

IN THE SUPREME COURT OF OHIO

IN RE: M.W., :  
Adjudicated Delinquent Child : Case No. 2011-0215  
: :  
: : On Appeal from the Cuyahoga  
: : County Court of Appeals  
: : Eighth Appellate District  
: :  
: : C.A. Case No. 94737

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**MERIT BRIEF OF APPELLANT M.W.**

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WILLIAM MASON #0037540  
Cuyahoga County Prosecuting Attorney

DANIEL T. VAN #0084614  
Assistant Prosecuting Attorney  
(Counsel of Record)

Appeals Division, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800  
(216) 698-2270 Fax

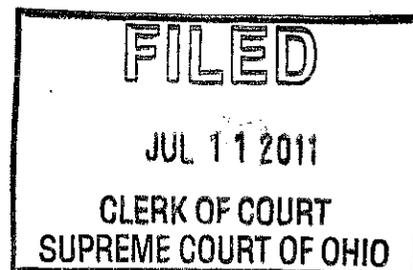
COUNSEL FOR THE STATE OF OHIO

The Office of the Ohio Public Defender

AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 (Fax)  
amanda.powell@opd.ohio.gov

COUNSEL FOR M.W.



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## STATEMENT OF THE CASE AND FACTS

On August 22, 2009, a complaint was filed, alleging that fifteen-year-old M.W. was delinquent for aggravated robbery in violation of R.C. 2911.01(A)(1), a felony of the first degree if committed by an adult, with a firearm specification. (S-1). Although the State sought to transfer the case for criminal prosecution, the court found M.W. amenable, and retained jurisdiction in the juvenile court. (S-2).

The complaint alleged that on August 19, 2009, M.W. and another juvenile robbed the victim at gunpoint. (S-1). On August 22, 2009, law enforcement stopped M.W. for driving his mother's car without a license. (Jan. 8, 2010, T.p. 41); (S-4). Thereafter, the police interrogated M.W. at the police station for thirty-five minutes. (Oct. 7, 2009, T.p. 32). M.W. turned fifteen on May 3, 2009, three months before he was interrogated by police. (S-1); (Oct. 28, 2009, T.pp. 33-34). M.W. was not given an opportunity to consult with his mother, his father, or an attorney before the interrogation. (Oct. 7, 2010, T.pp. 20; 24); (Jan. 8, 2010, T.pp. 9-32). Officer Borden testified that Sargent Shoulders gave M.W. a statement of his rights before he was interrogated and that M.W. signed the rights form and answered Shoulders' questions. (Jan. 8, 2010, T.pp. 22-24). Borden testified at the probable cause hearing that M.W.'s parents were not present during the interrogation and that he knew M.W. was a juvenile who was "15 or 16" years old. (Oct. 7, 2009, T.p. 20).

At trial, Borden testified that neither he nor Shoulders determined whether M.W. knew how to read—he stated that M.W. "looked at the paper" he signed, but did not read it out loud before he signed it. (Jan. 8, 2010, T.p. 26). Borden also testified that he did not determine M.W.'s level of education during the interrogation. (Jan. 8, 2010, T.p. 23). At the amenability

hearing, the court noted that M.W. “is easily influenced, that there is a prior history of ADHD [\* \* \* which] has impacted his life.” (Oct. 28, 2009, T.pp. 34-35).

The statement M.W. gave to police reflects that M.W. told Shoulders that he “watched [the co-defendant’s] back” during a robbery on August 19, 2009, and that [the co-defendant] had the gun. (S-4). The state presented M.W.’s written statement at trial. (Jan. 8, 2010, T.pp. 9-32).

After trial, the court found M.W. delinquent of aggravated robbery with a firearm specification, and committed him to the Ohio Department of Youth Services for a minimum of one year on each, to be served consecutively, maximum of M.W.’s twenty-first birthday. (S-6). The dispositional entry also reflects that M.W. receives special education services. (S-6).

On appeal, M.W. raised three assignments of error:

I. The trial court violated M.W.’s right to due process when it admitted into evidence the typed statement of M.W.’s custodial statements to the police, which were obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Section 16, Article I of the Ohio Constitution and R.C. 2151.352.

II. The trial court committed plain error and violated M.W.’s right to due process when it admitted into evidence the typed statement of M.W.’s custodial statements to the police, because those statements were elicited in violation of M.W.’s constitutional right against self-incrimination.

III. M.W. was denied effective assistance of counsel as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

The Eighth District considered M.W.’s first and second assignments of error through his third assignment of error, and affirmed M.W.’s adjudication. Op. at ¶10-26. Specifically, as to ~~the alleged right to counsel violation, the court found that an “investigatory interrogation” is not~~ a “stage” of the proceedings under R.C. 2151.352; rather, it found that “a juvenile proceeding does not commence until the filing of a complaint.” Op. at ¶16, citing *In re Forbess*, 3<sup>rd</sup> Dist. No. 2-09-20, 2010-Ohio-2826 at ¶33. Therefore, the court found that since the complaint had not yet

been filed, R.C. 2151.352 and this Court's holding in In re C.S., 115 Ohio St.3d 267, 2007-Ohio-4919 did not apply. Op. at ¶17. As to the alleged Miranda violation, the court found, under the totality of the circumstances, that M.W.'s written waiver of his right to counsel at interrogation was voluntarily given, and that C.S. did not apply. Op. at ¶22; 17.

## ARGUMENT

### PROPOSITION OF LAW

**A child has the right to counsel at all stages of the proceedings against him. Because Ohio's General Assembly has designated interrogation as a stage of the proceedings, a child must be represented by his parent, guardian, custodian, or an attorney before the child can waive his right to counsel pursuant to Miranda.**

#### Introduction

For more than sixty years, the United States Supreme Court has recognized that children are different from adults and require special protections. Recently, in J.D.B. v. North Carolina, the Court again acknowledged this: "children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them," J.D.B. v. North Carolina (2011), \_\_\_ U.S. \_\_\_, \_\_\_, 2011 U.S. LEXIS 4557, \*4-\*5.<sup>1</sup> See, also, Haley v. Ohio (1948), 332 U.S. 596, 599, 68 S. Ct. 302, 303-04; Gallegos v. Colorado (1962), 370 U.S. 49; 82 S. Ct. 1209; Graham v. Florida (2010), 560 U.S. \_\_\_, 130 S. Ct. 2011; Roper v. Simmons (2005), 543 U.S. 551, 125 S. Ct. 1183. These decisions recognize juveniles' limited understanding of the justice system and the particular challenges youth face in navigating that system. And in 1967, the Court stated, "[i]t has long been recognized that the eliciting and use of confessions or admissions require careful scrutiny." In re Gault (1967), 387 U.S. 1, 44, 87 S. Ct. 1428, 1453.

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<sup>1</sup> As contained in the *Merit Brief of Amici Curiae*, the Westlaw citation for J.D.B. is 131 S.Ct. 2394.

In In re C.S., 115, Ohio St.3d 267, 2007-Ohio-4919, ¶106, this Court noted, “It is now commonly recognized that courts should take ‘special care’ in scrutinizing a purported confession or waiver by a child.” In re C.S., 115, Ohio St.3d 267, 2007-Ohio-4919, citing In re Manuel R. (1988), 207 Conn. 725, 737-38, 543 A.2d 719, 724-25, and Haley v. Ohio (1948), 332 U.S. 596, 599, 68 S. Ct. 302, 303-04. The need for special care is well founded, as research shows that most juveniles are not able to understand their Miranda rights. *Brief of Amici Curiae*, pp. 16-20.

Twelve states have afforded special protections to children during interrogations. Most of these states require some type of meaningful consultation with adults before allowing a juvenile to waive his rights. *Brief of Amici Curiae*, p. 14. And, Illinois and West Virginia require the presence of counsel under certain circumstances to ensure that a child’s rights are protected. See, e.g., W. Va. Code § 49-5-2(i); 705 ILCS 405/5-170. *Brief of Amici Curiae*, p. 14.

In C.S., this Court recognized that “In essence, the fifth sentence of R.C. 2151.352 is an ‘independent advice/interested adult’ standard that we have declined to adopt, absent legislative action, in other circumstances.” C.S. at fn. 3, citing In re Watson (1989), 47 Ohio St.3d 86, 89-90, 548 N.E.2d 210, 213-14. It reasoned that “[t]hough there may be a number of policy reasons to support the legislative imposition of a bright-line rule requiring a juvenile to consult with an attorney before waiving his constitutional rights \* \* \* we do not believe that it is required by the Due Process Clause.” C.S. at fn. 3.

~~Read together, R.C. 2151.352 and R.C. 2151.311 provide a statutory right to counsel for children during custodial interrogations. And this Court’s holding in C.S., if applied to all stages~~

of the proceedings, provides for the independent advice/interested adult standard at interrogation. Under R.C. 2151.352, a child would be required to discuss the child's waiver of counsel with a parent, guardian, custodian, or an attorney before he could waive his right to counsel at interrogation. This Court's recognition of this standard makes sense in light of the long-standing jurisprudence that requires special protections for children. And, ensuring that the process is fair from the very beginning ensures that the rehabilitative efforts of the juvenile system are realized. See Gault at 26 ("Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.") (internal citations omitted).

**Interrogation is a stage of the proceedings under R.C. 2151.311; therefore, if the child is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, he may not waive his right to counsel. In re C.S., 115 Ohio St.3d 267, 2007-Ohio-4919, applied.**

In C.S., this Court held "through R.C. 2151.352, the legislature provided a statutory right to counsel that goes beyond constitutional requirements." C.S. at ¶83, citing In re Williams, 101 Ohio St.3d 398, 2004-Ohio-1500, ¶15, citing State ex rel. Asberry v. Payne, 82 Ohio St.3d 44, 46, 1998-Ohio-596. Specifically, R.C. 2151.352 provides that "[a] child \* \* \* is entitled to representation by legal counsel at *all stages* of the proceedings under this chapter or Chapter 2152. of the Revised Code." (Emphasis added.)

The question then, is what is meant by "all stages of the proceedings"? Unmistakably, a "court proceeding" which is defined as "all action taken by the court," is a stage of the proceedings. Juv.R. 2(G); R.C. 2151.352. In R.C. 2151.352, the General Assembly used the term "at all stages of the proceedings" in the first sentence of the statute but used the word

“hearing” in the seventh and eighth<sup>2</sup> sentences of the statute. This suggests that “hearings” in R.C. 2151.352 and “court proceedings” in Juv.R. 2, are analogous, and that they are different from, and merely a subset of, “all stages of the proceedings.” R.C. 2151.352. Simply put, if the General Assembly intended for R.C. 2151.352 to only apply to “court proceedings” or “hearings,” it would have said so. The canon, *expressio unius est exclusio alterius* (expression of one thing suggests the exclusion of others) is relevant here, and supports that the General Assembly intended the right to counsel to apply to juveniles in a larger context than just “court proceedings.”

Further, the second paragraph of R.C. 2151.352 also indicates that the statutory right to counsel applies to any child taken into custody, as it specifically provides that a child in custody who has been arrested be permitted to communicate with an attorney or a relative or other person so as to obtain counsel, as per R.C. 2935.14. R.C. 2151.352.

Revised code 2151.352 provides that a child has a right to counsel at “all stages of the proceedings” under Chapter 2151 and 2152 of the Revised Code. R.C. 2151.311 provides that children may be subject to interrogation. Therefore, interrogation is identified as a “stage of the proceedings” under Chapter 2151 of the Code. Accordingly, a child’s statutory right to counsel attaches at interrogation.

Specifically, R.C. 2151.311 provides the procedure that applies when a child is apprehended. Under R.C. 2151.311(A)(1) and (2), a child who is taken into custody must be

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<sup>2</sup> “Section 2935.14 of the Revised Code applies to any child taken into custody. The parents, custodian, or guardian of a child taken into custody, and any attorney at law representing them or the child, shall be entitled to visit the child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of the hearing.

Any report or part of a report concerning the child, which is used in the hearing and is pertinent to the hearing, shall for good cause shown be made available to any attorney at law representing the child and to any attorney at law representing the parents, custodian, or guardian of the child, upon written request prior to any hearing involving the child.”

returned to the child's parents or taken to juvenile court or detention. Under R.C. 2151.311(C), a child may be held for processing in any place where an adult placed under arrest can be held, for a limited period of time. And, "processing," under R.C. 2151.311(C)(1), is defined as "interrogating" the child. R.C. 2151.311(D)(2).

Through R.C. 2151.311, the General Assembly has designated the custodial interrogation of a child to be a stage of the proceedings. Therefore, just as Ohio has created a right to counsel that goes beyond constitutional requirements, it has created a right to "representation" by a child's parent, guardian, custodian, or an attorney, at all stages of the proceedings, including interrogation. R.C. 2151.352.

Because a child has the right to counsel at interrogation pursuant to R.C. 2151.311 and 2151.352, it follows that this Court's holding in C.S. should apply to waivers of counsel at interrogation. In C.S. this court held that "represent" in the fifth sentence of R.C. 2151.352 means "to counsel or advise the juvenile," and that a juvenile may waive his right to counsel, but only "if he is counseled or advised by his parent, custodian, or guardian." C.S. at ¶98. "If the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, he may not waive his right to counsel." *Id.*

Constitutional rights, such as the right to counsel and the Fifth Amendment privilege against self-incrimination, are applicable to juveniles. In re Gault (1967), 387 U.S. 1, 87 S. Ct. 1428, 1453. Statements resulting from custodial interrogations are admissible only after a showing that the procedural safeguards have been followed. Miranda v. Arizona (1966), 384 U.S. 436, 86 S. Ct. 1602. Additionally, the United States Supreme Court has emphasized that the admissions and confessions of juveniles require special attention. Haley v. Ohio (1948), 332 U.S. 596, 68 S. Ct. 302. Indeed, "[w]aiver by minors must be scrutinized closely since the

validity of the waiver is affected by the factors of age, emotional stability, and emotional capacity.” In re Smalley (1989), 62 Ohio App.3d 435, 445, 575 N.E.2d 1198, 1204.

In Ohio, in order to determine whether a juvenile has waived his right to remain silent and to have the assistance of counsel at interrogation, the court must examine the totality of the circumstances surrounding the waiver. In re Watson (1989), 47 Ohio St.3d 86, 88, 548 N.E.2d 210, 213. “The totality-of-the-circumstances approach requires an inquiry into all the circumstances surrounding the interrogation[, including] the age, mentality, and prior criminal experience of the accused; the length, intensity and frequency of the interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.” State v. Edwards (1976), 49 Ohio St.2d 31, 358 N.E.2d 1051, ¶2 of syl. But this totality-of-the-circumstances test is not sufficient to protect children’s rights, especially when children do not understand their Miranda rights (see *Brief of Amici Curiae* at pp. 16-20), and are more vulnerable than adults during interrogations—especially given current interrogation practices (see *Brief of Amici Curiae* at pp. 20-30). In fact, this Court recently noted that the “interrogation methods [used in a juvenile delinquency proceeding] are troubling....” In re D.B., \_\_\_ Ohio St.3d \_\_\_, 2011-Ohio-2671, fn. 1.

The holding in C.S., as applied to waivers of counsel at interrogation, would provide children the protection they deserve. As applied, C.S. would create a condition precedent to a court’s evaluating the other factors under the totality-of-the-circumstances test regarding the child’s waiver of counsel. That is because this Court has held, “[i]f the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, he may not waive his right to counsel.” C.S. at ¶98. The totality-of-the-circumstances test is employed only where the record reflects that the child has consulted with the child’s parent, guardian, custodian, or an attorney before waiving his right to counsel. Then, the child’s consultation with the interested

adult or attorney who has given independent advice about waiver would become one factor in the totality of the circumstances regarding the waiver. C.S. at ¶110 (“Though it is not dispositive, a key factor in the totality of the circumstances is the degree to which the juvenile’s parent is capable of assisting and willing to assist the juvenile in the waiver analysis. [\* \* \*] The juvenile court judge must be aware that not all parents may sufficiently counsel and advise, that is, ‘represent,’ their child in a delinquency proceeding.”). (Internal citation omitted.)

In this case, the Eighth District declined to extend C.S. to M.W.’s waiver of counsel at interrogation. Op. at ¶17. And, in its analysis regarding M.W.’s waiver of his Miranda rights, the court failed to consider the fact that M.W.’s parent was not present under the totality of the circumstances surrounding his waiver.

R.C. 2151.352 requires that a child be given the advice of an interested adult or the independent advice of an attorney about the child’s decision to waive counsel at “all stages of the proceedings.” And, it has long been recognized that the child “requires the guiding hand of counsel at every step in the proceedings against him.” Gault at 36, quoting Powell v. Alabama (1932), 287 U.S. 45, 69, 53 S. Ct. 55, 64. In this matter, M.W. was adjudicated delinquent based solely on his statements to police; there was no other evidence against him. But, because the evidence was obtained in violation of R.C. 2151.352 and C.S., his adjudication must be vacated, or in the alternative, be reversed and the matter remanded to the court of appeals.

### **Conclusion**

Ohio’s juvenile courts and law enforcement officials need this Court’s guidance to ensure ~~that every child’s right to counsel is upheld uniformly at every stage of the proceedings under the~~ Juvenile Code. In this case, law enforcement interrogated M.W. without ensuring that he had been properly counseled and advised about his right to an attorney, either by his parent, guardian, custodian, or an attorney. Therefore, this Court should vacate M.W.’s adjudication. In the

alternative, this Court should reverse the decision of the court of appeals, suppress M.W.'s confession, and remand to the juvenile court for further proceedings.

Respectfully submitted,

The Office of the Ohio Public Defender



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AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 – Fax  
amanda.powell@opd.ohio.gov

COUNSEL FOR M.W.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Appellant M.W. and the Appendix to the Merit Brief of Appellant M.W.**, was forwarded by regular U.S. Mail, postage prepaid, this 11<sup>th</sup> day of July, 2011 to Daniel T. Van , Assistant Prosecuting Attorney, Appeals Division, 8<sup>th</sup> Floor, 1200 Ontario Street, Cleveland, Ohio 44113.



---

AMANDA J. POWELL #0076418  
Assistant State Public Defender

COUNSEL FOR M.W.

IN THE SUPREME COURT OF OHIO

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**APPENDIX TO MERIT BRIEF OF APPELLANT M.W.**

---

WILLIAM MASON #0037540  
Cuyahoga County Prosecuting Attorney

The Office of the Ohio Public Defender

DANIEL T. VAN #0084614  
Assistant Prosecuting Attorney  
(Counsel of Record)

AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

Appeals Division, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800  
(216) 698-2270 Fax

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 (Fax)  
amanda.powell@opd.ohio.gov

COUNSEL FOR THE STATE OF OHIO

COUNSEL FOR M.W.

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**11-0215**

Case No. \_\_\_\_\_

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C.A. Case No. 94737

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**NOTICE OF APPEAL OF MINOR CHILD-APPELLANT M.W.**

---

WILLIAM MASON #0037540  
Cuyahoga County Prosecuting Attorney

RICHARD HANRAHAN #0084068  
Assistant Prosecuting Attorney  
(Counsel of Record)

Appeals Division, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800  
(216) 698-2270 Fax

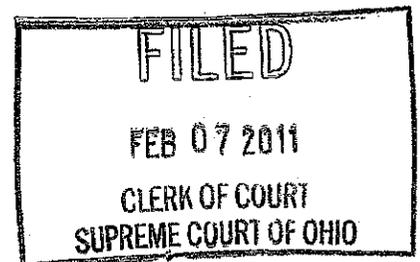
COUNSEL FOR THE STATE OF OHIO

The Office of the Ohio Public Defender

AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 (Fax)  
amanda.powell@opd.ohio.gov

COUNSEL FOR M.W.

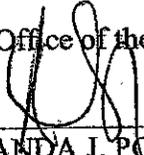


**NOTICE OF APPEAL OF MINOR CHILD-APPELLANT M.W.**

M.W. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case No. 94737, on December 23, 2010. This case involves a felony-level delinquency offense, involves constitutional questions, and is of public or great general interest.

Respectfully submitted,

The Office of the Ohio Public Defender



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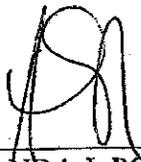
AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 644-0708 (Fax)  
amanda.powell@opd.ohio.gov

COUNSEL FOR M.W.

**CERTIFICATE OF SERVICE**

A copy of the foregoing **Notice of Appeal** was served by ordinary U.S. Mail, postage-prepaid, this 7<sup>th</sup> day of February, 2011, to the office of Richard Hanrahan, Assistant Cuyahoga County Prosecuting Attorney, Appeals Division, 8<sup>th</sup> Floor, 1200 Ontario Street, Cleveland, Ohio 44113.



---

AMANDA J. POWELL #0076418  
Assistant State Public Defender  
(Counsel of Record)

COUNSEL FOR M.W.

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 94737

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IN RE: M.W.  
A Minor Child

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. DL 09115470

**BEFORE:** Boyle, J., Rocco, P.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** December 23, 2010



MARY J. BOYLE, J.:

Appellant, M.W., appeals the judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, which found him delinquent by reason of committing aggravated robbery and placed him in the custody of the Ohio Department of Youth Services ("ODYS"). We affirm.

Procedural History and Facts

On August 22, 2009, a complaint was filed against M.W., alleging that he was delinquent for aggravated robbery in violation of R.C. 2911.01(A)(1), a felony of the first degree if committed by an adult, with a gun specification. The complaint further alleged that M.W. was 15 years old at the time of the offense. He pleaded not guilty to the charge. The state sought to transfer the case to the general division and have M.W. tried as an adult. Although the court found probable cause to do so, it ultimately decided that M.W. was amenable to the juvenile justice system and retained jurisdiction. The matter proceeded to an adjudicatory hearing before a magistrate.

The allegations giving rise to the complaint were that in the late evening of August 19, 2009, M.W., along with another juvenile, robbed the victim at gunpoint in the vicinity of Tremont and Jefferson avenues in Cleveland. Among other things, the state offered into evidence a written statement signed by M.W. wherein he confessed to his involvement in the robbery. Specifically, he stated

the following: "I watched [the co-delinquent]'s back, I kept anyone from walking up on him or watched for the police." He further stated that the co-delinquent carried the firearm. He also acknowledged that the money was supposed to be split between the two of them, but that the co-delinquent was caught before they had a chance to divide the money.

The magistrate ultimately found that the state proved the allegations of the complaint beyond a reasonable doubt, thereby finding M.W. delinquent of the charge of aggravated robbery and the three-year firearm specification. The trial judge subsequently adopted and affirmed the magistrate's decision and placed M.W. in the custody of the ODYS for an indefinite term consisting of a minimum period of 12 months and a maximum period not to exceed his attainment of 21 years of age.

M.W. appeals, raising the following three assignments of error:

"[I.] The trial court violated M.W.'s right to due process when it admitted into evidence the typed statement of M.W.'s custodial statements to the police, which were obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Section 16, Article I of the Ohio Constitution and R.C. 2151.352.

"[II.] The trial court committed plain error and violated M.W.'s right to due process when it admitted into evidence the typed statement of M.W.'s custodial

statements to the police, because those statements were elicited in violation of M.W.'s constitutional right against self-incrimination.

"[III.] M.W. was denied effective assistance of counsel as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution."

For the ease of discussion, we will address these assignments of error out of order and together where appropriate.

#### Ineffective Assistance of Counsel

In his third assignment of error, M.W. argues that his trial counsel was ineffective for failing to file a motion to suppress his written statement. According to M.W., the statement arose out of the police's unlawful interrogation of him, where he was not provided counsel despite not having knowingly, voluntarily, and intelligently waiving his *Miranda* rights. We disagree.

To succeed on a claim of ineffective assistance, a defendant must establish that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373. Counsel will only be considered deficient if his or her conduct fell below an objective standard of reasonableness. *Strickland* at 688. When reviewing counsel's performance, this court must be highly deferential and "must

indulge a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." *Id.* at 689. To establish resulting prejudice, a defendant must show that the outcome of the proceedings would have been different but for counsel's deficient performance. *Id.* at 694.

"[F]ailure to file a motion to suppress is not per se ineffective assistance of counsel." *State v. Madrigal*, 87 Ohio St.3d 378, 389, 2000-Ohio-448, 721 N.E.2d 52, quoting *Kimmelman v. Morrison* (1986), 477 U.S. 365, 384, 106 S.Ct. 2574, 91 L.Ed.2d 305. Failure to file a motion to suppress constitutes ineffective assistance of counsel only if, based upon the record, the motion would have been granted. *State v. Robinson* (1996), 108 Ohio App.3d 428, 433, 670 N.E.2d 1077.

Thus, we must determine from the record whether a motion to suppress would have been granted if M.W.'s trial counsel had filed one. If so, M.W.'s counsel was ineffective for failing to file it.

Relying on the arguments asserted in his first two assignments of error, i.e., that he was denied his right to counsel during the police's interrogation of him and that he did not knowingly, voluntarily, and intelligently waive this right, M.W. argues that, had his trial counsel filed a motion to suppress his statement on either grounds, the trial court would have granted it. We will address each of his arguments in turn.

*Right to Counsel*

M.W. argues that his statement was taken in violation of his right to counsel under R.C. 2151.352, which provides juveniles with the right to counsel that goes beyond constitutional requirements. See *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶83. Specifically, R.C. 2151.352 provides that “[a] child \* \* \* is entitled to representation by legal counsel at all stages of the proceedings under this chapter of Chapter 2152 of the Revised Code.”<sup>1</sup> Relying on *In re C.S.*, M.W. contends that this right to counsel under R.C. 2151.352 is absolute, even for purposes of an interrogation, and that it cannot be waived when neither his parent nor attorney has counseled him regarding a waiver of this right. We find M.W.’s argument unpersuasive.

First, as recently recognized by the Third District, R.C. 2151.352 does not consider an “investigatory interrogation” as a “stage” of the proceeding under the statute. *In re Forbess*, 3d Dist. No. 2-09-20, 2010-Ohio-2826, ¶33. Indeed, a juvenile proceeding does not commence until the filing of a complaint. *Id.* Thus, because no complaint had been filed against M.W. at the time of the police interrogation, R.C. 2151.352 does not apply. And while M.W. did have a Fifth Amendment right to counsel under *Miranda*, he never exercised that right.

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<sup>1</sup> Chapter 2152 of the Ohio Revised Code specifically deals with juvenile offenses, with the commencement of juvenile delinquency proceedings beginning with the filing of a complaint. *Wright v. State* (1990), 69 Ohio App.3d 775, 781, 591 N.E.2d 1279.

Second, we find M.W.'s application of *In re C.S.* misplaced. In that case, the Ohio Supreme Court held that "in a delinquency proceeding, a juvenile may waive his constitutional right to counsel, subject to certain standards articulated below, if he is counseled and advised by his parent, custodian, or guardian. If the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, he may not waive his right to counsel." *In re C.S.* at ¶98. The Court's holding, therefore, is limited to a "delinquency proceeding"; it has no bearing on a juvenile's waiver of *Miranda* rights during a police interrogation prior to the commencement of a delinquency proceeding.

Accordingly, because we find no violation of M.W.'s right to counsel under R.C. 2151.352, we cannot say that his trial counsel was ineffective for failing to move to suppress M.W.'s statement on this basis.

*Voluntariness of the Waiver and Statement*

M.W. also argues that his statement should have been suppressed because he did not knowingly, voluntarily, and intelligently waive his *Miranda* rights, thereby rendering his confession inadmissible. We disagree.

"Juveniles are entitled both to protection against compulsory self-incrimination under the Fifth Amendment and to *Miranda* warnings where applicable. Any statements made by a suspect may not be used in evidence where those statements were made during a custodial interrogation unless

*Miranda* warnings were properly given to the suspect.” (Internal quotations and citations omitted.) *In re Forbess*, 2010-Ohio-2826, at ¶27. See, also, *In re Gault* (1967), 387 U.S. 1, 54, 87 S.Ct. 1428, 18 L.Ed.2d 527; *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694. A suspect, therefore, may either waive or invoke his *Miranda* rights, including his Fifth Amendment right to counsel, and, if a request for counsel is made, the interrogation must not recommence until counsel is present. *In re Forbess* at ¶28.

In determining whether a juvenile has properly waived his *Miranda* rights, the reviewing court must examine the totality of the circumstances surrounding the waiver, “including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.” *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶57, quoting *State v. Edwards* (1976), 49 Ohio St.2d 31, 358 N.E.2d 1051, paragraph two of the syllabus.

Based on our review of the record, we find that M.W.’s waiver of his right to counsel was voluntarily given. First, M.W. testified at trial that he was told his *Miranda* rights prior to making a statement and that he understood such rights. Aside from M.W.’s own admission, the factors we must consider support our conclusion that the waiver was voluntarily made. Here, the record reveals

that M.W. has had prior experiences with the police and that he has been adjudicated delinquent in other cases. M.W., who was 15 at the time of the interrogation, further exhibited the mental and emotional capacity to voluntarily waive his rights. According to the detective, M.W. acted "normal" and was not under the influence of drugs or alcohol at the time of the interrogation. There was no evidence that M.W. had a diminished understanding, and he openly admitted that he could read. Further, the interrogation lasted only 35 minutes. Based on all these circumstances, we do not believe that M.W.'s trial counsel was ineffective for failing to move to suppress his statement based on an involuntary waiver of *Miranda* rights.

Finally, to the extent that M.W. also implies that his statement is rendered involuntary because his mother was not present, the Ohio Supreme Court has expressly rejected this argument. See *In re Watson* (1989), 47 Ohio St.3d 86, 548 N.E.2d 210. Indeed, "a juvenile's confession is not rendered involuntary where the juvenile does not have either a parent or an attorney present." *In re Howard* (1997), 119 Ohio App.3d 33, 694 N.E.2d 488.

Accordingly, because we find that a motion to suppress on either ground would have been futile, we cannot say that M.W.'s trial counsel was ineffective.

The third assignment of error is overruled.

Admission of the Statement

In his first two assignments of error, M.W. contends that his statement was erroneously admitted into evidence for the same reasons that his trial counsel was ineffective, i.e., the statement was taken in violation of his right to counsel under R.C. 2151.352, and he did not voluntarily waive his *Miranda* rights. But based on our previous discussion, we find no error, plain or otherwise. See Crim.R. 52(B). Accordingly, the first two assignments of error are overruled.

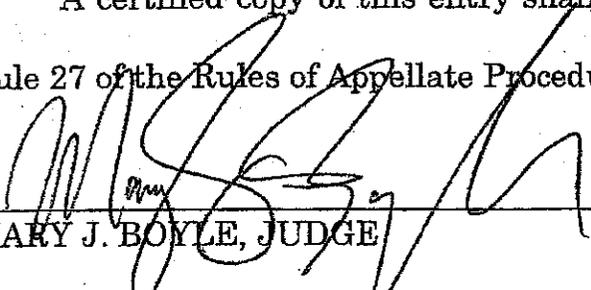
Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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



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MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR

## AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2151. JUVENILE COURT

PROCEDURE IN CHILDREN'S CASES

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2151.311 (2011)*

## § 2151.311. Procedure upon apprehension

(A) A person taking a child into custody shall, with all reasonable speed and in accordance with division (C) of this section, either:

(1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in *section 2151.31 of the Revised Code*;

(2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

(B) If a parent, guardian, or other custodian fails, when requested by the court, to bring the child before the court as provided by this section, the court may issue its warrant directing that the child be taken into custody and brought before the court.

(C) (1) Before taking any action required by division (A) of this section, a person taking a child into custody may hold the child for processing purposes in 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 for either of the following periods of time:

(a) For a period not to exceed six hours, if all of the following apply:

(i) The child is alleged to be a delinquent child for the commission of an act that would be a felony if committed by an adult;

(ii) The child remains beyond the range of touch of all adult detainees;

(iii) The child is visually supervised by jail or workhouse personnel at all times during the detention;

(iv) The child is not handcuffed or otherwise physically secured to a stationary object during the detention.

(b) For a period not to exceed three hours, if all of the following apply:

(i) The child is alleged to be a delinquent child for the commission of an act that would be a misdemeanor if committed by an adult, is alleged to be a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or is alleged to be an unruly child or a juvenile traffic offender;

(ii) The child remains beyond the range of touch of all adult detainees;

(iii) The child is visually supervised by jail or workhouse personnel at all times during the detention;

(iv) The child is not handcuffed or otherwise physically secured to a stationary object during the detention.

(2) If a child has been transferred to an adult court for prosecution for the alleged commission of a criminal offense, subsequent to the transfer, the child may be held as described in division (F) of section 2152.26 or division (B) of *section 5120.16 of the Revised Code*.

(D) As used in division (C)(1) of this section, "processing purposes" means all of the following:

(1) Fingerprinting, photographing, or fingerprinting and photographing the child in a secure area of the facility;

(2) Interrogating the child, contacting the child's parent or guardian, arranging for placement of the child, or arranging for transfer or transferring the child, while holding the child in a nonsecure area of the facility.

**HISTORY:**

133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 134 v S 445 (Eff 6-29-72); 143 v H 166 (Eff 2-14-90); 145 v H 571 (Eff 10-6-94); 146 v H 480 (Eff 10-16-96); 146 v H 124 (Eff 3-31-97); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3. Eff 1-1-2002.

**NOTES:**

## Section Notes

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

## Related Statutes &amp; Rules

## Cross-References to Related Statutes

Apprehension, custody and detention of child, *RC § 2151.31.*

Confinement of minors, *RC § 341.11.*

Definitions, *RC § 2151.01.1.*

Abused child, *RC § 2151.03.1.*

Child without proper parental care, *RC § 2151.05.*

Delinquent child, *RC § 2152.02.*

Dependent child, *RC § 2151.04.*

Juvenile traffic offender, *RC § 2152.02.*

Neglected child, *RC § 2151.03.*

Residence or legal settlement of child, *RC § 2151.06*.

Unruly child, *RC § 2151.02.2*.

Detention or shelter care hearing, *RC § 2151.31.4*.

Place of detention, *RC § 2152.26*.

Places where neglected, abused, dependent or unruly child may or may not be held, *RC § 2151.31.2*.

#### Ohio Rules

Custody, *JuvR 6*.

Initial procedure, *JuvR 7(B)-(D)*.

#### Practice Manuals & Treatises

*Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings*

#### Case Notes & OAGs

ANALYSIS Confessions Detention Search and seizure

#### CONFESSIONS.

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The fact that the police did not immediately take defendant to a juvenile facility did not render his statements inadmissible: *State v. Bobo, 65 Ohio App. 3d 685, 585 N.E.2d 429 (1989)*.

Confessions were admissible in evidence, even though the accused were not taken immediately before the juvenile court as directed by this section: *State v. Lowder*, 79 Ohio App. 237, 72 N.E.2d 785 (1946).

#### DETENTION.

If a peace officer determines that the detention or shelter care of a child appears to be required as provided in *RC* § 2151.31(C) and *JuvR* 7(A), the peace officer is required by *RC* § 2151.31.1(A) and *JuvR* 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child: OAG No. 96-061 (1996).

*Revised Code* §§ 2151.31.1(A)(1), 2151.31.4(A), and *JuvR* 7(B) do not authorize the release of a child to the peace officer who took the child into custody: OAG No. 96-061 (1996).

#### SEARCH AND SEIZURE.

The matter of unlawful search and seizure under the *USConst amend IV* applies to juveniles; and the burden of proving unlawful search and seizure is upon the one who filed the motion to suppress evidence: *In re Morris*, 29 Ohio Misc. 71, 278 N.E.2d 701 (JC 1971).

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TITLE 21. COURTS -- PROBATE -- JUVENILE

CHAPTER 2151. JUVENILE COURT

DISTRICT DETENTION HOMES

**Go to the Ohio Code Archive Directory**

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*ORC Ann. 2151.352 (2011)*

§ 2151.352. Right to counsel

A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to Chapter 120. of the Revised Code except in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(2), (3), (9), (10), (11), (12), or (13); (B)(2), (3), (4), (5), or (6); (C); (D); or (F)(1) or (2) of *section 2151.23 of the Revised Code*. If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

*Section 2935.14 of the Revised Code* applies to any child taken into custody. The parents, custodian, or guardian of a child taken into custody, and any attorney at law representing them or the child, shall be entitled to visit the child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of the hearing.

Any report or part of a report concerning the child, which is used in the hearing and is pertinent to the hearing, shall for good cause shown be made available to any attorney at law representing the

child and to any attorney at law representing the parents, custodian, or guardian of the child, upon written request prior to any hearing involving the child.

**HISTORY:**

133 v H 320 (Eff 11-19-69); 136 v H 164 (Eff 1-13-76); 148 v S 179, § 3. Eff 1-1-2002; 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 9-29-05.

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2911. ROBBERY, BURGLARY, TRESPASS AND SAFECRACKING

ROBBERY

**Go to the Ohio Code Archive Directory**

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*ORC Ann. 2911.01 (2011)*

§ 2911.01. Aggravated robbery

(A) No person, in attempting or committing a theft offense, as defined in *section 2913.01 of the Revised Code*, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

(2) Have a dangerous ordnance on or about the offender's person or under the offender's control;

(3) Inflict, or attempt to inflict, serious physical harm on another.

(B) No person, without privilege to do so, shall knowingly remove or attempt to remove a deadly weapon from the person of a law enforcement officer, or shall knowingly deprive or attempt to deprive a law enforcement officer of a deadly weapon, when both of the following apply:

(1) The law enforcement officer, at the time of the removal, attempted removal, deprivation, or attempted deprivation, is acting within the course and scope of the officer's duties;

(2) The offender knows or has reasonable cause to know that the law enforcement officer is a law enforcement officer.

(C) Whoever violates this section is guilty of aggravated robbery, a felony of the first degree.

(D) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in *section 2923.11 of the Revised Code*.

(2) "Law enforcement officer" has the same meaning as in *section 2901.01 of the Revised Code* and also includes employees of the department of rehabilitation and correction who are authorized to carry weapons within the course and scope of their duties.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 147 v H 151. Eff 9-16-97.

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2935. ARREST, CITATION, AND DISPOSITION ALTERNATIVES

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2935.14 (2011)*

§ 2935.14. Rights of person arrested

If the person arrested is unable to offer sufficient bail or, if the offense charged be a felony, he shall, prior to being confined or removed from the county of arrest, as the case may be, be speedily permitted facilities to communicate with an attorney at law of his own choice, or to communicate with at least one relative or other person for the purpose of obtaining counsel (or in cases of misdemeanors or ordinance violation for the purpose of arranging bail). He shall not thereafter be confined or removed from the county or from the situs of initial detention until such attorney has had reasonable opportunity to confer with him privately, or other person to arrange bail, under such security measures as may be necessary under the circumstances.

Whoever, being a police officer in charge of a prisoner, or the custodian of any jail or place of confinement, violates this section shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than thirty days, or both.

**HISTORY:**

128 v 97. Eff 1-1-60.

OHIO RULES OF COURT SERVICE

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\*\*\* RULES CURRENT THROUGH APRIL 1, 2011 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2010 \*\*\*

Ohio Rules Of Juvenile Procedure

*Ohio Juv. R. 2 (2011)*

Review Court Orders which may amend this Rule.

**Rule 2. Definitions**

As used in these rules:

(A) "Abused child" has the same meaning as in *section 2151.031 of the Revised Code*.

(B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.

(C) "Agreement for temporary custody" means a voluntary agreement that is authorized by *section 5103.15 of the Revised Code* and transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(D) "Child" has the same meaning as in *sections 2151.011 and 2152.02 of the Revised Code*.

(E) "Chronic truant" has the same meaning as in *section 2151.011 of the Revised Code*.

(F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

(G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.

(H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.

(I) "Delinquent child" has the same meaning as in *section 2152.02 of the Revised Code*.

(J) "Dependent child" has the same meaning as in *section 2151.04 of the Revised Code*.

(K) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.

(L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.

(M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

(N) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to

the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in *section 2151.011 of the Revised Code*.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in *section 2151.021 of the Revised Code*.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in *section 2151.03 of the Revised Code*.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by *section 5103.15 of the Revised Code*, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in *section 5103.02 of the Revised Code* that is certified pursuant to *sections 5103.03 to 5103.05 of the Revised Code* to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by *section 2151.06 of the Revised Code*.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in *sections 2152.11 and 2152.13 of the Revised Code*.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in *sections 2152.11 and 2152.13 of the Revised Code*. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in *section 2151.022 of the Revised Code*.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

**HISTORY:** Amended, eff 7-1-94; 7-1-98; 7-1-01; 7-1-02.

Michie's West Virginia Code Annotated

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\*\*\* Text Current Through 2011 Regular Session \*\*\*

\*\*\* Annotations Current Through February 11, 2011 \*\*\*

Chapter 49. Child Welfare.

Article 5. Juvenile Proceedings.

**GO TO WEST VIRGINIA STATUTES ARCHIVE DIRECTORY**

*W. Va. Code § 49-5-2 (2011)*

**§ 49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.**

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(a) The circuit court has original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged

offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine [§ 60-6-9], article six, chapter sixty, section three [§ 16-9A-3] or section four [§ 16-9A-4], article nine-a, chapter sixteen, or section nineteen [§ 11-16-19], article sixteen, chapter eleven of this code, or for any violation of chapter twenty [§§ 20-1-1 et seq.] of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine [§ 60-6-9], article six, chapter sixty or section nineteen [§ 11-16-19], article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a [§§ 16-9A-1 et seq.], chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the further power to sentence that person to a term of incarceration: Provided, That any such term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal jurisdiction over that person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten [§ 49-5-10] of this article.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and shall be afforded the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile's parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in accordance with article twenty-one [§§ 29-21-1 et seq.], chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose

presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend: Provided, That in cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer: Provided, however, That in any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make

findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

**HISTORY:** 1936, 1st Ex. Sess., c. 1; 1939, c. 105; 1972, c. 61; 1974, c. 9; 1975, c. 126; 1977, c. 65; 1978, c. 14; 1995, c. 55; 1996, c. 82; 1996, 1st Ex. Sess., c. 4; 1998, c. 188; 2000, c. 72; 2001, c. 54; 2007, c. 171.

ILLINOIS COMPILED STATUTES ANNOTATED

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\*\*\* STATUTES CURRENT THROUGH PUBLIC ACTS 97-13 OF THE 2011 LEGISLATIVE

SESSION \*\*\*

\*\*\* ANNOTATIONS CURRENT TO STATE CASES THROUGH JUNE 10, 2011 \*\*\*

CHAPTER 705. COURTS

JUVENILE COURTS

JUVENILE COURT ACT OF 1987

ARTICLE V. DELINQUENT MINORS

PART 1. GENERAL PROVISIONS

**GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY**

*705 ILCS 405/5-170 (2011)*

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THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 705 ILCS 405/5-170. (Effective until July 1, 2011) Representation by counsel

Sec. 5-170. (a) In a proceeding under this Article, a minor who was under 13 years of age at the time of the commission of an act that if committed by an adult would be a violation of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 [720 ILCS 5/9-1, 720 ILCS 5/9-1.2, 720 ILCS 5/9-2, 720 ILCS 5/9-2.1, 720 ILCS 5/9-3, 720 ILCS 5/9-3.2, 720 ILCS 5/9-3.3, 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, or 720 ILCS 5/12-16] must be represented by counsel during the entire custodial interrogation of the minor.

(b) In a judicial proceeding under this Article, a minor may not waive the right to the assistance of counsel in his or her defense.

**HISTORY:** Source: P.A. 91-915, § 5; 92-16, § 87; 94-345, § 5.