDERS

Go to the Ohio Code Archive Directory

ORC Ann. 2151.358 (2008)

§ 2151.358. Expungement of records

(A) The juvenile court shall expunge all records sealed under *section 2151.356 [2151.35.6] of the Revised Code* five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier.

(B) Notwithstanding division (A) of this section, upon application by the person who has had a record sealed under *section 2151.356 [2151.35.6] of the Revised Code*, the juvenile court may expunge a record sealed under *section 2151.356 [2151.35.6] of the Revised Code*. In making the determination whether to expunge records, all of the following apply:

(1) The court may require a person filing an application for expungement to submit any relevant documentation to support the application.

(2) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.

(3) The court shall promptly notify the prosecuting attorney of any proceedings to expunge records.

(4) (a) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the expungement proceedings.

(b) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the expungement of the records, the court may order the records of the person that are under consideration to be expunged without conducting a hearing on the application. If the court decides in its discretion to conduct a hearing on the application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(c) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the expungement of the records, the court shall conduct a hearing on the application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(5) After conducting a hearing in accordance with division (B)(4) of this section or after due consideration when a hearing is not conducted, the court may order the records of the person that are the subject of the application to be expunged if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (a) The age of the person;
- (b) The nature of the case;
- (c) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (d) The education and employment history of the person;

(e) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(C) If the juvenile court is notified by any party in a civil action that a civil action has been filed based on a case the records for which are the subject of a sealing order, the juvenile court shall not expunge a record sealed under *section 2151.356 [2151.35.6] of the Revised Code* until the civil action has been resolved and is not subject to further appellate review, at which time the records shall be expunged pursuant to division (A) of this section.

(D) After the records have been expunged, the person who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.

LEXSTAT ORC ANN. 2151.362

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2151. JUVENILE COURT
 DESERTION OF CHILD UNDER 72 HOURS OLD

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ORC Ann. 2151.362 (2008)

§ 2151.362. School district liability for cost of education; state subsidy where placement is in private facility

(A) (1) In the manner prescribed by division (C)(1) or (2) of *section 3313.64 of the Revised Code*, as applicable, the court, at the time of making any order that removes a child from the child's own home or that vests legal or permanent custody of the child in a person other than the child's parent or a government agency, shall determine the school district that is to bear the cost of educating the child. The court shall make the determination a part of the order that provides for the child's placement or commitment. That school district shall bear the cost of educating the child unless and until the department of education determines that a different district shall be responsible for bearing that cost pursuant to division (A)(2) of this section. The court's order shall state that the determination of which school district is responsible to bear the cost of educating the child is subject to re-determination by the department pursuant to that division.

(2) If, while the child is in the custody of a person other than the child's parent or a government agency, the department of education determines that the place of residence of the child's parent has changed since the court issued its initial order, the department may name a different school district to bear the cost of educating the child. The department shall make this new determination, and any future determinations, based on evidence received from the school district currently responsible to bear the cost of educating the child. If the department finds that the evidence demonstrates to its satisfaction that the residence of the child's parent has changed since the court issued its initial order under division (A)(1) of this section, or since the department last made a determination under division (A)(2) of this section, the department shall name the district in which the child's parent currently resides or, if the parent's residence is not known, the district in which the parent's last known residence is located. If the department cannot determine any Ohio district in which the parent currently resides or has resided, the school district designated in the initial court order under division (A)(1) of this section, or in the most recent determination made by the department under division (A)(2) of this section, shall continue to bear the cost of educating the child.

(B) Whenever a child is placed in a detention facility established under *section 2152.41 of the Revised Code* or a juvenile facility established under *section 2151.65 of the Revised Code*, the child's school district as determined by the court or the department, in the same manner as prescribed in division (A) of this section, shall pay the cost of educating the child based on the per capita cost of the educational facility within the detention home or juvenile facility.

(C) Whenever a child is placed by the court in a private institution, school, or residential treatment center or any other private facility, the state shall pay to the court a subsidy to help defray the expense of educating the child in an amount equal to the product of the daily per capita educational cost of the private facility, as determined pursuant to this section, and the number of days the child resides at the private facility, provided that the subsidy shall not exceed twenty-five hundred dollars per year per child. The daily per capita educational cost of a private facility shall be deter-

mined by dividing the actual program cost of the private facility or twenty-five hundred dollars, whichever is less, by three hundred sixty-five days or by three hundred sixty-six days for years that include February twenty-ninth. The state shall pay seventy-five per cent of the total subsidy for each year quarterly to the court. The state may adjust the remaining twenty-five per cent of the total subsidy to be paid to the court for each year to an amount that is less than twenty-five per cent of the total subsidy for that year based upon the availability of funds appropriated to the department of education for the purpose of subsidizing courts that place a child in a private institution, school, or residential treatment center or any other private facility and shall pay that adjusted amount to the court at the end of the year.