

IN THE SUPREME COURT OF OHIO

IN RE: MEREDITH POLING,  
a minor child.

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Case No. 2008-1562

On Appeal from the Hardin  
County Court of Appeals  
Third Appellate District

C.A. Case No. 60809

ORIGINAL

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APPELLEE'S MERIT BRIEF

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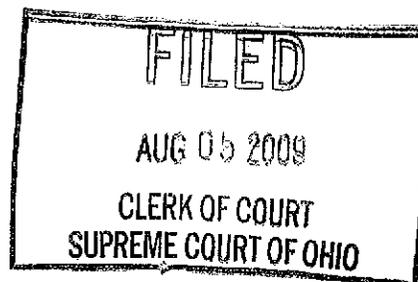
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## STATEMENT OF THE CASE AND FACTS

On March 30, 2007, the State filed a complaint in the Hardin County Juvenile Court alleging that Meredith Poling, aged 15, was a delinquent child for murder, in violation of R.C. 2903.02(A), enhanced with a firearm specification, in violation of R.C. 2941.145. (*Merit Brief* p. 1.) The State also filed a motion for discretionary bindover, requesting that the juvenile court transfer the case to the General Division of the Court of Common Pleas so Meredith could be prosecuted as an adult pursuant to R.C. 2152.10(B), R.C. 2152.12(B), and Juv.R. 30. (*Merit Brief* p. 1.) On April 2, 2007, Meredith was ordered to be held in the Logan County Juvenile Detention Center (hereinafter “detention center”) pending the outcome of this case. (*In re Poling*, Hardin County Juvenile Court, Case No. JD 207 20131, March 19, 2008, Order Regarding Motion to Transfer, p. 2, hereinafter, “Order Denying Transfer, March 19, 2008”.)

On September 26 and 27, 2007, the juvenile court conducted the first part of its bifurcated discretionary-bindover hearing. (*Merit Brief* p. 1.) At the conclusion of the preliminary hearing, the court found that the State met its burden in proving that there was probable cause that Meredith committed the acts charged in the complaint. (Order Denying Transfer, March 19, 2008, p. 1.) Pursuant to R.C. 2152.12(B)(3) and Juv.R. 30(B), the juvenile court ordered a full examination and investigation into Meredith’s background, including information about her upbringing; medical conditions; mental, physical and sexual abuse; school records; prior court involvement; alcohol and drug abuse; relationships and interactions with friends and family members; as well as her cooperation with the assessments and counseling that were conducted while she was being held in the detention center. (*In re Poling*, Hardin County Juvenile Court, Case No. JD 207 20131, Entry, July 16, 2008, p. 1, hereinafter, “Entry, July 16, 2008”.)

Dr. David Tennenbaum, Ph.D., a psychologist with extensive experience in the juvenile court system, was appointed to perform a forensic evaluation of Meredith for the amenability hearing. (Order Denying Transfer, March 19, 2008, p. 8.) Dr. Tennenbaum met with Meredith in the detention center for two hours on four separate occasions—December 18, and 19, 2007, and January 2, and 4, 2008. (Order Denying Transfer, March 19, 2008, p. 8.) During these meetings, Dr. Tennenbaum administered tests, assessments, and inventories. (Order Denying Transfer, March 19, 2008, p. 8.) He also spent more than ten hours reviewing records and background materials that were provided to him by the State and defense counsel. (Order Denying Transfer, March 19, 2008, p. 8.)

While Meredith was in the detention center pending the amenability hearing, she received mental health counseling services from Mr. Vincent Ciola for approximately eight months—from June 25, 2007 through February 6, 2008. (Order Denying Transfer, March 19, 2008, p. 12.) Mr. Ciola was a student at Case Western University Graduate School, who had an internship with, and was supervised by, the Light of the Way Christian Counseling Center. (Order Denying Transfer, March 19, 2008, p. 12.) Mr. Ciola conducted over thirty individual counseling sessions with Meredith, for a total approximately forty-five hours, as well as group counseling sessions with Meredith. (Order Denying Transfer, March 19, 2008, p. 12.)

On February 11, 2008, the juvenile court held the amenability hearing. (*Merit Brief* p. 1.) At the hearing, the court received into evidence and reviewed over seven-hundred pages of documents. (Order Denying Transfer, March 19, 2008, p. 1.) The court also heard testimony from two witnesses—Dr. David Tennenbaum, and Ms. Brenda Boecher, Meredith's Diversion Officer. (*Merit Brief* p. 5.) At the conclusion of the hearing, the juvenile court took the matter

under advisement in order to review all of the evidence presented, as well as to analyze the statutory factors outlined in R.C. 2152.12(B)-(E) weighing in favor of, and against, transfer.

On March 19, 2008, the juvenile court issued an eighteen-page decision outlining the evidence that supported its finding that Meredith could be successfully rehabilitated in the juvenile justice system, and overruled the State's motion for discretionary bindover. (Order Denying Transfer, March 19, 2008, pp. 1-18.) The juvenile court described in detail Meredith's upbringing and the courts findings. It also devoted five-pages of its decision to apply and analyze the statutory factors in favor of, and against, transfer as is required by R.C. 2152.12(B); ultimately, deciding against transfer. (Order Denying Transfer, pp. 13-18.)

On April 17, 2008, the State filed a motion for leave to appeal the juvenile court's decision overruling its motion for discretionary bindover pursuant to App.R. 5(C), accompanied by a memorandum in support of its motion for leave to appeal. (*Merit Brief* p. 2.) On May 19, 2008, defense counsel filed a motion in opposition to the state's motion for leave to appeal.

On June 25, 2008, the Third District overruled the State's motion for leave to appeal, finding that "the State did not raise any issues of law that were capable of repetition yet evading review." *In re Poling*, 3<sup>rd</sup> Dist. No. 06-08-09, 3. On July 3, 2008, the State filed an application for reconsideration of the court of appeals' decision. (*Merit Brief* p. 3.) The court of appeals denied the state's application for reconsideration on August 21, 2008. (*Merit Brief* p. 3.)

On July 16, 2008, the juvenile court issued an entry, sua sponte, which granted the State leave to file a motion for reconsideration of the juvenile court's March 18, 2008 decision. (Entry, July 16, 2008, pp. 1-9.) The State was ordered to "set forth the specific facts [it] believe[d] the Court to have erroneously relied upon in arriving at its decision to retain

jurisdiction.” (Entry, July 16, 2008, pp. 8-9.) But, the State never filed a motion for reconsideration.

On August 8, 2008, the State filed a notice of appeal and a memorandum in support of jurisdiction in this Court but failed to serve the Ohio Public Defender’s Office as is required by S.Ct.Prac.R. XIV(2)(A). (*Merit Brief* p. 3.) On December 21, 2008, this Court accepted the State’s appeal. (*Merit Brief* p. 3.)

On January 30, 2009, undersigned counsel filed a motion to strike appellant’s notice of appeal; alternatively, counsel requested thirty days to file a memorandum in opposition to jurisdiction. (*Merit Brief* p. 3.) On February 24, 2009, this Court overruled Appellee’s motion to strike but stayed briefing in order to give Appellee thirty days to file a response. (*Merit Brief* p. 3.) On March 26, 2009, Appellee filed a motion in opposition to jurisdiction. On May 12, 2009, this Court lifted the stay and ordered the parties to proceed in accordance with S.Ct.Prac.R. VI. (*Merit Brief* p. 3.) Appellee’s merit brief timely follows.

## **ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW**

### **APPELLEE’S FIRST PROPOSITION OF LAW**

**The State can appeal a juvenile court’s decision that finds a child amenable to treatment in the juvenile justice system and denies a motion for discretionary bindover when it is granted leave to appeal pursuant to App.R. 5(C).**

#### **I. Introduction**

The issue before this Court is, how can the State perfect an appeal of a juvenile court’s decision to retain jurisdiction in a discretionary-bindover case? The State and its Amicus propose that this Court extend its holding in *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-185, ¶28 to discretionary-bindover determinations. (*Merit Brief* p. 13); (*Amicus Merit Brief* p. 3);

(See Sections I and II, *infra*.) Specifically, the State urges this Court to hold that a finding of no probable cause, which results in the dismissal of a complaint or an indictment in mandatory-bindover proceedings, is “legally indistinguishable” from a court’s finding that a child is amenable to treatment, resulting in a proceedings on the merits in juvenile court in discretionary-bindover proceedings. (*Merit Brief* p. 13); (*Amicus Merit Brief* p. 3). Because the State equates mandatory- and discretionary-bindover determinations, it argues that it has an appeal of right.

But, there is no statutory authority or juvenile or appellate rule which provides the State with an appeal of right of a juvenile court’s amenability determination in discretionary-bindover cases. R.C. 2945.67(A). (See Section III, *infra*.) Therefore, in order to seek appellate review of the juvenile court’s decision, the State must seek leave to appeal pursuant to App.R. (5)(C). (See Section III, *infra*.)

If this Court finds that the State has the right to immediately appeal a juvenile court’s decision denying its discretionary motion for bindover after a finding of amenability, this Court should nonetheless, affirm the court of appeals decision because the State never filed an appeal as of right pursuant to R.C. 2945.67(A). (See Sections III(A); IV, *infra*.) Instead, it filed a motion for leave to appeal pursuant to App.R. 5(C). (*Merit Brief* pp. 8-14); (See Section IV, *infra*). Consequently, it never perfected its appeal and should not be rewarded with review by this Court, or with appellate review by the court of appeals because it *now* claims it is entitled to an appeal as of right. (*Merit Brief* pp. 8-14). (Emphasis added.)

If, however, this Court determines that the State does not possess an immediate appeal of right of discretionary-bindover determinations, this Court should affirm the court of appeals’ decision overruling the State’s motion for leave to appeal, as the court of appeals exercised its discretion and overruled the State’s motion for leave to appeal. (See Section IV(B), *infra*).

Alternatively, this Court should reverse and remand this matter to the court of appeals for it to issue a substantive decision on the merits.

**II. Discretionary-bindover proceedings and determinations are not the same as mandatory-bindover proceedings and determinations.**

Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult. R.C. 2152.23(A); *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-185, ¶22; *State v. Iacona*, 93 Ohio St.3d 83, 2001-Ohio-1292; *State v. Watson* (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d 1181; R.C. 2151.23(A)(1); R.C. 2152.10. And, “[i]n most instances involving delinquency, juveniles can be effectively tried and handled in the juvenile justice system.” *State v. Hanning*, 89 Ohio St.3d. 86, 89, 2000-Ohio-436. Under certain circumstances, juvenile courts must determine whether a child will remain in the juvenile system or whether the child must be transferred to the adult criminal system. R.C. 2152.10; R.C. 2152.12. Because the decision to transfer a child is a life-altering decision, juvenile courts are granted “wide latitude to retain or relinquish jurisdiction, and the ultimate decision lies within its sound discretion.” *State v. Watson* (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d 1181, citing *State v. Carmichael* (1973), 35 Ohio St.2d 120, 123, 431 N.E.2d 326.

There are two types of transfer in Ohio’s juvenile justice system: discretionary and mandatory transfer. R.C. 2152.10; R.C. 2152.12; Juv.R. 30. “Discretionary transfer, as its name implies, allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear amenable to care or rehabilitation with the juvenile system or appear to be a threat to public safety.” *Hanning* at 90, citing R.C. 2151.26.<sup>1</sup> But “[m]andatory transfer removes discretion from judges in the transfer decisions in certain situations.” *Id.*

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<sup>1</sup> Effective January 1, 2002, R.C. 2152.26 was repealed and replaced by R.C. 2152.10 and R.C. 2152.12. The amendments to 2152.26 do not effect the outcome if this case.

Under Ohio's mandatory-bindover provisions, if a child meets certain statutory requirements,<sup>2</sup> the only finding that a juvenile court must make before transferring a child to the adult system is whether probable cause exists that the child committed the act charged. R.C. 2152.10; R.C. 2152.12; Juv.R. 30.<sup>3</sup> If the juvenile court finds probable cause, the State's motion for bindover is granted and the juvenile court has a duty to transfer the child to the court of common pleas where he will be tried as an adult and subject to adult sanctions. *A.J.S.*, at ¶22; R.C. 2929.02(B). If, however, the juvenile court does not find probable cause, the State's motion for mandatory bindover is denied. The denial of a motion for mandatory bindover after a finding of no probable cause constitutes "the functional equivalent of the dismissal of an indictment." *A.J.S.* at ¶33. Therefore, the State has an appeal of right pursuant to R.C. 2945.67(A). *Id.*

Discretionary-bindover proceedings are more complex than mandatory-bindover proceedings, because juvenile courts have to employ a two-step process, and consider a number of statutory factors regarding the child's amenability before it can transfer a child to the adult system. R.C. 2152.10; R.C. 2152.12; Juv.R. 30. If the juvenile court finds probable cause that the child committed the act charged, and finds that the child is not amenable to treatment in the juvenile system, it must transfer the child to the adult system. R.C. 2152.12(B)(3). Conversely, if the juvenile court finds that probable cause exists, but also finds the child is amenable to treatment in the juvenile justice system, it must schedule the matter for a full hearing on the merits in juvenile court. R.C. 2152.12(B); Juv.R. 30(E).

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<sup>2</sup> A child is subject to mandatory bindover proceedings if he is aged sixteen or seventeen and is charged with committing one of the offense enumerated in R.C. 2152.10 or R.C. 2152.12.

<sup>3</sup> The staff notes to Juv.R. 30 that were effective July 1, 1997, indicate that the "[r]evisions to Juv.R. 30(B) and (C) recognize the statutory distinctions between mandatory and discretionary bindover. Once probable cause has been established for mandatory bindover under Juv. R. 30(B), the only procedural step remaining is to enter the order of transfer."

As in mandatory-bindover proceedings, the first step in discretionary-bindover proceedings is a determination as to probable cause. R.C. 2152.12(B)(1) and (2); Juv. R. 30(B) and (C). If a juvenile court finds that there is no probable cause to believe that the child committed the act charged in the complaint and the State's discretionary motion for bindover is denied, and under this Court's rationale in *A.J.S.*, the State can immediately appeal the court's decision pursuant to R.C. 2945.67(A). *A.J.S.* at ¶33.

But, if the juvenile court finds that probable cause exists, it must continue the matter for a full "investigation, including a mental examination of the child." R.C. 2152.10; 2152.12(C); Juv.R. 30(C). Once the investigation is complete, the juvenile court is required to hold an amenability hearing to "determine whether the child is amenable to care or rehabilitation within the juvenile system and whether, in order to ensure the safety of the community, the child should be subject to adult sanctions." *A.J.S.* at ¶38, citing R.C. 2152.12(B)(3); Juv.R. 30(C).

A juvenile court's decision regarding a child's amenability to rehabilitation requires the court to consider individual characteristics of the child and to engage in a more complex analysis than a juvenile court's decision about whether probable exists. In determining whether probable cause exists, the juvenile court evaluates the quality of the evidence to determine if the child committed the offense. *Iacona*, 93 Ohio St.3d at 93. And, a determination as to "whether the state [\* \* \*] produced sufficient evidence to support a finding of probable cause in [\* \* \*] bindover proceeding is a question of law, and [courts] review questions of law de novo." *A.J.S.* at ¶47, citing *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8.

However, a juvenile court's determination regarding a child's amenability to rehabilitation is not about the quality of evidence, but rather, is about the unique characteristics of the child—including whether the child has a history of failed attempts at rehabilitation, the

child's maturation level and ability to be rehabilitated, as well as the time and resources available in the juvenile justice system. R.C. 2152.10; R.C. 2152.12(B)-(E); Juv.R. 30(C). The statute requires a juvenile court to determine whether the statutory factors in favor of transfer outweigh the factors against transfer. R.C. 2152.12(B)(3). See, also, R.C. 2152.12(D) and (E). Pursuant to R.C. 2152.12(D) and (E), a juvenile court must consider seventeen factors, as well as any other relevant factors, to determine if transfer is appropriate:

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

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
- (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- (3) The child's relationship with the victim facilitated the act charged.
- (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
- (5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.
- (6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or

was on parole for a prior delinquent child adjudication or conviction.

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

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

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

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

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

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

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

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

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

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

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

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security

available in the juvenile system provides a reasonable assurance of public safety.

R.C. 2152.12(D) and (E).

If, after weighing each of the enumerated factors, the juvenile court determines that the child can not be rehabilitated in the juvenile system, the court must transfer the child to the adult system, and the child is not entitled to appeal the juvenile court's decision until after a conviction and sentence has been entered in the court of common pleas. *In re Becker* (1974), 39 Ohio St.2d 84, 86, 314 N.E.2d 158. Conversely, if the juvenile court determines that there is sufficient time and resources in the juvenile system to rehabilitate the child, it must "retain jurisdiction, [and] shall set the proceedings for a hearing on the merits" in juvenile court. Juv.R. 30(E). See, also, *State v. Harris*, 1<sup>st</sup> Dist. No. C-050160, 2006-Ohio-716; *State v. Washington*, 2<sup>nd</sup> Dist. No. 20226, 2005-Ohio-6546; *State v. Burrell*, 1<sup>st</sup> Dist. No. C-030803, 2005-Ohio-34; *State v. Goodwin*, 8<sup>th</sup> Dist. No. 86309, 2006-Ohio-2311.

In discretionary-bindover proceedings, because juvenile courts must apply and analyze numerous factors and make an individualized determination as to each child and his circumstances, courts of appeals afford great deference to the juvenile court's findings, and will not disturb its decision absent an abuse of discretion. See *State v. Golphin*, 81 Ohio St.3d 543, 546, 1998-Ohio-336; *State v. Watson* (1989), 47 Ohio St.3d 93, 96, 547 N.E.2d 1181; *State v. Douglas* (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711.

**III. There is no statute, juvenile, or appellate rule that provides the State with an appeal of right of a juvenile court's amenability determination.**

It is well-established that "[t]he State may only appeal a [juvenile or] criminal case when a statute gives it express authority to do so." *State v. Hensley*, 2<sup>nd</sup> Dist. No. 18886, 2002-Ohio-1887, citing Ohio Constitution, Article IV, Section 3(B)(2). (Internal citations omitted.) The

only circumstance in which the State has an “appeal as a matter of right” in a delinquency matter occurs after a motion to dismiss or a motion to suppress has been granted. R.C. 2945.67(A); Juv.R.22(F);<sup>4</sup> App.R.4(A)(4). Revised Code section 2945.67(A), in relevant part, provides:

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

A juvenile court’s determination as to amenability does not fall under any of the “appeal as a matter of right” categories provided in R.C. 2945.67(A). Therefore, in cases where the juvenile court determines that a child is amenable to treatment and should remain in the juvenile system, the State may appeal, but only by leave of court, because those rulings fall within “any other decision, except the final verdict,” in R.C. 2945.67(A). *State v. Arnett* (1986), 22 Ohio St.3d 186, 489 N.E.2d 284; *State v. Bistricky* (1990), 51 Ohio St.3d 157, 555 N.E.2d 644. Because appeals from amenability rulings do not fall within one of the categories where the State is granted an appeal as of right by R.C. 2945.67, the State must obtain leave from the court of appeals if it wants to prosecute an appeal. See also, *State v. Wallace* (1975), 43 Ohio St.2d 1, 330 N.E. 2d 697; App.R. 5(C).

**A. This Court should not expand its holding in *In re A.J.S.* and find that the State has an appeal of right of discretionary-bindover determinations because it can seek appellate review from the court appeals.**

The State and its Amicus urge this Court to extend its holding in *In re A.J.S.* to discretionary-bindover proceedings and “similarly rule that the State has the right to appeal the

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<sup>4</sup> Juv.R. 22(F) specifically provides the State with an appeal as of right from the granting of a motion to suppress upon certification “that (1) the appeal is not taken for purpose of delay and (2) the granting of the motion has rendered proof available to the state so weak in its entirety that any reasonable possibility of proving the complaint’s allegations have been destroyed.”

denial of a discretionary-bindover motion because [ \* \* \* ] absent such a ruling, the State will be denied a meaningful or effective remedy because, as with a denial based upon a lack of probable cause, the State forever loses the opportunity to try the juvenile as an adult.” (*Merit Brief* p. 13); (*Amicus Merit Brief* p. 3). The State contends that “absent the right to an immediate appeal, a decision of the juvenile court under R.C. 2152.12(B) would be virtually unreviewable, regardless of how improper or incorrect that decision may be.” (*Merit Brief* p. 14.)

But, the State has the right to obtain review of a juvenile court’s discretionary-bindover determination by seeking leave to appeal pursuant to App. R. 5(C). See, *In re Cline*, 2<sup>nd</sup> Dist. No. 19082, 2002-Ohio-271. The State will be afforded a review of the substantive issues, and presumably, a reversal of an “improper and incorrect” decision, if it can show that the underlying legal question is capable of repetition yet evades review. *Bistricky*, 51 Ohio St.3d at 158-59. (“Pursuant to R.C. 2945.67(A), the General Assembly has given courts of appeals discretionary authority to decide whether to hear an appeal from a decision adverse to the state other than a final verdict.”).

To support its argument, the State cites to *In re Cline*, 2<sup>nd</sup> Dist. No. 19082, 2002-Ohio-271. (*Merit Brief* p. 9). But, in *Cline*, the State filed a motion for leave to appeal the juvenile court’s finding of no probable cause. *Id.* In *Cline*, the State did not claim that it had, nor did the court of appeals find, that the State had, an appeal of right of the juvenile court’s decision. Instead, the court of appeals granted the State’s motion for leave to appeal and ordered the parties to proceed with briefing in accordance with the appellate rules. *Id.* On appeal, the State argued that the juvenile court erred when it did not find probable cause that the defendant committed the act charge. *In re Cline*, 2<sup>nd</sup> Dist. No. 19600, 2003-Ohio-2516. The court of

appeals agreed and reversed and remanded the matter to the juvenile court to find probable cause and to conduct an amenability hearing. *Id.*

But, the ultimate holding in *Cline* is irrelevant to the case at bar, because the juvenile court's probable cause determination is not at issue in this case. Notably, in *Cline*, the State did not file an appeal as of right, but rather, filed a motion for leave to appeal. *Id.*

The State cites to three additional bindover cases where there was a finding of no probable cause that the child committed the act charged, which resulted in, or included, a dismissal of one or more of the charges. (*Merit Brief* pp. 9-13, citing *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215; *In re D.T.F.* 10<sup>th</sup> Dist. Nos. 05AP-03 & 05AP-04, 2005-Ohio-5245; and, *In re A.J.S.* 120 Ohio St.3d 185, 2008-Ohio-5307). But, in those cases, the dismissal of the charges resulted in a dismissal of the complaint or indictment which provided the State with an appeal of right pursuant to R.C. 2945.67(A). *Id.*

Those cases are distinguishable from this case, because the juvenile court's probable cause determination is not at issue. In this case, the juvenile court found that there was probable cause that Meredith committed the act charged. (*Merit Brief* p. 1); (Order Denying Transfer, March 19, 2009, p. 1). Rather, the determination at issue here is the juvenile court's finding of amenability and its decision to retain jurisdiction over the child in this case. Because a juvenile court's finding of amenability is not one of the categories that provide the State with an "appeal of right" in R.C. 2945.67(A), and does not result in a dismissal of the charges, the State was required to seek leave to appeal pursuant to App.R. 5(C).

Moreover, giving the State an appeal of right of discretionary-bindover determinations, denies juvenile courts, as well as courts of appeals the discretion they have long possessed. *State v. Fisher* (1988), 35 Ohio St.3d 22, 25, 117 N.E.2d, 911 ("A decision to grant or deny a motion

for leave to appeal [\* \* \*] rests solely within the discretion of the court of appeals.”) Appellate courts should be given the opportunity to manage their own dockets because it is appellate judges, clerks of court, and their respective support staff that will suffer the burden of having their dockets filled with state appeals that may or may not have merit.

#### **IV. The State did not file an appeal of right in the court of appeals.**

Contrary to Amicus’ contentions, the State never filed a timely notice of appeal and a motion for leave to appeal in the court of appeals. (*Amicus Merit Brief* p. 3) Amicus argues that “[t]he State acted with an abundance of caution in filing the motion for leave along with its notice of appeal and [that it] should be not be penalized for the additional filing.” (*Amicus Merit Brief* p. 3.) But, the State never filed an appeal of right pursuant to R.C. 2945.67(A) because it was simply following the procedure outlined in App.R. 5(C) to perfect its motion for leave to appeal. Appellate Rule 5(C) provides, in relevant part:

#### **(C) Motion by prosecution for leave to appeal**

When leave is sought by the prosecution from the court of appeals to appeal a judgment or order of the trial court, a motion for leave to appeal shall be filed with the court of appeals [\* \* \*]. The motion shall be accompanied by [\* \* \*] [a] memorandum of law in support of the movant’s claims. *Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals.*

App. R. 5(C). (Emphasis added.)

Accordingly, pursuant to App.R. 5(C), the State was required to file a “notice of appeal” in the form prescribed by Ohio R. App. P. 3, with the clerk of the trial court, and a copy of the notice in the court of appeals at the same time.

But, in direct opposition to App.R. 5(C), Amicus argues that, “at worst, the motion for leave is surplusage and should have no bearing on whether the appellate court should have reviewed the case as an appeal as of right pursuant to *In re A.J.S.* (*Amicus Merit Brief* pp. 3-4). In response, Appellee submits that the State’s fifty-page memorandum in support of its motion for leave to appeal pursuant to App.R. 5(C) can not be construed as surplusage. Second, a reviewing court can, but does not have to raise issues that litigants fail to raise on appeal.

Instead of filing an appeal as of right in the court of appeals, the State now complains that the court of appeals erred when it overruled its motion for leave to appeal. (*Merit Brief* p. 8.) Had the State originally filed an appeal as of right pursuant to R.C. 2945.67(A) rather than a motion for leave to appeal pursuant to App.R. 5(C), and had the court of appeals denied the State’s appeal, this issue would properly be before this Court. See *A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307. But, this Court does not review issues that were not raised in the court of appeals, and which are only being raised for the first time in this Court. *State v. Martello* (2002), 1998 Ohio St.3d 398, 2002-Ohio-6661, ¶41, fn 2; *Sherman v. Haines*, (1995), 73 Ohio St.3d 125, 126, 1995-Ohio-222, fn 1 (“Appellees also argue the applicability of the doctrines of promissory estoppel and part performance. These issues, however, having been raised for the first time before this [C]ourt, will not be considered.”).

Because the State did not file an appeal as of right, or even argue that it had an appeal as of right in the court of appeals, this Court should not consider the issue for the first time. Moreover, because the State did not follow the correct appellate procedure to appeal, it should not be rewarded with review in this Court.

**B. This Court should affirm the court of appeals' decision denying the State's motion for leave to appeal.**

If this Court determines that a State must perfect its appeal of a discretionary-bindover decision through leave of court, this Court should affirm the court of appeals' decision overruling the State's motion for leave to appeal. It is well-established, that a "decision to grant or deny a motion for leave to appeal [\* \* \*] rests solely within the discretion of the court of appeals." *State v. Fisher* (1988), 35 Ohio St.3d 22, 25, 117 N.E.2d 911. Therefore, the court of appeals was justified when it exercised its discretion and denied the State's motion for leave to appeal. Accordingly, this Court should affirm the court of appeals' decision denying the State's motion for leave to appeal.

Alternatively, because the court of appeals did not issue a decision addressing the substantive issues raised by the State, this Court should reverse and remand the matter for a full review on the merits.

**APPELLEE'S SECOND PROPOSITION OF LAW**

(In response to the State's second through seventh propositions of law)

**A juvenile court does not abuse its discretion when it properly complies with R.C. 2152.10(B), R.C. 2152.12(B)-(E), and Juv.R. 30(C), and overrules the State's motion for discretionary bindover.**

**I. This Court should dismiss the State's second through seventh propositions of law as review was improvidently accepted.**

The State is asking this Court to reverse the decision of the Hardin County Juvenile Court denying its discretionary-bindover motion. (*Merit Brief*, Propositions of Law II through VII, pp. 14-49). The State argues that the juvenile court abused its discretion when it denied its motion for discretionary bindover. (*Merit Brief* pp. 15-49). Having lost its motion for leave to appeal in the court of appeals, the State now seeks review of the same issue—whether the juvenile court

abused its discretion in denying its motion for discretionary bindover—in its remaining propositions of law. (*Merit Brief* pp. 14-49).

But, this Court is not a court of error correction. *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 492, 2000-Ohio-397, (Cook J., concurring and citing Oh. Const. Art. IV Sec. 2). This Court “sits to settle the law, not to settle cases,” and its function is not to engage in “‘error correction’ regarding the application of settled law” to the facts of a particular case. *Id.*

This Court has repeatedly held, and the State agrees that the standard of review to be applied to discretionary-bindover decisions is an abuse of discretion. See *State v. Golphin*, 81 Ohio St.3d 543, 546, 1998-Ohio-336; *State v. Watson*, (1989), 47 Ohio St. 3d 93, 96, 547 N.E. 2d 1181; *State v. Douglas* (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711. (*Merit Brief* pp. 14, 46). The application of the standard here, results in a finding that the juvenile court did not abuse its discretion when it denied the State’s motion because its “eighteen[-]page decision extensively analyze[d] and applie[d] the factors in favor of and against transfer, as set forth in R.C. 2152.12(D) and (E).” (Order Denying Transfer, March 19, 2008, 13-18.) The State also agrees that in making a determination pursuant to Juv.R. 30, “the juvenile court enjoys wide latitude to retain or relinquish jurisdiction, and the ultimate decision lies within its sound discretion.” (*Merit Brief* p. 37, quoting *State v. Watson* (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d, 1181.)

Because the State is dissatisfied with the juvenile court’s decision to retain jurisdiction and with the court of appeals’ decisions overruling its appeal, it asks this Court to issue a third, and different opinion regarding its motion for discretionary bindover. But, as one commentator has noted, “[t]ime and resources are too limited for th[is] Court to micromanage the law in every case of error correction. Instead, th[is] Court must pick and choose, so that resolving one ‘good’

cause will provide the resolution for numerous other cases.” Shawn Judge, *Convince the Court to Hear Your Case: A Pragmatic Approach to Jurisdictional Memorandum*, LITIGATION NEWS, Vol. 11, Issue 1, Spring 2005, at 4. A decision on the State’s second through seventh propositions of law, regardless of the ultimate result, would provide a resolution for this case, and for these parties alone. Beyond that, it would have no impact upon Ohio appellate practice. For that reason, this Court should decline to address the State’s second through seventh propositions of law now.

Further, because the State failed to raise any errors of law, and instead only complains about the court of appeals’ and the juvenile court’s exercise of discretion, this Court should dismiss the State’s second through seventh propositions of law. This Court has held that, “when there is not a case in controversy or any ruling by an appellate court that would result in an advisory opinion, there will be no appellate review unless the underlying legal question is capable of repetition yet evades review. *State v. Bistricky* (1990), 51 Ohio St.3d 157, 158, 555 N.E.2d 644. But, as was argued above, the underlying legal question here which addresses the standard of review to be applied to a juvenile court’s decision denying discretionary bindover, has been resolved.

Moreover, if this Court finds that the State raised substantive issues in its remaining propositions of law, these issues were not addressed by the court of appeals; therefore, they are not ripe for review by this Court. Accordingly, this Court should reverse and remand the matter to the Third District Court of Appeals to conduct a review on the merits. *Id.* (“We, therefore, reverse the judgment of the court of appeals to the extent that it found no authority, pursuant to R.C. 2945.67(A), to consider the state’s appeal and remand the cause to that court to exercise its discretion [ \* \* \*].”).

**II. Even if this Court reverses and remands this matter to the court of appeals for it to conduct a review on the merits, the standard on appeal is an abuse of discretion. Contrary to the State's contentions, the juvenile court did not abuse its discretion in denying its discretionary-bindover motion.**

In its second through seventh propositions of law, the State contends that the juvenile court engaged in ex parte communications with third parties and considered extraneous evidence which "prejudiced the State" and "require[s] the vacation of [the court's] March 19, 2008 ruling" denying the State's motion for discretionary bindover. (*Merit Brief* p. 21). But, the juvenile court's communication with Ms. Sanford, Mr. Ciola's supervisor, was collateral to the court's decision to retain jurisdiction. (Entry, July 18, 2008, pp. 2-5.) Because the communications did not influence or effect the court's substantive ruling, its decision should stand. (Entry, July 18, 2008, p. 1-6.)

**A. Alleged ex parte communication and consideration of extraneous evidence.**

The juvenile court did not engage in ex parte communications and did not consider extraneous evidence to the detriment of either party. Ohio Code of Judicial Conduct Canon 3(B)(7) provides that, except in certain situations, "[a] judge shall not initiate, receive, permit, or consider communications as to substantive matters or issues on the merits made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding."

During the amenability hearing, the parties stipulated to several exhibits that were admitted into evidence for the juvenile court's consideration. (*Merit Brief* pp. 14-15). Specifically, Defense Exhibit "J," as originally filed, consisted of a nine-page report and treatment plan prepared by Mr. Ciola, student counselor with the Light of the Way Christian Counseling Center, for Meredith. (*Merit Brief* p. 15).

While studying Defense Exhibit “J,” the juvenile court realized that the report was not signed by Mr. Ciola or Ms. Sandra Sanford, Mr. Ciola’s supervisor. (Entry, July 16, 2008 p. 5.) The juvenile court became concerned, “not as to the report’s credibility or its author’s supervision but that, because of licensure issues, the report should have been signed.” (Entry, July 16, 2008, p. 5). Therefore, the juvenile court raised its concerns regarding the missing signatures, possible outside scrutiny, risk to licensure, lack of monitoring of services by the HCFJS” and possible liability, with Ms. Sanford. (Entry, July 16, 2008, p. 5.) As a result, Ms. Sanford wrote a written response to the Hardin County Job and Family Services (hereinafter “HCFJS”) and to the court, informing them that she was “in fact, supervising [Ciola] but had neglected to sign off on his letter and paperwork. [\* \* \*] [T]he Court immediately directed her to present copies to the parties which she apparently did. (July 16, 2008 Entry, pp. 5-6.) (Emphasis in original.) No objections were raised by either party. (July 16, 2008, Entry, p. 6.)

The juvenile court’s alleged ex parte communication and consideration of this extraneous evidence were clearly administrative, and “was entirely collateral to the investigation and hearing on the prosecution’s motion [for bindover.]” (Entry, July 16, 2008, p. 6.) The juvenile court specifically stated that the communication with Ms. Sanford “was not intended to address and had no bearing on contested substantive matters or issues on the merits of the motion.” (Entry, July 16, 2008, p. 6.)

The State’s reliance on this Court’s decision in *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665 and *Nationwide Mutual Ins. Co. v. Riggle* (1962), 173 Ohio St. 288, 181 N.E.2d 696, is misplaced. In *Roberts* and *Nationwide*, this Court reversed and remanded the proceedings because the trial court engaged in direct and substantial ex parte communications with counsel. *Roberts*, at 95; *Nationwide*, at 290. But here, because the juvenile court did not engage in ex

parte communications with the State or defense counsel, *Roberts* and *Nationwide* are unpersuasive and irrelevant.

The State contends that it was deprived of the opportunity to cross-examine or contest the accuracy of Mr. Ciola's report. (*Merit Brief* p. 21.) It further argues that "Judge Rapp's conduct prejudiced the State and undercut the State's trial tactic of stipulating to an exhibit that should speak for itself, and absent any further testimony or explanation, is clearly unpersuasive. (*Merit Brief* p. 21.) But, by agreeing to its admissibility, the State not only conceded to the materiality, relevance, and credibility of the report, it voluntarily waived any substantial defects the report might have contained.

In its July 16, 2008 entry, the juvenile court thoroughly explained its reasoning for contacting Mr. Sanford and explicitly stated that these alleged ex parte communications did not have influence its decision denying the State's motion for discretionary transfer. (Entry, July 16, 2008 Entry, pp. 3-6.) Furthermore, the court sua sponte granted the State leave to file a motion for reconsideration of its March 18, 2008 decision, and requested that the State "set forth the specific facts [it] believe[d] the Court to have erroneously relied upon in arriving at its decision to retain jurisdiction." (July 16, 2008 Entry, p. 9). But, the State never filed a motion to reconsider.

**B. Dr. Tennenbaum's testimony and report.**

In its fifth proposition of law, the State argues that "[t]he juvenile court abused his discretion in crediting Vincent Ciola's letter rather than the report of Dr. Tennenbaum and in substituting his own beliefs for those of Dr. Tennenbaum." (*Merit Brief* p. 28). But, the court did not substitute its own beliefs for those of Dr. Tennenbaum, and described in length the findings of Dr. Tennenbaum that it found credible, and the parts it found questionable. (Order

Denying Transfer, March 19, 2008, pp. 8-12.) Further, a juvenile court is not bound by expert opinion, and may assign any weight to expert opinion that it deems appropriate. *State v. West* 167 Ohio App.3d 586, 2006-Ohio-3518; *State v. Whiteside* (1982), 6 Ohio App.3d 30, 452 N.E.2d 332. Accordingly, this proposition is without merit.

**C. Statutory factors enumerated in R.C. 2152.12(D) and (E).**

In its sixth proposition of law, the State acknowledges that juvenile courts are afforded wide latitude in deciding whether to retain or relinquish jurisdiction in discretionary-bindover cases, and that discretionary-bindover decisions are reviewed for an abuse of discretion. (*Merit Brief* p. 37, citing *State v. Carmichael* (1973), 35 Ohio St. 2d 1, 298 N.E.2d 568 and *State v. Douglas* (1985), 20 Ohio St.3d 34, 485 N.E.2d 711.) The State also admits that the juvenile court considered the statutory factors outlined in R.C. 2152.12[(D) and (E)], but argues that “his attitude in reaching his decision was unreasonable and arbitrary and must not be permitted to stand.” (*Merit Brief* p. 37.)

In its eighteen-page order denying the State’s motion for bindover, the juvenile court thoroughly examined the factors weighing in favor of, and against, transfer and applied each factor to the facts of this case. (Order Denying Transfer, March 19, 2008, pp. 13-18.) While analyzing each of the enumerated factors and applying them to this case, the court considered Meredith’s background, including information about her upbringing; medical conditions; mental, physical and sexual abuse; school records; prior court involvement; alcohol and drug abuse; relationships and interactions with friends and family members, as well as current behavior and rehabilitative efforts while in the detention center. (Order Denying Transfer, March 19, 2008, pp. 1-7.) It also considered the reports, assessments, and counseling sessions that were

conducted by Dr. Tennenbaum and by Mr. Ciola. (Order Denying Transfer, March 19, 2008, pp. 7-12.)

Thus, despite the State's contentions that the juvenile court only "pa[id] lip service to the factors enumerated in R.C. 2152.12(D) and (E)," it is clear that the juvenile court afforded each statutory factor the proper weight due; thus, it did not abuse its discretion and its decision denying the State's motion for bindover should not be disturbed. (Order Denying Transfer, March 19, 2008, pp. 1-18.)

**D. Cumulative errors.**

Although the State claims in seventh proposition of law that a combination of errors by the juvenile court "compromised the fairness of the proceedings," it offers no analysis to support those claims. (*Merit Brief* p. 49.) Thus, it fails to demonstrate that the hearing was unfair and warrants reversal. *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008. Therefore, this Court should affirm the court of appeals decision.

**III. This Court should affirm the juvenile court's decision denying the State's motion for bindover and the court of appeals motion denying the State's motion for leave to appeal.**

Even if this Court agrees with the State's second through seventh propositions of law, it should affirm the juvenile court's decision denying the State's bindover motion, as it reached the correct result. *State ex rel. McGrath v. Ohio Adult Parole Authority et al.*, 100 Ohio St.3d 72, 2003-Ohio-5062, at ¶8 ("Reviewing courts are not authorized to reverse a correct judgment on the basis that some or all of the lower court's reasons are erroneous."), citing *State ex rel. Johnson v. Ohio Dept. of Rehab. & Corr.*, 95 Ohio St.3d 70, 72, 2002-Ohio-1629. Further, the court of appeals was justified in overruling the State's motion for leave to appeal.

## CONCLUSION

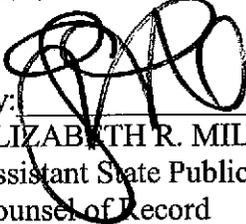
This Court should not extend its holding in *In re A.J.S.* to discretionary-bindover determinations because a juvenile court's decision to retain jurisdiction after a finding of amenability is not the same as a finding of no probable cause in mandatory-bindover proceedings. *Id.*

If, however, this Court determines that the State has the right to immediately appeal a decision denying its discretionary motion for bindover after a finding of amenability, this Court should nonetheless, affirm the court of appeals decision because the State never filed an appeal as of right pursuant to R.C. 2945.67(A). Conversely, if this Court determines that the State does not have an immediate appeal of right of discretionary-bindover determinations, this Court should affirm the court of appeals' decision overruling the State's motion for leave to appeal.

This Court should dismiss the State's second through seventh propositions of law as being improvidently accepted. Alternatively, this Court should reverse and remand this matter to the court of appeals for it to issue a substantive decision on the merits.

Respectfully submitted,

The Office of the Ohio Public Defender

By: 

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COUNSEL FOR APPELLEE  
MEREDITH POLING

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPELLEE'S MERIT BRIEF has been sent by regular U.S. mail, postage prepaid, this 5<sup>th</sup> day of August, 2009 to the office of Colleen P. Limerick, Hardin County Assistant Prosecutor, One Courthouse Square, Suite #50, Kenton, Ohio 43326.



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ELIZABETH R. MILLER #0077362  
Assistant State Public Defender

IN THE SUPREME COURT OF OHIO 08-1562

IN THE MATTER OF:	)	Supreme Court Case No.
	)	
MEREDITH POLING,	)	On Appeal from the Court of Appeals
	)	of the Third Appellate Judicial District
ALLEGED DELINQUENT CHILD	)	of Ohio, Hardin County
	)	
[STATE OF OHIO -- APPELLANT].	)	Court of Appeals Case No. 6-08-09

NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

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**FILED**  
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 CLERK OF COURT  
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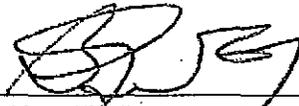
**ATTORNEY FOR H.C.J.&F.S.**

**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

The Appellant, the State of Ohio, hereby gives notice of its appeal to the Supreme Court of Ohio from the judgment of the Hardin County Court of Appeals, Third Appellate Judicial District, filed on June 25, 2008, in Court of Appeals Case No. 6-08-09.

This appeal was taken from the Juvenile Division of the Court of Common Pleas of Hardin County, and it involves a felony and is one of public and of great general interest.

Respectfully submitted,



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Attorney for the State of Ohio

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing, Notice of Appeal, was sent by United States Mail, first-class postage prepaid, upon William F. Kluge, Attorney for the Appellee, Alleged Delinquent Child, at 124 S. Metcalf Street, Lima, Ohio 45801, Bridget Hawkins, *Guardian Ad Litem* for the Child, P.O. Box 549, Bellefontaine, Ohio 43311, and Teresa Glover, Attorney for H.C.J.&F.S., at 175 W. Franklin Street, Kenton, Ohio 43326 on this 8<sup>th</sup> day of August, 2008.



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Bradford W. Bailey (#0017814)  
Hardin County Prosecutor  
Attorney for the State of Ohio

# CONSTITUTION OF THE STATE OF OHIO

## ARTICLE IV: JUDICIAL

### § 3 Court of Appeals.

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

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

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

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

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

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

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

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

LEXSTAT O.R.C. 2151.23

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

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2151.23 (2009)*

§ 2151.23. Jurisdiction of juvenile court

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) (1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with *sections 3109.04 and 3127.01 to 3127.53 of the Revised Code* and, as applicable, *sections 5103.20 to 5103.22 or 5103.23 to 5103.237 [5103.23.7] of the Revised Code*.

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

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

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

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

#### **HISTORY:**

133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06; 152 v S 10, § 1, eff. 1-1-08; 152 v H 214, § 5, eff. 5-14-08.

LEXSTAT ORC ANN. 2151.26

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

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*ORC Ann. 2151.26 (2009)*

§ 2151.26. Renumbered

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

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

## LEXSTAT ORC ANN. 2152.10

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

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ORC Ann. 2152.10 (2009)

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

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

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

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

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

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

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

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

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

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

**HISTORY:**

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

## LEXSTAT ORC ANN. 2152.12

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

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ORC Ann. 2152.12 (2009)

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

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

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

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

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

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

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

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

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

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred out-

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

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

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

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
- (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- (3) The child's relationship with the victim facilitated the act charged.
- (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
- (5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of *section 2923.12 of the Revised Code*, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.
- (6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.
- (7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.
- (8) The child is emotionally, physically, or psychologically mature enough for the transfer.
- (9) There is not sufficient time to rehabilitate the child within the juvenile system.

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

- (1) The victim induced or facilitated the act charged.
- (2) The child acted under provocation in allegedly committing the act charged.
- (3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
- (4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.
- (5) The child previously has not been adjudicated a delinquent child.
- (6) The child is not emotionally, physically, or psychologically mature enough for the transfer.
- (7) The child has a mental illness or is a mentally retarded person.
- (8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

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

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

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

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

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

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

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

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

#### **HISTORY:**

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

LEXSTAT O.R.C. 2151.23

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

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*ORC Ann. 2151.23 (2009)*

§ 2151.23. Jurisdiction of juvenile court

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) (1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with *sections 3109.04 and 3127.01 to 3127.53 of the Revised Code* and, as applicable, *sections 5103.20 to 5103.22 or 5103.23 to 5103.237 [5103.23.7] of the Revised Code*.

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

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

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

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

#### **HISTORY:**

133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06; 152 v S 10, § 1, eff. 1-1-08; 152 v H 214, § 5, eff. 5-14-08.

## LEXSTAT O.R.C 2152.26

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 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

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

Go to the Ohio Code Archive Directory

ORC Ann. 2152.26 (2009)

§ 2152.26. Place of detention

(A) Except as provided in divisions (B) and (F) of this section, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:

- (1) A certified foster home or a home approved by the court;
- (2) A facility operated by a certified child welfare agency;
- (3) Any other suitable place designated by the court.

(B) In addition to the places listed in division (A) of this section, a child alleged to be or adjudicated a delinquent child may be held in a detention facility for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with division (F)(2) of this section in a facility of a type specified in that division. Division (B) of this section does not apply to a child alleged to be or adjudicated a delinquent child for chronic truancy, unless the child violated a lawful court order made pursuant to division (A)(6) of *section 2152.19 of the Revised Code*. Division (B) of this section also does not apply to a child alleged to be or adjudicated a delinquent child for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, unless the child violated a lawful court order made pursuant to division (C)(1)(e) of *section 2151.354 [2151.35.4] of the Revised Code*.

(C) (1) Except as provided under division (C)(1) of *section 2151.311 [2151.31.1] of the Revised Code* or division (A)(5) of *section 2152.21 of the Revised Code*, a child alleged to be or adjudicated a juvenile traffic offender may not be held in any of the following facilities:

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

(b) A secure correctional facility.

(2) Except as provided under this section, sections 2151.56 to 2151.61, and divisions (A)(5) and (6) of *section 2152.21 of the Revised Code*, a child alleged to be or adjudicated a juvenile traffic offender may not be held for more than twenty-four hours in a detention facility.

(D) Except as provided in division (F) of this section or in division (C) of *section 2151.311 [2151.31.1]*, in division (C)(2) of *section 5139.06* and *section 5120.162 [5120.16.2]*, or in division (B) of *section 5120.16 of the Revised Code*, a child who is alleged to be or is adjudicated a delinquent child may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.

(E) Unless the detention is pursuant to division (F) of this section or division (C) of section 2151.311 [2151.31.1], division (C)(2) of section 5139.06 and section 5120.162 [5120.16.2], or division (B) of *section 5120.16 of the Revised Code*, the official in charge of the institution, jail, workhouse, or other facility shall inform the court immediately when a child, who is or appears to be under the age of eighteen years, is received at the facility, and shall deliver the child to the court upon request or transfer the child to a detention facility designated by the court.

(F) (1) If a case is transferred to another court for criminal prosecution pursuant to *section 2152.12 of the Revised Code*, the child may be transferred for detention pending the criminal prosecution in a jail or other facility in accordance with the law governing the detention of persons charged with crime. Any child so held shall be confined in a manner that keeps the child beyond the range of touch of all adult detainees. The child shall be supervised at all times during the detention.

(2) If a person is adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the person may be held under that disposition in places other than those specified in division (A) of this section, including, but not limited to, a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.

(3) (a) A person alleged to be a delinquent child may be held in places other than those specified in division (A) of this section, including, but not limited to, a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:

(i) The person attains eighteen years of age before the person is arrested or apprehended for that act.

(ii) The person is arrested or apprehended for that act before the person attains eighteen years of age, but the person attains eighteen years of age before the court orders a disposition in the case.

(b) If, pursuant to division (F)(3)(a) of this section, a person is held in a place other than a place specified in division (A) of this section, the person has the same rights to bail as an adult charged with the same offense who is confined in a jail pending trial.

#### **HISTORY:**

*RC* § 2151.31.2, 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 139 v H 440 (Eff 11-23-81); 143 v H 166 (Eff 2-14-90); 144 v S 331 (Eff 11-13-92); 145 v H 152 (Eff 7-1-93); 145 v H 571 (Eff 10-6-94); 146 v H 265 (Eff 3-3-97); 146 v H 124 (Eff 3-31-97); 147 v H 1 (Eff 7-1-98); 148 v S 181 (Eff 9-4-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); *RC* § 2152.26, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003.

LEXSTAT ORC ANN. 2903.02

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TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2903. HOMICIDE AND ASSAULT  
HOMICIDE

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2903.02 (2009)*

§ 2903.02. Murder

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of *section 2903.03* or *2903.04 of the Revised Code*.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in *section 2929.02 of the Revised Code*.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

LEXSTAT ORC ANN. 2941.145

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TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2941. INDICTMENT  
FORM AND SUFFICIENCY

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2941.145 (2009)*

§ 2941.145. Specification that offender displayed, brandished, indicated possession of or used firearm

(A) Imposition of a three-year mandatory prison term upon an offender under division (D)(1)(a) of *section 2929.14 of the Revised Code* is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense)."

(B) Imposition of a three-year mandatory prison term upon an offender under division (D)(1)(a) of *section 2929.14 of the Revised Code* is precluded if a court imposes a one-year or six-year mandatory prison term on the offender under that division relative to the same felony.

(C) The specification described in division (A) of this section may be used in a delinquent child proceeding in the manner and for the purpose described in *section 2152.17 of the Revised Code*.

(D) As used in this section, "firearm" has the same meaning as in *section 2923.11 of the Revised Code*.

**HISTORY:**

146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3. Eff 1-1-2002.

LEXSTAT ORC ANN. 2945.67

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

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2945.67 (2009)*

§ 2945.67. Appeal by state

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

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

**HISTORY:**

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

LEXSTAT OHIO APP. R. 3

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Ohio Rules Of Appellate Procedure  
Title II Appeals From Judgments And Orders Of Court Of Record

*Ohio App. Rule 3 (2009)*

Review Court Orders which may amend this Rule.

**Rule 3. Appeal as of right—how taken**

**(A) Filing the notice of appeal.**

An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by leave of court shall be taken in the manner prescribed by Rule 5.

**(B) Joint or consolidated appeals.**

If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

**(C) Cross appeal.**

(1) Cross appeal required. A person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order or, in the event the judgment or order may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by *App.R. 4*.

(2) Cross appeal not required. A person who intends to defend a judgment or order appealed by an appellant on a ground other than that relied on by the trial court but who does not seek to change the judgment or order is not required to file a notice of cross appeal.

**(D) Content of the notice of appeal.**

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. The title of the case shall be the same as in the trial court with the designation of the appellant added, as appropriate. Form 1 in Appendix of Forms is a suggested form of a notice of appeal.

**(E) Service of the notice of appeal.**

The clerk of the trial court shall serve notice of the filing of a notice of appeal and, where required by local rule, a docketing statement, by mailing, or by facsimile transmission, a copy to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the party's last known address. The clerk shall mail or otherwise forward a copy of the notice of appeal and of the docket entries, together with a copy of all filings by ap-

## Ohio App. Rule 3

pellant pursuant to *App.R. 9(B)*, to the clerk of the court of appeals named in the notice. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or a party's counsel. The clerk shall note in the docket the names of the parties served, the date served, and the means of service.

**(F) Amendment of the notice of appeal.**

The court of appeals within its discretion and upon such terms as are just may allow the amendment of a timely filed notice of appeal.

**(G) Docketing statement.**

If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, a docketing statement shall be filed with the clerk of the trial court with the notice of appeal. (See Form 2, Appendix of Forms.)

The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar.

A case may be assigned to the accelerated calendar if any of the following apply:

- (1) No transcript is required (e.g. summary judgment or judgment on the pleadings);
- (2) The length of the transcript is such that its preparation time will not be a source of delay;
- (3) An agreed statement is submitted in lieu of the record;
- (4) The record was made in an administrative hearing and filed with the trial court;
- (5) All parties to the appeal approve an assignment of the appeal to the accelerated calendar; or
- (6) The case has been designated by local rule for the accelerated calendar.

The court of appeals by local rule may assign a case to the accelerated calendar at any stage of the proceeding. The court of appeals may provide by local rule for an oral hearing before a full panel in order to assist it in determining whether the appeal should be assigned to the accelerated calendar.

Upon motion of appellant or appellee for a procedural order pursuant to *App.R. 15(B)* filed within seven days after the notice of appeal is filed with the clerk of the trial court, a case may be removed for good cause from the accelerated calendar and assigned to the regular calendar. Demonstration of a unique issue of law which will be of substantial precedential value in the determination of similar cases will ordinarily be good cause for transfer to the regular calendar.

**HISTORY:** Amended, eff 7-1-72; 7-1-77; 7-1-82; 7-1-91; 7-1-92; 7-1-94.

## LEXSTAT OHIO APP. R. 4

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Ohio Rules Of Appellate Procedure  
 Title II Appeals From Judgments And Orders Of Court Of Record

*Ohio App. Rule 4 (2009)*

Review Court Orders which may amend this Rule.

**Rule 4. Appeal as of right--when taken**

**(A) Time for appeal.**

A party shall file the notice of appeal required by *App.R. 3* within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in *Rule 58(B) of the Ohio Rules of Civil Procedure*.

**(B) Exceptions.**

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals. If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion. In a civil case or juvenile proceeding, if a party files a timely motion for judgment under *Civ. R. 50(B)*, a new trial under *Civ. R. 59(B)*, vacating or modifying a judgment by an objection to a magistrate's decision under *Civ. R. 53(E)(4)(c)* or *Rule 40(E)(4)(c) of the Ohio Rules of Juvenile Procedure*, or findings of fact and conclusions of law under *Civ. R. 52*, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered.

(3) Criminal post-judgment motion. In a criminal case, if a party timely files a motion for arrest of judgment or a new trial for a reason other than newly discovered evidence, the time for filing a notice of appeal begins to run when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

(4) Appeal by prosecution. In an appeal by the prosecution under *Crim.R. 12(K)* or *Juv.R. 22(F)*, the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order. If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under *Civ.R. 54(B)*, a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under *Civ.R. 54(B)*.

**(C) Premature notice of appeal.**

## Ohio App. Rule 4

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

**(D) Definition of "entry" or "entered".**

As used in this rule, "entry" or "entered" means when a judgment or order is entered under *Civ.R. 58(A)* or *Crim.R. 32(C)*.

**HISTORY:** Amended, eff 7-1-72; 7-1-85; 7-1-89; 7-1-92; 7-1-96; 7-1-02.

LEXSTAT OHIO APP. RULE 5

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Ohio Rules Of Appellate Procedure  
Title II Appeals From Judgments And Orders Of Court Of Record

*Ohio App. Rule 5 (2009)*

Review Court Orders which may amend this Rule.

**Rule 5. Appeals by leave of court**

**(A) Motion by defendant for delayed appeal.**

(1) After the expiration of the thirty day period provided by *App. R. 4(A)* for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

- (a) Criminal proceedings;
- (b) Delinquency proceedings; and
- (c) Serious youthful offender proceedings.

(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by *App. R. 3* and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

**(B) Motion to reopen appellate proceedings.**

If a federal court grants a conditional writ of habeas corpus upon a claim that a defendant's constitutional rights were violated during state appellate proceedings terminated by a final judgment, a motion filed by the defendant or on behalf of the state to reopen the appellate proceedings may be granted by leave of the court of appeals that entered the judgment. The motion shall be filed with the clerk of the court of appeals within forty-five days after the conditional writ is granted. A certified copy of the conditional writ and any supporting opinion shall be filed with the motion. The clerk shall serve a copy of a defendant's motion on the prosecuting attorney.

**(C) Motion by prosecution for leave to appeal.**

When leave is sought by the prosecution from the court of appeals to appeal a judgment or order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by *App. R. 3* and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant

who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

**(D) Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C).**

(1) When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the judgment and order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by *App.R. 3* and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

**(2) Leave to appeal consecutive sentences incorporated into appeal as of right.**

When a criminal defendant has filed a notice of appeal pursuant to *App. R. 4*, the defendant may elect to incorporate in defendant's initial appellate brief an assignment of error pursuant to R.C. 2953.08(C), and the assignment of error shall be deemed to constitute a timely motion for leave to appeal pursuant to R.C. 2953.08(C).

**(E) Determination of the motion.**

Except when required by the court the motion shall be determined by the court of appeals on the documents filed without formal hearing or oral argument.

**(F) Order and procedure following determination.**

Upon determination of the motion, the court shall journalize its order and the order shall be filed with the clerk of the court of appeals, who shall certify a copy of the order and mail or otherwise forward the copy to the clerk of the trial court. If the motion for leave to appeal is overruled, except as to motions for leave to appeal filed by the prosecution, the clerk of the trial court shall collect the costs pertaining to the motion, in both the court of appeals and the trial court, from the movant. If the motion is sustained and leave to appeal is granted, the further procedure shall be the same as for appeals as of right in criminal cases, except as otherwise specifically provided in these rules.

**HISTORY:** Amended, eff 7-1-88; 7-1-92; 7-1-94; 7-1-96; 7-1-03.

## LEXSTAT OHIO JUV. R. 22

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## Ohio Rules Of Juvenile Procedure

*Ohio Juv. R. 22 (2009)*

Review Court Orders which may amend this Rule.

**Rule 22. Pleadings and motions; defenses and objections****(A) Pleadings and motions.**

Pleadings in juvenile proceedings shall be the complaint and the answer, if any, filed by a party. A party may move to dismiss the complaint or for other appropriate relief.

**(B) Amendment of pleadings.**

Any pleading may be amended at any time prior to the adjudicatory hearing. After the commencement of the adjudicatory hearing, a pleading may be amended upon agreement of the parties or, if the interests of justice require, upon order of the court. A complaint charging an act of delinquency may not be amended unless agreed by the parties, if the proposed amendment would change the name or identity of the specific violation of law so that it would be considered a change of the crime charged if committed by an adult. Where requested, a court order shall grant a party reasonable time in which to respond to an amendment.

**(C) Answer.**

No answer shall be necessary. A party may file an answer to the complaint, which, if filed, shall contain specific and concise admissions or denials of each material allegation of the complaint.

**(D) Prehearing motions.**

Any defense, objection or request which is capable of determination without hearing on the allegations of the complaint may be raised before the adjudicatory hearing by motion. The following must be heard before the adjudicatory hearing, though not necessarily on a separate date:

- (1) Defenses or objections based on defects in the institution of the proceeding;
- (2) Defenses or objections based on defects in the complaint (other than failure to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding);
- (3) Motions to suppress evidence on the ground that it was illegally obtained;
- (4) Motions for discovery;
- (5) Motions to determine whether the child is eligible to receive a sentence as a serious youthful offender.

**(E) Motion time.**

Except for motions filed under division (D)(5) of this rule, all prehearing motions shall be filed by the earlier of:

- (1) seven days prior to the hearing, or
- (2) ten days after the appearance of counsel.

Rule 22(D)(5) motions shall be filed by the later of:

- (1) Twenty days after the date of the child's initial appearance in juvenile court; or
- (2) Twenty days after denial of a motion to transfer.

The filing of the Rule 22(D)(5) motion shall constitute notice of intent to pursue a serious youthful offender disposition.

The court in the interest of justice may extend the time for making prehearing motions.

The court for good cause shown may permit a motion to suppress evidence under division (D)(3) of this rule to be made at the time the evidence is offered.

**(F) State's right to appeal upon granting a motion to suppress.**

In delinquency proceedings the state may take an appeal as of right from the granting of a motion to suppress evidence if, in addition to filing a notice of appeal, the prosecuting attorney certifies that (1) the appeal is not taken for the purpose of delay and (2) the granting of the motion has rendered proof available to the state so weak in its entirety that any reasonable possibility of proving the complaint's allegations has been destroyed.

Such appeal shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the juvenile court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal which may be taken under this rule shall be diligently prosecuted.

A child in detention or shelter care may be released pending this appeal when the state files the notice of appeal and certification.

This appeal shall take precedence over all other appeals.

**HISTORY:** Amended, eff 7-1-77; 7-1-94; 7-1-01.

LEXSTAT OHIO JUV. R. 30

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Ohio Rules Of Juvenile Procedure

*Ohio Juv. R. 30 (2009)*

Review Court Orders which may amend this Rule.

**Rule 30. Relinquishment of jurisdiction for purposes of criminal prosecution**

**(A) Preliminary hearing.**

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

**(B) Mandatory transfer.**

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

**(C) Discretionary transfer.**

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

**(D) Notice.**

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

**(E) Retention of jurisdiction.**

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

**(F) Waiver of mental examination.**

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

**(G) Order of transfer.**

The order of transfer shall state the reasons for transfer.

**(H) Release of child.**

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

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

## LEXSTAT OHIO S. CT. PRAC. R. VI

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## Rules Of Practice Of The Supreme Court Of Ohio

*Ohio S. Ct. Prac. RULE VI (2009)*

Review Court Orders which may amend this Rule.

**RULE VI. BRIEFS ON THE MERITS IN APPEALS****Section 1. Limitation on Application of Rule.**

The filing deadlines imposed by this rule do not apply to appeals involving the imposition of the death penalty for an offense committed on or after January 1, 1995, and instituted under *S.Ct.Prac.R. II*, Section 1(C)(1). Filing deadlines for briefs in those appeals are governed by *S.Ct.Prac.R. XIX*, Section 5.

**Section 2. Appellant's Brief.**

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within 20 days from the date the Clerk of the Supreme Court files the record from the court of appeals. In every other appeal, the appellant shall file a merit brief within 40 days from the date the Clerk files the record from the court of appeals or the administrative agency. In any case, the appellant shall not file a merit brief prior to the filing of the record by the Clerk. [See Appendix D following these rules for a sample brief.]

(B) The appellant's brief shall contain all of the following:

(1) A table of contents listing the table of authorities cited, the statement of facts, the argument with proposition or propositions of law, and the appendix, with references to the pages of the brief where each appears.

(2) A table of the authorities cited, listing the citations for all cases or other authorities, arranged alphabetically; constitutional provisions; statutes; ordinances; and administrative rules or regulations upon which appellant relies, with references to the pages of the brief where each citation appears.

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to *S.Ct.Prac.R. VII*.

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if appellant prevails. See *Drake v. Bucher (1966)*, 5 *Ohio St.2d* 37, 39, 213 *N.E.2d* 182, 184. If several propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading.

(5) An appendix, numbered separately from the body of the brief, containing copies of all of the following:

(a) The date-stamped notice of appeal to the Supreme Court, the notice of certified conflict, or the federal court certification order, whichever is applicable;

(b) The judgment or order from which the appeal is taken;

(c) The opinion, if any, relating to the judgment or order being appealed;

(d) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;

(e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which appellant relies;

(f) Any constitutional provision, statute, or ordinance upon which appellant relies, to be construed, or otherwise involved in the case;

(g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

(C) Except in death penalty appeals of right, the appellant's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

### **Section 3. Appellee's Brief.**

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, within 20 days after the filing of appellant's brief the appellee shall file a merit brief. In every other appeal, the appellee shall file a merit brief within 30 days after the filing of appellant's brief. The appellee's brief shall comply with the provisions in Section 2(B) of this rule, answer the appellant's contentions, and make any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken. A statement of facts may be omitted from the appellee's brief if the appellee agrees with the statement of facts given in the appellant's merit brief. The appendix need not duplicate any materials provided in the appendix of the appellant's brief.

(B) Except in death penalty appeals of right, the appellee's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(C) If the case involves more than one appellant who file separate merit briefs, the appellee shall file only one merit brief responding to all of the appellants' merit briefs. The time for filing the appellee's brief shall be calculated from the date the last brief in support of appellant is filed.

### **Section 4. Appellant's Reply Brief.**

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant may file a reply brief within 15 days after the filing of appellee's brief. In every other appeal, the appellant may file a reply brief within 20 days after the filing of appellee's brief. Except in death penalty appeals of right, the reply brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(B) If the case involves more than one appellee who file separate merit briefs, the appellant shall file only one reply brief, if any, responding to all of the appellees' merit briefs. The time for filing the appellant's reply brief, if any, shall be calculated from the date the last brief in support of appellee is filed.

### **Section 5. Merit Briefs in Case Involving Cross-Appeal.**

In a case involving a cross-appeal, each of the parties shall be permitted to file two briefs, and each brief shall conform to the requirements of Section 2(B) of this rule.

#### **(A) First brief.**

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the first merit brief within 20 days from the date the Clerk files the record from the court of appeals. In every other appeal, the appellant/cross-appellee shall file the first merit brief within 40 days from the date the Clerk files the record from the court of appeals or the administrative agency. Except in death penalty appeals of right, this first brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

#### **(B) Second brief.**

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellee/cross-appellant shall file the second merit brief within 20 days after the filing of the first brief. In every other appeal, the appellee/cross-appellant shall file the second merit brief within 30 days after the filing of the first brief. The second brief shall be a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law

and arguments in support of the cross-appeal. Except in death penalty appeals of right, the second brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

**(C) Third brief.**

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the third merit brief within 20 days after the filing of the second brief. In every other appeal, the appellant/cross-appellee shall file the third merit brief within 30 days after the filing of the second brief. If the appellant/cross-appellee elects to file a reply brief in that party's appeal, the third brief shall be a combined brief containing both a reply and a response to the arguments in the cross-appeal. Otherwise, the third brief shall include only a response in opposition to the cross-appeal. Except in death penalty appeals of right, the third brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

**(D) Fourth brief.**

The fourth brief may be filed by the appellee/cross-appellant only as a reply brief in the cross-appeal. In every appeal involving termination of parental rights or adoption of a minor child, or both, if a fourth brief is filed, it shall be filed within 15 days after the filing of the third brief. In every other appeal, if a fourth brief is filed, it shall be filed within 20 days after the filing of the third brief. Except in death penalty appeals of right, a fourth brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

**Section 6. Brief of Amicus Curiae.**

**(A)** An *amicus curiae* may file a brief urging affirmance or reversal, and leave to file an *amicus* brief is not required. The brief shall conform to the requirements of this rule, except that an *amicus* filing a brief in support of an appellant need not include the appendix required by Section 2(B)(5) of this rule.

**(B)** The cover of an *amicus* brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal. If the *amicus* brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, and the *amicus curiae* may file a reply brief within the time allowed to the appellant to file a reply brief. If the *amicus* brief is in support of an appellee or does not expressly support the position of any party, the brief shall be filed within the time for filing allowed to the appellee to file a merit brief. The Clerk shall refuse to file an *amicus* brief that is not submitted timely.

**Section 7. Consequence of Failure to File Briefs.**

If the appellant fails to file a merit brief within the time provided by this rule or as extended in accordance with *S.Ct.Prac.R. XIV*, Sections 3 or 6(C), the Supreme Court may dismiss the appeal. If the appellee fails to file a merit brief within the time provided by this rule or as extended in accordance with *S.Ct.Prac.R. XIV*, Sections 3 or 6(C), the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

**Section 8. Prohibition Against Supplemental Briefing.**

Except as provided in *S.Ct.Prac.R. VIII*, Section 7, and *S.Ct.Prac.R. IX*, Sections 8 and 9, merit briefs shall not be supplemented. If a relevant authority is issued after the deadline has passed for filing a party's merit brief, that party may file a citation to the relevant authority but shall not file additional argument.

**HISTORY:** Amended, eff 4-1-96; 10-19-98; 4-1-00; 6-1-00; 7-1-04; 1-1-08.

LEXSTAT OHIO S. CT. PRAC. R. XIV

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Rules Of Practice Of The Supreme Court Of Ohio

*Ohio S. Ct. Prac. RULE XIV (2009)*

Review Court Orders which may amend this Rule.

**RULE XIV. GENERAL PROVISIONS**

**Section 1. Filing with the Supreme Court.**

**(A) Filing Defined.**

The filing of documents with the Supreme Court as required by these rules shall be made by filing with the Clerk of the Supreme Court during the regular business hours of the Clerk's Office. Documents received in the Clerk's Office after 5:00 p.m. shall not be filed until the next business day. Only submissions filed in accordance with this provision will be considered by the Supreme Court. Filing may be made in person or by mail addressed to the Clerk, but documents filed by mail shall not be considered filed until received in the Clerk's Office.

**(B) Filings Treated as Public Records.**

Documents filed with the Supreme Court shall be treated as public records unless they have been sealed pursuant to a court order or are the subject of a motion to seal pending in the Supreme Court.

**(C) Filing by Facsimile Transmission.**

(1) The following documents may be filed by facsimile transmission to the Clerk:

(a) A request for extension of time or a stipulation to an agreed extension of time that complies with Section 3 or Section 6 of this rule;

(b) A list of additional authorities filed under *S.Ct.Prac.R. VI*, Section 8, or *S.Ct.Prac.R. IX*;

(c) An application for dismissal;

(d) A waiver of oral argument filed under *S.Ct.Prac.R. IX*, Section 3.

(e) A notice related to attorney representation filed under *S.Ct.Prac.R. I*.

(f) A notice of a court of appeals determination of no conflict filed under *S.Ct.Prac.R. IV*, Section 4(B).

(g) A waiver of a memorandum in response under *S.Ct.Prac.R. III*, Section 2(E).

(2) Each facsimile transmission shall be accompanied by a cover page requesting that the document be filed and providing the name, telephone number, and facsimile number of the person transmitting the document.

(3) Only one copy of the document shall be transmitted. The Clerk shall provide any additional copies required to be filed by these rules. The person filing a document by facsimile transmission shall retain the original document and make it available upon request of the Supreme Court.

(4) Documents transmitted by facsimile transmission and received in the Clerk's Office on a Saturday, Sunday, or other day the Clerk's Office is closed to the public, or after 5:00 p.m. on a business day, shall be considered for filing on the next business day.

**(D) Prohibition Against Untimely Filings.**

No document may be filed after the filing deadlines imposed by these rules, set by Court order, or as extended in accordance with Section 3(B)(2) or Section 6(C) of this rule or with *S.Ct.Prac.R. XIX*. The Clerk shall refuse to file a document that is not timely tendered for filing. Motions to waive this rule are prohibited and shall not be filed.

**(E) Rejection of Noncomplying Documents.**

The Clerk may reject documents tendered for filing unless they are clearly legible and comply with the requirements of these rules.

**Section 2. Service of Documents; Notice When Documents Are Rejected for Filing.**

**(A) Service Requirement.**

(1) When a party or an *amicus curiae* files any document with the Clerk, except a complaint filed to institute an original action, that party or *amicus curiae* shall also serve a copy of the document on all parties to the case. Service on a party represented by counsel shall be made on counsel of record.

(2) Service of a copy of a notice of appeal from a decision of the Public Utilities Commission or the Power Siting Board shall be made pursuant to *section 4903.13 of the Revised Code*. In an appeal or a cross-appeal from the Public Utilities Commission or the Power Siting Board, a copy of the notice of appeal or cross-appeal shall also be served upon all parties to the proceeding before the Public Utilities Commission or the Power Siting Board that is the subject of the appeal or cross-appeal.

(3) In a case involving a felony, when a county prosecutor files a notice of appeal under *S.Ct.Prac.R. II* or an order certifying a conflict under *S.Ct.Prac.R. IV*, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender.

**(B) Manner of Service.**

(1) Except as otherwise provided by this rule, service may be personal, by mail, by e-mail, or by facsimile transmission. Except as provided in division (A) of this section, personal service includes delivery of the copy to counsel or to a responsible person at the office of counsel and is effected upon delivery. Service by mail is effected by depositing the copy with the United States Postal Service for mailing. Service by e-mail is effected upon the successful electronic transmission of the copy. Service by facsimile transmission is effected upon the successful electronic transmission of the copy by facsimile process.

(2) In appeals from the Board of Tax Appeals under *S.Ct.Prac.R. II*, Section 3(A), service of a notice of appeal or cross-appeal shall be made by certified mail.

(3) In expedited election cases under *S.Ct.Prac.R. X*, Section 9, service of the response, evidence, and merit briefs shall be personal, by e-mail, or by facsimile transmission.

**(C) Certificate of Service; Certificate of Filing.**

(1) Unless a document is filed jointly and is signed by all parties to the case, all documents presented for filing with the Clerk, except complaints filed to institute an original action, shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the party or the *amicus curiae* who files the document. The certificate of service for a document served by facsimile transmission shall also state the facsimile number of the person to whom the document was transmitted. The Clerk shall refuse to accept for filing any document that does not contain a certificate of service, unless these rules require that the document be served by the Clerk.

(2) In an appeal from the Public Utilities Commission or the Power Siting Board, the notice of appeal shall also contain a certificate of filing to evidence that the appellant filed a notice of appeal with the docketing division of the Public Utilities Commission in accordance with sections *4901-1-02(A)* and *4901-1-36 of the Ohio Administrative Code*.

**(D) Failure to Provide Service.**

(1) When a party or *amicus curiae* fails to provide service upon a party or parties to the case in accordance with division (A) of this section, any party adversely affected may file a motion to strike the document that was not served. Within 10 days after a motion to strike is filed, the party or *amicus curiae* against whom the motion is filed may file a memorandum opposing the motion.

(2) If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document. If the Supreme Court determines that service was made as required by this rule or that service was not made but the movant was not adversely affected, it may deny the motion.

**(E) Notice to Other Parties When Document Is Rejected for Filing.**

If a document presented for filing is rejected by the Clerk under these rules, the party or *amicus curiae* who presented the document for filing shall promptly notify all of the parties served with a copy of the document that the document was not filed in the case.

**Section 3. Computation and Extension of Time.**

**(A) Computation of Time.**

In computing any period of time prescribed or allowed by these rules or by an order of the Supreme Court, the day of the act from which the designated period of time begins to run shall not be included and the last day of the period shall be included. If the last day of the period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Notwithstanding *Civ.R. 6(A)*, when the period of time prescribed or allowed is less than seven days, as in expedited election cases under *S.Ct.Prac.R. X*, Section 9, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. When the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or before the usual closing time on that day, then that act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

**(B) Extension of Time.**

**(1) General Prohibition Against Extensions of Time.**

Except as provided in division (B)(2) of this section, the Supreme Court will not extend the time for filing a document as prescribed by these rules or by Court order, and the Clerk shall refuse to file requests for extension of time.

**(2) Extension of Time to File Certain Documents.**

(a) Except in expedited election cases under *S.Ct.Prac.R. X*, Section 9, parties may stipulate to extensions of time to file merit briefs, including reply briefs, under *S.Ct.Prac.R. VI*; merit briefs, including reply briefs, under *S.Ct.Prac.R. XIX*; or the response to a complaint or evidence under *S.Ct.Prac.R. X*. Each party may obtain in a case only one agreed extension of time not to exceed 20 days, provided the party has not previously obtained an extension of time from the Supreme Court under division B(2)(b) of this section. An agreed extension of time shall be effective only if a stipulation to the agreed extension of time is filed with the Clerk within the time prescribed by these rules for filing the brief or other document that is the subject of the agreement. The stipulation shall state affirmatively the new date for filing agreed to by the parties. The Clerk shall refuse to file a stipulation to an agreed extension of time that is not tendered timely in accordance with this rule, or if a request for extension of time has already been granted under Section 3(B)(2)(b) of this rule to the party filing the stipulation.

(b) In an expedited election case or any other case where a stipulation to an agreed extension of time cannot be obtained under division 3(B)(2)(a) of this section, a party may file a request for extension of time to file a brief, the response to a complaint, or evidence. The Supreme Court will grant a party only one extension of time, not to exceed 10 days, provided the request for extension of time states good cause for an extension and is filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request. The Clerk shall refuse to file a request for extension of time that is not tendered timely in accordance with this rule, or if a stipulation to an agreed extension of time has already been filed under Section 3(B)(2)(a) of this rule by the party filing the request.

**(3) Effect of Extension of Time Upon Other Parties on the Same Side.**

When one party receives an extension of time under division (B)(2) of this section, the extension shall apply to all other parties on that side.

**Section 4. Motions; Responses.**

(A) Unless otherwise prohibited by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based. A motion to stay a lower court's decision pending appeal shall include relevant information regarding bond and be accompanied by a copy of the lower court's decision and any applicable opinion.

(B) If a party files a motion with the Supreme Court, any other party may file a memorandum opposing the motion within 10 days from the date the motion is filed, unless otherwise provided in these rules. A reply to a memorandum opposing a motion shall not be filed by the moving party. The Clerk shall refuse to file a reply to a memorandum opposing a motion, and motions to waive this rule are prohibited and shall not be filed.

(C) The Supreme Court may act upon a motion before the deadline for filing a memorandum opposing the motion if the motion is for a procedural order, including an extension of time to file a merit brief, or if the motion requests emergency relief and the interests of justice warrant immediate consideration by the Supreme Court. Any party adversely affected by the action of the Supreme Court may file a motion to vacate the action.

**Section 5. Frivolous Actions; Sanctions; Vexatious Litigators.**

(A) If the Supreme Court, *sua sponte* or on motion by a party, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose, on the person who signed the appeal or action, a represented party, or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Supreme Court considers just. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(B) If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under section 5(A) of this rule, the Supreme Court may, *sua sponte* or on motion by a party, find the party to be a vexatious litigator. If the Supreme Court determines that a party is a vexatious litigator under this rule, the Court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Supreme Court without first obtaining leave, prohibiting the filing of actions in the Supreme Court without the filing fee or security for costs required by *S.Ct.Prac.R. XV*, or any other restriction the Supreme Court considers just.

**Section 6. Settlement Conferences.****(A) Referral of Cases for Settlement Conferences.**

The Supreme Court may, *sua sponte* or on motion by a party, refer to mediation counsel for a settlement conference any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or any non-felony case that the Supreme Court deems appropriate. The mediation counsel may conduct the settlement conference in person or by telephone. At the settlement conference, the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case. Unless otherwise provided by Court order, referral of a case for a settlement conference under this rule does not alter the filing deadlines prescribed by these rules.

**(B) Attendance.**

If a case is referred for a settlement conference, each party to the case, or the representative of each party who has full settlement authority, and the attorney for each party shall attend the conference, unless excused by the mediation counsel to whom the case has been referred. If a party or an attorney fails to attend the conference without being excused, the Supreme Court may assess the party or the attorney reasonable expenses caused by the failure, including reasonable attorney fees or all or a part of the expenses of the other party. The Supreme Court may also dismiss the action, strike documents filed by the offending party, or impose any other appropriate penalty.

**(C) Extension of Time to File Briefs or Other Documents.**

Notwithstanding Section 3(B) of this rule, the Supreme Court, *sua sponte* or upon motion by a party, may extend filing deadlines or stay the case referred under this section, if the extension or stay will facilitate settlement. A request for an extension of time shall be filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

**(D) Privileges and Confidentiality.**

## Ohio S. Ct. Prac. RULE XIV

The definitions contained in *section 2710.01 of the Revised Code* apply to Supreme Court settlement conferences. The privileges contained in *section 2710.03 of the Revised Code* and the exceptions contained in *section 2710.05 of the Revised Code* apply to mediation communications. The privileges may be waived under *section 2710.04 of the Revised Code*. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediation counsel consent to disclosure. The Supreme Court may impose penalties for any improper disclosures made in violation of this rule.

**(E) Settlement Conference Order.**

At the conclusion of the settlement conference, the Supreme Court will enter an appropriate order.

**HISTORY:** Amended, eff 4-1-96; 4-28-97; 7-12-99; 7-1-04; 10-1-05; 1-1-08.