

IN THE SUPREME COURT OF OHIO

IN RE: J.V.

:  
 : Case No. 2011-107  
 :  
 : On Appeal from the  
 : Cuyahoga County Court of Appeals  
 : Eighth Appellate District  
 :  
 : C.A. Case No. 94820

**MERIT BRIEF OF AMICUS CURIAE  
 OFFICE OF THE OHIO PUBLIC DEFENDER  
 IN SUPPORT OF APPELLANT J.V.**

**OFFICE OF THE OHIO PUBLIC DEFENDER**

JILL BEELER #0069459  
 Assistant State Public Defender  
 (COUNSEL OF RECORD)

AMANDA J. POWELL #0076418  
 Assistant State Public Defender

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

**COUNSEL FOR AMICUS CURIAE,  
 OHIO PUBLIC DEFENDER**

ROBERT L. TOBIK, ESQ.  
 Cuyahoga County Public Defender

CULLEN SWEENEY #0077187  
 Assistant State Public Defender  
 (COUNSEL OF RECORD)

310 Lakeside Avenue, Suite 200  
 Cleveland, Ohio 44113  
 (216) 443-3660  
 (216) 443-6911 – Fax  
 csweeney@cuyahogacounty.us

**COUNSEL FOR J.V.**

WILLIAM MASON #0037540  
 Cuyahoga County Prosecutor

KRISTEN SOBIESKI #0071523  
 Assistant Cuyahoga County Prosecutor  
 (COUNSEL OF RECORD)

The Justice Center  
 1200 Ontario Street, 9<sup>th</sup> Floor  
 Cleveland, Ohio 44113  
 (216) 443-7800  
 (216) 698-2270 - Fax

**COUNSEL FOR STATE OF OHIO**



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**STATEMENT OF INTEREST  
OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER**

The Office of the Ohio Public Defender is a state agency, designed to represent criminal defendants, adults and juveniles, and to coordinate defense efforts throughout Ohio. The Ohio Public Defender Office, through its Juvenile Division, provides juveniles who have been committed to the Ohio Department of Youth Services, their constitutional right of access to the courts. See, *John L. v. Adams* (6<sup>th</sup> Cir. 1992), 969 F.2d 228.

Like this Court, the Ohio Public Defender is interested in the effect of the law that the instant case will have on those parties who are, or may someday be involved in, similar litigation. The Ohio Public Defender has represented and currently represents other juveniles who have been sentenced under the serious youthful offender statutes.

Accordingly, the Ohio Public Defender has an enduring interest in protecting the integrity of the justice system and ensuring equal treatment under the law. To this end, the Ohio Public Defender supports the fair, just, and correct interpretation and application of Ohio's serious youthful offender statutes.

**STATEMENT OF THE CASE AND FACTS IN SUPPORT OF ARGUMENT**

On June 15, 2005, seventeen-year-old J.V. was sentenced to a minimum period of two years, maximum of his twenty-first birthday, in the Department of Youth Services; and was given an adult prison sentence of six years, which was suspended pending the successful completion of his juvenile disposition. (A-1-3) In July, 2008, J.V. was approved for release, which was scheduled to occur on September 24, 2008<sup>1</sup>. (1/13/09 Tr. at 74-75, 86-87). J.V.'s release was put on hold after the incident which occurred on July 22, 2008, involving Unit

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<sup>1</sup> The DYS Release Authority initially added time onto J.V.'s minimum sentence according to their "matrix" review. The time added was therefore not due to disciplinary infractions or failure to complete treatment. (1/13/09 Tr. at 86).

Manager Lacey. J.V. was cleared of any wrongdoing however, after an independent “Inner-Disciplinary Committee” (IDC) review, which was conducted by a unit manager from Mohican JCF. (1/13/09 Tr. at 12-13). After the IDC hearing, J.V. was not given any additional time toward his sentence and his release date continued to be scheduled for September 24, 2008. (1/13/09 Tr. at 93-94). J.V. was not released on September 24<sup>th</sup> however, and was given conflicting information from staff. Some staff informed J.V. that he was going to go to court, while other staff told J.V. he was going home on the 24<sup>th</sup>. (1/13/09 Tr. at 94). Then, on September 25, 2008, the day after J.V.’s approved release date, a fight broke out on J.V.’s unit, involving 27 of the 30 youth. (1/13/09 Tr. at 15-18, 45). J.V. testified that he became involved in the fight after someone hit him from behind. (1/13/09 Tr. at 95). On October 16, 2008, the State filed the motion to invoke J.V.’s adult prison sentence. (T.d. 91).

The juvenile court had three chances to impose a proper juvenile disposition and a proper stayed adult sentence upon J.V. before he turned twenty-one, but failed each time. First, the juvenile court failed to properly state his stayed adult sentence at the original disposition/sentencing hearing on June 17, 2005. *In re J.V.*, Cuyahoga App. No. 86849, 2006-Ohio-2464, ¶14; (6/17/05, Tr. at 62-63; 66-68). On remand, the juvenile court fixed the sentencing problem at issue in *J.V. I*, but failed to impose a mandatory 5-year term of post-release control. (1/5/07, Tr. at 3-12); (T.d. 88 (A-4)). Then, on February 4, 2009, one month before J.V.’s twenty-first birthday,<sup>2</sup> the juvenile court imposed J.V.’s stayed adult sentence, but again failed to include the required post-release control sanction. (1/13/09, Tr. 144-49); (T.d. 114 (A-7)). On May 25, 2010, more than a year after J.V.’s twenty-first birthday, the Eighth District found that the sentence imposed in February, 2009 was void. *In re J.V.*, Cuyahoga App. No. 92869, 2010-

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<sup>2</sup> J.V. turned twenty-one years of age on March 11, 2009. (2/12/10, Tr. 45).

Ohio-71, ¶23. The court also remanded J.V.'s case "to the docket of the juvenile court for a new hearing." Id. at ¶24. On its fourth attempt, nearly two years after its jurisdiction over the matter had lapsed, the juvenile court conducted a de novo sentencing. (2/12/10, Tr. 16-47). At this time, the court corrected the original imposition of the stayed adult sentence, imposed the adult portion of the sentence, and included the mandatory term of post-release control for the first time. (2/12/10, Tr. 16-47); (T.d. 141 (A-8)).

## **LAW AND ARGUMENT**

### **PROPOSITION OF LAW I:**

**The invocation of an adult prison sentence upon a juvenile, pursuant to R.C. 2152.14, violates the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution.**

J.V. was seventeen years old when he received a serious youthful offender disposition, also known as a blended sentence. He was sentenced to a minimum period of two years in the Department of Youth Services (DYS), maximum until he attained the age of twenty-one. Therefore, J.V. had approximately four years to demonstrate that he could be rehabilitated. If he was not to be rehabilitated, he would have his adult criminal sentence of six years invoked. And in fact, J.V. did have his adult sentence invoked. But, was the adult sentence invoked because of J.V.'s refusal to accept the services of the juvenile justice system? What duty, if any, falls on the State to provide services to delinquent children, especially those facing adult consequences?

J.V. was incarcerated in DYS, Marion JCF, from July, 2005 until the State filed a motion to invoke the adult sentence in October, 2008. While J.V. was at Marion, DYS entered into a settlement agreement in the United States District Court, Southern District Eastern Division, in which it agreed that the conditions of confinement there, and throughout DYS, were

unconstitutional. *S.H., et al. v. Stickrath*, No. 2:04-cv-1206 (S. Dist., E. Div.)<sup>3</sup>. The institutions were replete with violence by staff and youth, youth were often kept in isolation cells for lengthy periods of time, and there was little to no education or treatment being provided. Many problems were the result of overcrowded institutions, coupled with staffing shortages. Marion for example, was at 192% capacity during the time J.V. was incarcerated there, yet was also down in the amount of staff. *S.H.* at Fact-Finding Final Report at 126, 128, January 2008, (hereinafter referred to as the “Cohen Report”<sup>4</sup>); (1/13/09, Tr. at 13). Despite Ohio’s unconstitutional conditions of confinement issues, in 2008 and 2009 courts increasingly began invoking the adult sentences on SYO youth. Of the 24 youth who have had their sentence invoked, 14 of those youth were invoked in the years 2008 and 2009, and 13 were incarcerated at Marion JCF. (DYS Report<sup>5</sup> A- 61-81). So, while Ohio has failed in its responsibilities to provide youth with a safe environment and a system of education and rehabilitation, Ohio has also held these same youth to a higher standard, by invoking adult criminal punishments after finding, by clear and convincing evidence, that they have failed to be rehabilitated. This system, in which the child must not err and must somehow graduate from the DYS system as rehabilitated, while not being provided a safe environment or the skills in which to succeed, is fundamentally unfair.

**A. The Right to Due Process and the Right to Trial by Jury play a vital role in the rehabilitation of youth who face adult criminal punishments.**

The juvenile court movement began in this country in 1899, when early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long

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<sup>3</sup> Information pertaining to the conditions lawsuit can be found at <http://www.dys.ohio.gov> and by clicking on “Agency Information” and “Settlement Agreement.”

<sup>4</sup> The Cohen Report can be found at [www.dys.ohio.gov](http://www.dys.ohio.gov) and by clicking on “Agency Information,” “Settlement Agreement,” and then “Consultant Report.”

<sup>5</sup> Amicus removed the names of youth from the reports received by DYS, but left the DYS inmate numbers for reference.

prison sentences and mixed in jails with hardened criminals. *In re Gault* (1967), 387 U.S. 1, 14-15. “From the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon— between the procedural rights accorded to adults and those of juveniles.”

*Id.* at 14.

They believed that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’ The child—essentially good, as they saw it—was to be made ‘to feel that he is the object of (the state’s) care and solicitude,’ not that he was under arrest or on trial.

*Id.* at 15. These results were to be achieved by insisting that the proceedings were not adversary, but that the State was proceeding as *parens patriae*. *Id.* at 16. The phrase *parens patriae*, taken from chancery practice, describes the power of the State to act in *loco parentis* for the purpose of protecting property interests and the person of the child. *Id.* Inherent in the concept of the juvenile justice system is the duty of the State to care for, protect, and rehabilitate delinquent children. Nevertheless, despite these good intentions and “most enlightened impulses,” the Court found that “[d]epartures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.” *Id.* at 17; 19. The Court’s rationale in granting children certain constitutional rights therefore recognized that due process is not only a necessary component of the juvenile justice system, but is also vital to the rehabilitation of youth.

The right to an impartial jury “in all criminal prosecutions” under federal law is guaranteed by the Sixth Amendment. *McKeiver v. Pennsylvania* (1971), 403 U.S. 528, 540. That requirement has been imposed upon the States, through the Fourteenth Amendment, “in all criminal cases which— were they to be tried in federal court— would come within the Sixth Amendment’s guarantee.” *Id.* This is because the Court has said it believes “that trial by jury in

criminal cases is fundamental to the American scheme of justice.” *Id.*, citing *Duncan v. Louisiana* (1968), 391 U.S. 145, 149; *Bloom v. Illinois* (1968), 391 U.S. 194, 210-211. With respect to trial by jury, accepting “the proposition that the Due Process Clause has a role to play,” the task “is to ascertain the precise impact of the due process requirement.” *McKeiver* at 541, citing *Gault* at 13-14. The applicable due process standard in juvenile proceedings, as developed by *Gault* and *In re Winship* (1970), 397 U.S. 358, is “fundamental fairness.” *McKeiver* at 543.

The traditional juvenile court proceeding is not a “criminal prosecution,” within the meaning and reach of the Sixth Amendment, but it also is not devoid of criminal aspects merely because it has been given a civil label. *McKeiver* at 541, citing *Kent v. U.S.* (1966), 383 U.S. 541, 554; *Gault* at 17; *Winship* at 365-66. In *Gault*, the Court declared that “civil labels and good intentions do not themselves obviate the need for criminal due process safeguards” in juvenile courts, for “a proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of liberty for years is comparable in seriousness to a felony prosecution.” *Gault* at 36. In addition, the Due Process Clause protects the accused juvenile against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *Winship* at 365-66. For, “a person accused of a crime \* \* \* would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.” *Winship* at 363, citing *Coffin v. United States* (1895), 156 U.S. 432, 453.

When the Supreme Court first applied the right of notice of the charges, counsel, confrontation and cross-examination of witnesses, and the privilege against self-incrimination to

children, it did so under the rationale that a separate system of justice, coupled with the affirmation of rights, leads to rehabilitation. “Due process of law is the primary and indispensable foundation of individual freedom.” *Gault* at 20. The appearance, as well as the actuality of fairness, impartiality, and orderliness, which are the very essentials of due process, may be a more therapeutic attitude so far as the child is concerned. *Id.* at 26. In fact, “when the procedural laxness of the *parens patriae* attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed.” *Id.* And, “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.” *Id.* citing Wheeler and Cottrell, *Juvenile Delinquency— Its Prevention and Control*, Russell Sage Foundation (1966), at p. 33.

**B. Ohio joins other states and adopts Serious Youthful Offender / Blended Sentence Proceedings.**

Over the past several years, a number of states have developed sentencing schemes that combine the juvenile court process with adult sentencing ramifications. Patrick Griffin, National Center for Juvenile Justice, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws* (2003), available at <http://www.ncjj.org>. (A-10-33). Blended sentencing laws are different than transfer laws. Transfer laws permit specific juveniles to be tried in courts of criminal jurisdiction, while blended sentencing laws authorize courts to combine a juvenile disposition with a suspended criminal sentence. *Id.* at p. 2. Seventeen states have “criminal blended sentencing” laws that permit juveniles who have been moved into the criminal court system for trial be returned to juvenile court for sentencing. *Id.* Fifteen states give juvenile court judges the power to send juveniles to adult prison in what is known as “juvenile blended sentencing.” *Id.* And, in ten of those fifteen states, including Ohio, juvenile

blended sentencing provisions expand the categories of juveniles for whom adult sanctions are a possibility, thereby expanding the pool of offenders at risk of adult sanctions.<sup>6</sup> *Id.* at 15.

The general tendency of “juvenile blended sentencing” laws is to expand the sanctioning powers of the juvenile court. *Id.* at 13. In Ohio, if a juvenile is brought before the juvenile court and a blended sentence proceeding is initiated, the juvenile court must afford the juvenile all of the rights afforded to a person who is prosecuted for committing a crime, including the right to a grand jury determination of probable cause and the right to an open and speedy trial by jury. R.C. 2152.13(C)(1), (2). In Texas, unlike Ohio, if a petition alleging violent or habitual felony conduct has been referred to and approved by a grand jury, the juvenile is entitled to be tried by a jury and to have the sentence determined by a jury. *Id.* at 14; Tex. Fam. Code §54.04.

In *D.H.*, this Court countenanced a troubling reality that juveniles can be sentenced to adult prison without being provided all of the same constitutional protections as adults, as long as the sentence remains suspended. *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9 at ¶18; 59. The justification for denying full constitutional rights to juveniles is part of an ongoing effort to salvage the juvenile justice system. But, affording full constitutional rights to juveniles who face adult sentences does not impact the value of or need for a separate system of justice for juveniles; rather, it recognizes that when states choose to pursue adult sanctions against juveniles, juveniles must be afforded the same rights as adults.

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<sup>6</sup> In Ohio, there are no transfer categories, discretionary or mandatory, that apply to juveniles under fourteen years old. But under Ohio’s blended sentencing law, juveniles as young as ten may receive adult sentences following adjudication for certain offenses. *Id.*

### C. The Blended Sentence Invocation Hearing:

In *D.H.*, this Court reviewed the imposition of a serious youthful offender sentence and found, “although modern juvenile proceedings share some indicia of the criminal courts, juvenile proceedings are not considered criminal prosecutions for purposes of Sixth Amendment analyses.” *D.H.* at ¶45. This Court recognized that because D.H. faced the potential imposition of an adult sentence, his case differed in an important respect from the cases of the juveniles in *McKeiver* and *In re Agler* (1969), 19 Ohio St.2d 70. But, this Court nevertheless found that, “any adult sentence that the trial court imposes through R.C. 2152.13(D)(2)(a)(i) is only a potential sentence— it is stayed pursuant to R.C. 2152.13(D)(2)(a)(iii) ‘pending the successful completion of the traditional juvenile dispositions imposed.’” *D.H.* at ¶ 30; 43.

R.C. 2152.14(E) governs under what circumstances a juvenile court may invoke the adult portion of a serious youthful offender sentence. See, *D.H.* at ¶31. Unlike the serious youthful offender disposition hearing, there is no distinction between mandatory and discretionary serious youthful offenders during an invocation hearing. Both mandatory and discretionary SYOs are entitled to a juvenile court hearing during which the judge must make certain statutorily required findings by clear and convincing evidence before the juvenile’s adult sentence can be invoked. Therefore, if this Court finds R.C. 2152.14 to be in violation of *Apprendi v. New Jersey* (2000), 530 U.S. 466, *Blakely v. Washington* (2004), 542 U.S. 296; and *State v. Foster* (2006), 109 Ohio St.3d 1, that finding must apply equally to discretionary and mandatory SYOs.

R.C. 2152.14 requires a finding by clear and convincing evidence that the juvenile is “unlikely to be rehabilitated during the remaining period of juvenile jurisdiction” and that the juvenile has engaged in further bad conduct pursuant to R.C. 2152.14(A) or (B). See, *D.H.* at ¶31. The conduct that can result in the enforcement of an adult sentence includes committing,

while in custody or on parole, an act that could be charged as any felony or as a first-degree misdemeanor offense of violence if committed by an adult, or engaging in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim. *Id.* at ¶36; R.C. 2152.14(A)(2)(a); (A)(2)(b); (B)(1); (B)(2).

The specific constitutional questions for this Court include whether the standard -- clear and convincing evidence— and the fact that a judge, not a jury, must make the statutory findings in order to invoke the adult sentence, passes constitutional muster. As was the case in *D.H.* and in serious youthful offender disposition hearings, the invocation hearing is held in juvenile court. It is the juvenile court judge who sentences the youth to an adult sentence at the disposition hearing, and the juvenile judge who must decide whether to invoke the suspended adult prison sentence. From that hearing, the child may be transferred to the Ohio Department of Rehabilitation and Correction.

**D. Ohio's use of the SYO sentencing law demonstrates that the youth who receive an SYO sentence is determined by the county within which they live, and the youth who have their adult sentence invoked is largely determined by the status of the litigation against DYS and the institution within which they are placed.**

Ohio's Serious Youthful Offender provisions went into effect on January 1, 2002. R.C. 2152.02(X); 2152.11; 2152.13; 2152.14; 148 v S 179, §3 (Eff 1-1-2002). Within the first two years of the new law, a study was conducted by Magistrate David A. Hejmanowski, of the Delaware County Juvenile Court. *Serious Youthful Offenders in Ohio*; (A-34-52). Magistrate Hejmanowski conducted a survey of all eighty-eight counties in Ohio, to review the level and nature of the use of blended sentencing in its first two years. (A-35). In 2004, 177 Serious Youthful Offender requests were reported; however, 46.9% of those cases occurred in four of Ohio's counties, including J.V.'s home county, Cuyahoga. (A-36). And, 31.6% of the total

number of cases occurred in either Lucas or Summit County. Certain larger counties reported little or no blended sentencing activity, including Trumbull County with one SYO request, Franklin County with three SYO requests, and Mahoning and Montgomery Counties with no SYO filings. *Id.* Of the 177 SYO requests, 102 blended sentences were imposed, and 72.5% of the youth who received a blended sentence were committed to the Ohio Department of Youth Services for their juvenile disposition. *Id.*

In addition to the number of filings noted on the survey, there were a number of policy comments that were collected and discussed in the study. (A-44-47). Some of these included:

1. Several county prosecutor's offices reported that their use of blended sentencing is either the result of plea bargaining in transfer cases or that they file cases with a blended sentencing request in order to use the potential for a blended sentence as a tool in the bargaining process.

"I use it as leverage. No one wants to dabble in that just yet. There's just too much room for error." (Assistant Prosecuting Attorney, Trumbull County.)

A Franklin County Assistant Prosecutor commented on the effect that the possibility of a jury trial has in the negotiating process.

2. Respondents routinely felt that if a juvenile over the age of fourteen had committed a sufficiently serious offense and had a sufficiently bad record so as to warrant a blended sentence, that the same juvenile also warranted transfer to the adult system.

"Most of the time if you really look at all these aggravated robberies and burglaries, we can lock them up [in DYS] until they're 21." (Franklin County Assistant Prosecuting Attorney.)

3. Several survey respondents noted that they utilize the blended sentencing procedure only for younger offenders.

"The case it would be appropriate for is a 12, 13, or 14 year-old who we can't transfer but want additional leverage on." (Franklin County Assistant Prosecuting Attorney.)

"It's that kid who is younger who committed a serious crime who is appropriate." (Hamilton County Assistant Prosecuting Attorney.)

“Most of the kids we come across are just bind overs. Most of these are discretionary bind overs and when they fail, we go SYO. We have a couple of very young offenders who are very appropriate for SYO dispositions.” (Chief of the Juvenile Division of Stark County).

Id. The youth who receive a blended sentence seem much more likely to be determined by the county in which they live, and the philosophy of the particular prosecutor, rather than the history of the child or the nature of the offense.

For example, in addition to discussing the counties that had used blended sentencing, several counties commented that they did not or would not use the blended sentencing provision. (A-47). The Licking County Juvenile Court indicated, “The local prosecutor and the Court do not believe that the SYO classification serves any useful purpose in this community.” Id. (emphasis in original). Magistrate Hejmanowski concluded that the use of blended sentencing and attitudes toward it vary widely from county to county and from individual to individual within the county. (A-47). At the time of the study’s completion, no adult sentences had been invoked. Id.

Ohio’s blended sentencing law has now been in effect for nine years. According to the Ohio Department of Youth Services’ Records, 293 youth have received a SYO sentence and were committed to DYS; and 24 of those youth have had their adult sentence invoked, either while in the custody of DYS or while on parole. (A-53-61). Of the 24 youth who have had their sentence invoked, 14 of those youth were invoked in the years 2008 and 2009. (A-61). In addition, 13 of the youth whose adult sentence had been invoked, including J.V., were incarcerated at Marion Juvenile Correctional Facility. (A-62-81). Had J.V. not been from one of four counties that routinely utilized the SYO procedure, had he not been placed in Marion JCF, had DYS been meeting its obligation to provide a constitutional system of care and

rehabilitation, then perhaps the theory of the blended sentence would be realized. Instead, J.V. would be faced with serving three years in the Marion JCF.

**E. Ohio Department of Youth Services— The transition from unconstitutional conditions of confinement, to a new system of true rehabilitative juvenile justice continues.**

It is widely believed that when a juvenile receives a blended sentence, it is up to the juvenile to determine whether or not he will ever have to serve the adult portion of that sentence. As this Court pointed out, the juvenile must engage in separate conduct detrimental to his own rehabilitation in the juvenile system to be committed to an adult facility. *D.H.* at ¶38. “Theoretically, the threat of the imposition of an adult sentence encourages a juvenile’s cooperation in his own rehabilitation, functioning as both carrot and stick.” *D.H.* at ¶18. If the juvenile responds to treatment, he will be rehabilitated and will never have to serve his adult sentence. If not, and he commits an additional act, he may have to serve his adult criminal sentence.

The Twelfth District Court of Appeals adopted this reasoning and found, “Among juveniles who receive an adult sentence, only those who commit further serious wrongdoing and who are at least fourteen years old can be ordered to serve the adult sentence.” *In re J.B.*, Butler App. No. CA2004-09-226, 2005-Ohio-7029, ¶133. This Court also noted, “how the juvenile responds to [the juvenile] disposition will determine whether the stay is lifted on the adult sentence.” *D.H.* at ¶30. That reasoning, however, does not account for what is actually a very complex and problematic juvenile justice system. It also does not recognize that the State must hold up its end of the bargain to provide an environment within which the youth can be rehabilitated. While the overarching goal of the juvenile justice system may be rehabilitation and treatment, the fact remains that DYS is currently involved in an extensive remodeling of its

correctional and rehabilitative system. In the present matter, J.V. was sentenced to serve six years for assaultive behavior in the Marion Juvenile Correctional Facility, one of DYS's most troubled facilities.

In December 2004, a system-wide conditions-of-confinement lawsuit was filed against the Ohio Department of Youth Services in United States District Court, Southern District Eastern Division. *S.H., et al. v. Stickrath*, No. 2:04-cv-1206 (S. Dist., E. Div.). In July 2007, the court entered an Order certifying the case as a class action. *Id.* The class consisted of all youth who are or will be committed to DYS, including J.V. *Id.* In May 2007, the court approved a case management plan in which the parties agreed to a joint fact-finding team headed by Fred Cohen, Esq. *Id.* Mr. Cohen assembled a team of ten experts who conducted intensive site visits of various DYS facilities; interviewed staff, youth, and DYS officials; and assembled and studied records, studies, and reports. Cohen Report's Executive Summary at i. In his report, Mr. Cohen concluded, "Most ODYS facilities were found to be overcrowded, understaffed, and underserved in such vital areas as safety, education, mental health treatment, and rehabilitative programming." *Id.* at i. And, "Excessive force and the excessive use of isolation, some of it extraordinarily prolonged, is endemic to the ODYS system." *Id.* at ii.

Regarding Marion Juvenile Correctional Facility, Cohen indicated:

The needless and excessive use of force is engrained within ODYS, with Ohio River Valley, Marion, and Indian River in the top tier on use of force, restraints, and isolation. We consistently found flawed training, deficient oversight, seriously inadequate reporting and subsequent review of 'incidents.' Our findings support the conclusion that ODYS youth, with varying degrees of intensity depending on facility, are not provided with the constitutional minimum relating to a safe environment. Their physical and psychological well-being is at risk and often damaged at the present time. The environment, in turn, dramatically impedes whatever efforts are made to provide treatment and programs.

*Id.* at iii.

The Cohen Report, referencing unconstitutional conditions of confinement, lack of treatment programs, lack of educational programs, and lack of mental health treatment within DYS, and Marion Juvenile Correctional Facility (JCF) specifically, was filed with the court in January 2008. J.V. was incarcerated in DYS, at Marion JCF, from July 2005 until the State filed a motion to invoke the adult sentence in October 2008. At the invocation hearing, two staff from Marion JCF provided testimony regarding two incidents which occurred at Marion JCF in July and September of 2008. (Appellant's Memorandum in Support of Jurisdiction p. 5)

J.V. was incarcerated in Marion JCF for more than three years, and during the same time period that the conditions of confinement lawsuit was pending, including the same timeframe DYS was being evaluated by the team of experts in the *S.H.* litigation. In fact, the Cohen Report was filed nine months prior to the state filing its motion to invoke. At the time, Marion JCF held approximately 275 male youth. Cohen Report at 55. In terms of use of force, expert Steve Martin found a pattern and practice of unnecessary and excessive staff use of force. *Id.* at 33. Mr. Martin examined use of force reporting and after reviewing hundreds of Marion incident reports, he concluded that staff frequently submitted reports that were incomplete and/or false. *Id.* at 33. For example:

Incident ID-4102070485, June 25, 2007: This is an incident in which a JCO kicked a restrained youth in the head multiple times in plain view of six staff members (based on my review of the video that captured the entire incident). None of the JCO witnesses reported the kicks. A nurse in attendance reported that the JCO's "boot made contact with the left side of the helmet the youth was wearing to prevent him banging his head." The single staff member who accurately reported the incident was the Operations Manager ("OM").

Incident ID-4102070449, June 14, 2007: This was an incident in which one officer reported that a Unit Administrator ("UA") used a "fight break-up" tactic on a youth. The UA reported that he used "Emergency Defense & Basic Block" on the youth. The UOF policy defines Emergency Defense as the "highest level of staff response that carries a substantial risk that it shall proximately result in the serious physical harm or the death of any person." There is evidence to suggest

that the UA simply pushed the youth back into his cell; however, the incorrect use of terms in the absence of detailed reporting simply creates serious ambiguity as to what actually occurred.

Incident ID-4102070487, June 25, 2007: This was an incident in which a youth reported that he was choked by an officer. A medical exam noted that his “tonsils [were] enlarged.” The video established that the officer did indeed “wrap his left arm around the neck area” of the youth. The officer had failed to submit any report of this incident.

Id. at 33-35.

At least a portion of the complaints against staff can be attributed to the use of overtime in an overcrowded prison environment. Building six, unit D, Unit Manager Lacey’s unit at Marion, was reported at 192% of capacity; and Marion Juvenile Correction Officers represented that the average work week for them included twenty-four hours or more of overtime. Id. at 126; 128.

When describing the mindset of certain staff in DYS, Cohen noted, “there is a harshness in the social climate that is created by verbally abusive and militaristic JCOs, the imposition of group punishments (even though forbidden by rule), excessive amounts of penal isolation – and more.” Id. at 12. In a letter signed “The Staff at Marion JCF,” the youth at Marion are described by staff as “lost to society and will not, and cannot be reformed no matter what new program is attempted.” Id.

Being incarcerated in Ohio River Valley’s JCF’s Special Management Unit meant confinement in a small, barely furnished segregation cell for 23 hours a day, 7 days a week. Id. at 20-21. The level system, which would allow youth to regain some freedom and amenities in two-week, discipline-free increments, itself lacked any meaningful, procedural fairness, treatment team input, or oversight. Id. The Special Management Unit that J.V. was placed on at Marion, was also a 23-hour-a-day lock-down unit, and was described as a six-week program by

Unit Manager Lacey. (1/13/09, Tr. at 21). According to Cohen, adequate treatment and educational opportunities in these isolation units, including at Marion, simply were not present. Id. at 21. And, Marion JCF made frequent use of seclusion to discipline youth. Id. at 37. The Marion Seclusion Summary Report for May 1 - June 30, 2007 identifies 268 seclusion events. Id. Notably, the Seclusion Summary Reports did not include isolation imposed pursuant to the youth disciplinary system, and youth were placed in the “23/7” room or cell confinement for two weeks; and a “lockdown” of youth who were disruptive at school. See, 1/13/09, Tr. at 21-22 (“There’s a score sheet that helps place a youth [on the SMU unit]. It can be anywhere from education, how he’s acting in the education department. If he’s a serious youthful offender, would add points. If he’s a felony 1, 2, 3, 4, 5, will give points. The act that he actually did or has been doing \* \* \* like I said, it’s a score sheet.”).

Research studies reveal the psychological effects on prisoners in solitary confinement. In a 1989 study, prisoners in solitary confinement revealed an increase in “psychological problems, including sleep disturbances, impaired cognition, anxiety, hostility \* \* \* heightened frictions and social conflict \* \* \* and potential long-term animosities.” Craig Haney and Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev.L. & Soc. Change (1997) 477, 506. Other studies have revealed that 86% of prisoners reported severe anger. Id. at 524. Prisoners in segregated confinement experienced “over-sensitivity to stimuli, irrational anger, and social withdrawal.” Id. In addition, “[i]ndividuals with primitive or psychopathic functioning or borderline cognitive capacities, impulse-ridden individuals, and individuals whose internal emotional life is chaotic or fearful are especially at risk for severe psychopathic reactions to such isolation. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol’y 325, 348 (2006).

The American Correctional Association limits seclusion of a juvenile to a maximum of 5 days, a standard which DYS has clearly ignored. American Correctional Association, *Standards for Juvenile Detention Facilities*, 3d e. (Latham, Maryland: ACA, 1991), p. 67. The United States as a whole falls short of the United Nations international standards for juveniles, as, “[a]ll disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.” Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res 45/113, ¶67, U.N. Doc A/RES/45/113 (Dec. 14, 1990). In *Lollis v. New York State Dept. of Social Services*, the court, referencing expert testimony, agreed, “they are unanimous in their condemnation of extended isolation as imposed on children, finding it not only cruel and inhuman, but counterproductive to the development of the child.” *Lollis v. New York State Dept. of Social Services*, 322 F.Supp. 473, 480 (S.D.N.Y. 1970).

In terms of educational programming, Cohen reported, “DYS fails to meet its responsibilities as a ‘parent’ under Ohio’s compulsory attendance statute and fails to meet the statutory requirement to provide a full day of school.” Cohen Report at 105. The lack of teachers or substitutes was a common reason cited for loss of class time, as twenty-three teaching positions were reported vacant in August 2007. *Id.* at 106.

In addition to a high level of violence and lack of educational programming, the experts unanimously found that there was no mental health system, that the facilities were almost devoid of meaningful treatment, that there was an ineffective dental quality assurance program, and that a high number of medical grievances with no recorded responses occurred at Marion. *Id.* at ii;

20; 167; 189. The new superintendent at Marion referenced the “great need for a culture change.” *Id.* at 115.

In April 2008, the parties to the class action entered into a stipulated settlement agreement. Included within the settlement, the parties agreed with the Cohen Report’s major findings concerning the use of force, use of seclusion, and provisions of medical, mental health, and educational services. *S.H.* at Stipulation for Injunctive Relief, April 9, 2008.<sup>7</sup> The settlement incorporated the Cohen Report, which established that the conditions of confinement for the members of the class, including J.V., fell below the constitutional and statutory standards in all categories addressed by the fact-finding team. *Id.*

Once DYS entered into the settlement agreement, their reform work began, and they continued to be monitored by the federal court. The First Annual Report was issued in May 2009. See, *S.H.*, Case No. 2:04-CV-1206, Doc. # 120, Filed 5/22/09<sup>8</sup>. During this time period, DYS continued to struggle in the areas of its staffing. For example, “In a system that requires zero pre-employment education and no relevant experience for new JCOs and where DYS training experts refer to staff development as creating only a ‘temporary proficiency,’ the probability of staffing problems seems to be high.” *Id.* at 133. Additional concerns related to the number of use-of-force incidents and situations during which youth’s bones were fractured. *Id.* at 69. From October 1, 2008 through March 31, 2009, there were seven incidents resulting in youth fractures. *Id.* After one year, “with few notable Central Office exceptions, too much enthusiasm remains within DYS for holding youth accountable, i.e., for punishing youth.” *Id.* at 126.

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<sup>7</sup> The Settlement Agreement can be found at [www.dys.ohio.gov](http://www.dys.ohio.gov) and by clicking on “Agency Information,” “Settlement Agreement,” and again on “Settlement Agreement”. “Highlights of the Settlement Agreement” can also be viewed.

<sup>8</sup> Documents from *S.H.* can be found at <https://ecf.ohsd.uscourts.gov/cgi-bin/login.pl>

As part of their efforts to reform, DYS agreed to use their best efforts to obtain the necessary funding to improve the juvenile justice system and to otherwise comply with the standards of care included in the stipulated settlement. *S.H.*, Settlement Agreement at 3. In January 2009, as part of their ongoing efforts, DYS announced the closing of Marion JCF by July, 2009. (A-82, January 8, 2009 Press Release, Ohio Department of Youth Services Plans Facility Closures). This announcement was part of an overall plan to restructure, reallocate funding, and move toward placing juvenile offenders in smaller more community-based treatment facilities, instead of large prison-like institutions. (A-82).

In September 2009, after the closing of Marion Juvenile Correctional Facility (JCF), the federal court monitor conducted a "Special Inquiry Report," in response to destabilizing events occurring with DYS. See, *S.H.*, Case No. 2:04-CV-1206, Doc. #133, Filed 9/16/09. Specifically, the inquiry of DYS was to address the closure of Marion, youth violence, and staffing issues. *Id.* at 2. Between October 2008 and April 2009, there was a 41% increase in the rate of fights at Cuyahoga Hills JCF; 47% increase in the rate of fights at Indian River JCF; 48% increase in the percent of staff who fear for their safety at Cuyahoga Hills JCF; 182% increase in the rate of physical restraints at Circleville JCF; 138% increase in the rate of isolation and confinements at Circleville JCF; 286% increase in the rate of isolation and confinement at Ohio River Valley JCF; and a 232% increase in the rate of confinement duration at Circleville JCF. *Id.* at p. 13-14. Data collection from 2008 through May 22, 2009 showed 80% of female youth and 87% of male youth committed one or more assaults. *Id.* at 14.

The Second Annual Report was filed with the court on June 30, 2010. *S.H.* Case No. 2:04-CV-1206, Doc. #187, Filed 6/30/10. Two years after the settlement agreement, and months after J.V. had his adult sentence invoked, DYS continued to struggle in the areas of use of force,

staff training, and lack of treatment. In general, the intensity of force tactics used by staff throughout DYS has lessened since the high levels in 2007. *Id.* at 15. However, fractures resulting from applications of force are too frequent, but almost exclusively occur at Ohio River Valley JCF since October 2009. *Id.* And, facility supervisory personnel continue to be directly involved in applications of force rather than managing them. *Id.* Facility personnel who are appointed to conduct pre-disciplinary hearings do not possess the necessary level of training or competency to conduct such hearings. *Id.* at 16. And, the percentage of youth that receive a disciplinary hearing as a result of an act of violence is not consistent across DYS, nor is the amount of isolation consistent with every act of violence category. *Id.* at 99. The Consistent Responses to Acts of Violence (CRAV) practice in DYS “does not teach a youth anger management skills, conflict resolution skills, or violence reduction strategies.” *Id.* Lastly, DYS continues to use an adult oriented and limited strategy for gang violence. *Id.* “It is time for DYS to think consistently with juvenile corrections driven best practices...” *Id.* at 99-100.

Today, DYS remains under the provisions of the settlement agreement and federal court monitoring. DYS continues to make changes to its policies, improve staff training, close large prison-like facilities, and move toward a system of treatment and rehabilitation. But, after the history of violence by staff and youth within these facilities, documented false reporting by staff, the arbitrary enforcement of disciplinary procedures, the overuse of isolation, and the lack of substantive treatment and education, the SYO invocation procedure is constitutionally deficient. Not only are children not being provided the same constitutional rights as adults who will be serving the same sentence; but there is an utter lack of treatment in DYS; and the decision-making regarding which youth receive the SYO sentence in the first instance, and which youth will be invoked, is completely arbitrary.

The Cohen Report pronounced that staff cannot demean, provoke, insult, and assault youth and then complain about a violent environment. Cohen Report at iii. In that same spirit, Ohio cannot devise and claim a constitutional sentencing scheme that places a juvenile within a system that is replete with violence and lacking in education, treatment and care; and then hold that juvenile to the highest level of responsibility after finding by clear and convincing evidence that the juvenile is “unlikely to be rehabilitated during the remaining period of juvenile jurisdiction” and that the juvenile has engaged in further bad conduct. See R.C. 2152.14. Ohio’s serious youthful offender statutes, coupled with unconstitutional conditions of confinement, drives a stake through the heart of what is fundamentally fair.

As set forth in J.V.’s merit brief at p. 12-31, the judicial fact-finding and relaxed burden of proof in R.C. 2152.14 violate a child’s Sixth and Fourteenth Amendment rights as pronounced by *Apprendi*; *Blakely*; and *Foster*. If this Court maintains that juveniles who have their adult sentences invoked do not have a Sixth Amendment right to a trial by jury, surely the fact-finding requirements in R.C. 2152.14 violate the fundamental fairness standard of due process.

This Court’s analysis in *D.H.*, that the adult criminal sentence is only a potential sentence and therefore neither the Sixth Amendment nor due process requires a jury determination on the imposition of a serious youthful offender dispositional sentence under R.C. 2152.13, the same reasoning cannot lie for the invocation hearing under R.C. 2152.14. For when the adult sentence is invoked, it matters little to the juvenile incarcerated in the Department of Rehabilitation and Correction that the state’s stated goal was for him to be rehabilitated or that his proceedings occurred in a juvenile court. Ohio and DYS’ ongoing efforts to improve Ohio’s juvenile facilities from what has been system-wide unconstitutional conditions, to a true system of rehabilitation, will require years of restructuring. Until then, the theory of blended sentencing,

the carrot and stick approach, cannot pass the fundamental fairness standard because it is fundamentally unfair to place a juvenile in an unconstitutional system and expect them to carry the burden of rehabilitation, when the state is not meeting its burden of providing treatment, education, and care, in a safe environment.

#### **F. Conclusion**

It is said that the road to hell is paved with good intentions. While rehabilitation and treatment are laudable goals of the juvenile justice system, they can survive the affirmation of constitutional rights. Affording full constitutional rights to juveniles who face adult sentences does not impact the value or need for a separate system of justice for juveniles. Rather, it recognizes that when states choose to pursue adult sanctions against juveniles, juveniles must be afforded the same rights as adults. Until Ohio can meet its obligation of providing constitutionally effective rehabilitative services to Ohio's troubled youth, Ohio's Serious Youthful Offender law cannot pass the standard of fundamental fairness. As the United States Supreme Court warned in 1966, "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. U.S.* (1966), 383 U.S. 541, 556. Today, there is more cause for concern than ever.

## PROPOSITION OF LAW II:

**A juvenile court does not have the authority to impose criminal punishment (including post-release control) after the delinquent child turns 21.**

### **I. Introduction**

Because J.V. turned twenty-one years of age on March 11, 2009, the juvenile court was without personal and subject-matter jurisdiction to do anything in J.V.'s case. Because the juvenile court failed to correct J.V.'s sentence before time ran out, J.V.'s sentence remains void (*In re J.V.*, Cuyahoga App. No. 92869, 2010-Ohio-71, ¶23) and he must be discharged from post-release control.

#### **A. A juvenile court has jurisdiction over a “child.”**

A juvenile court's power “is derived from Section 1, Article IV of the Constitution of Ohio, and the court is established and its jurisdiction is defined by [O.R.C.] Chapter 2151....” *The State, ex rel. Schwartz, Judge v. Haines, Director of Mental Hygiene and Correction* (1962), 172 Ohio St. 572, 573. Juvenile courts in Ohio are “legislatively created courts of limited jurisdiction.” *In re R.K.*, Cuyahoga App. No. 84948, 2004-Ohio-6918, ¶22, citing *In re Darling*, 9<sup>th</sup> Dist. No. 03CA0023, 2002-Ohio-7184.

Juvenile courts have exclusive original jurisdiction over children who are alleged to be delinquent. R.C. 2151.23(A)(1). In delinquency proceedings, “‘child’ means a person who is under eighteen years of age, except as otherwise provided” in R.C. 2152.02(C)(2)-(6). R.C. 2152.02(C)(1); *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791 ¶4. Revised Code 2152.02(C)(6) provides that the juvenile court has jurisdiction over a person who is adjudicated a delinquent child before age eighteen, “until the person attains twenty-one years of age.” In *Andrew*, this Court concluded that “the second clause of (C)(6) means that when a juvenile court is exercising jurisdiction over a person adjudicated a delinquent child pursuant to the matter for

which the person was adjudicated delinquent, the person adjudicated delinquent shall be treated as a child until he reaches the age of 21.” *Andrew* at ¶5.

Revised Code Section 2151.23(A) does provide for juvenile court jurisdiction over adults in certain circumstances. See, e.g., R.C. 2151.23(A)(5); (A)(6); (A)(14). But, 2151.23 does not provide juvenile courts the jurisdiction to impose a de novo sentence for an adult. And, a juvenile court’s ability to exercise its authority past a delinquent child’s twenty-first birthday is provided by statute only in two situations: 1) to expunge a record pursuant to R.C. 2151.358; and, 2) to modify previously validly entered juvenile sex offender classification orders by declassifying or reclassifying the person’s classification level to a lower tier pursuant to R.C. 2152.84-.85. Read together, R.C. 2151.23(A)(1) and R.C. 2152.02(C)(6) provide that a juvenile court’s jurisdiction over a child and over the subject matter of the child’s case terminates on the child’s twenty-first birthday.

Courts throughout Ohio have recognized the limitation on juvenile-court jurisdiction. *R.K.* at ¶16 (Unless specifically expanded by statute, juvenile court jurisdiction continues only until a child attains twenty-one years of age.); *In the Matter of Jay I.*, (Oct. 13, 1995), Wood Co. No. WD-94-115, 1995 Ohio App. LEXIS 4532, \*15-16; *State v. Lambert* (May 22, 1974), Harrison Co. App. No. 324, 1974 Ohio App. LEXIS 3963, \*7-\*8 (“Where an adjudicated delinquent child becomes 21 years of age during the pendency of appeals from his adjudication, all jurisdiction of the Juvenile Court terminates by operation of Section 2151.38, Revised Code, so that the court has no authority even to vacate its previous order of commitment, which was suspended by an appellate court.”), citing *In re J.F.*, 17 Ohio Misc. 40, 242 N.E.2d 604, at syl.

Sometimes, this bright line for juvenile-court jurisdiction produces surprising results. But this fact does not make the line any less bright. For example, in *In re G.M.*, 188 Ohio

App.3d 318, 2010-Ohio-2295, the Third District held that a juvenile court lost jurisdiction to classify G.M. as a juvenile sex offender registrant on the man's twenty-first birthday, when he was no longer a "child." Id. at ¶18. The court noted, "We recognize the legislature may not have anticipated this result." Id. at ¶19

Further, in *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, this Court recognized the difference between the continuing jurisdiction of juvenile courts in abuse, neglect, and dependency matters, and the limited jurisdiction of juvenile courts in delinquency matters. This Court reasoned that because delinquency matters have criminal aspects that involve the detention, not the protection, of children, greater constraints must be placed on juvenile courts in delinquency matters. Id. at ¶25. This Court held that the termination of probation terminated the juvenile court's jurisdiction to make further dispositions in a child's case. Id. at ¶28. Applying *Cross* to this case, J.V. attained twenty-one years of age on March 11, 2009. J.V.'s birthday terminated the juvenile court's jurisdiction to make any further disposition in J.V.'s case.

J.V.'s sentence was void when the court imposed it in February, 2009. *In re J.V.*, 2010-Ohio-71 at ¶23. Because the juvenile court was without personal jurisdiction over J.V. who became an adult on March 11, 2009, and was without subject matter over J.V.'s case, the court's attempt to correct the void sentence in February 2010 is also void. (2/12/10, Tr. 16-47); (T.d. 141 (A-8)). Accordingly, J.V. must be discharged from APA supervision.

**B. A juvenile court cannot impose a serious youthful offender disposition upon an adult.**

As outlined above, juvenile-court jurisdiction terminates generally on a child's twenty-first birthday, when he can no longer be deemed a "child." R.C. 2151.23(A)(1). But a juvenile court's power to impose a serious youthful offender disposition is also limited to those who can be deemed a "child." Specifically, R.C. 2152.13(A) provides that a "juvenile court may impose

a serious youthful offender dispositional sentence on a child....” See, also, R.C. 2152.13(D)(2)(a)(i).

In February, 2010, nearly two years after J.V. turned twenty-one years of age, the juvenile court conducted a de novo sentencing. (2/12/10, Tr. 16-47). At this time, the court corrected the original juvenile disposition, which included the adult sentence, imposed the adult sentence, and added post-release control. (2/12/10, Tr. 16-47); (T.d. 141 (A-8)). This action was plainly outside the juvenile court’s jurisdiction and outside the scope of R.C. 2152.13. Accordingly, the disposition is void.

**C. A juvenile court cannot impose a serious youthful offender disposition upon an adult where none exists.**

A lower court cannot follow a mandate of a higher court to correct an order or enter a new disposition if it is without subject-matter jurisdiction to do so. This Court has held that the “very gist of jurisdiction is the power to compel parties to come before the court” and that “[t]his jurisdiction must be conferred by law....” *Great Lakes Stages, Inc., v. Public Utilities Commission of Ohio* (1929), 120 Ohio St. 491, 498. Juvenile courts are statutory creations. As such, they derive their power from the General Assembly. Specifically, “The juvenile court has and shall exercise the powers and jurisdiction conferred in Chapters 2151. and 2152. of the Revised Code. R.C. 2151.07.

The court of appeals can only command the juvenile court to exercise jurisdiction that it has: “The juvenile court [\* \* \*] 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.” R.C. 2151.23(E).

A juvenile court’s power over a matter terminates when a person attains twenty-one years of age. R.C. 2151.23(A)(1) and R.C. 2152.02(C)(6). Because there is no source of continuing

jurisdiction over adults who were adjudicated delinquent as children, or over delinquency matters concerning those who are no longer children, no court of appeals can compel a juvenile court to follow its mandate when the court's power over the matter terminated while the appeal was pending.

On May 25, 2010, more than a year after J.V.'s twenty-first birthday, the Eighth District found that the sentence imposed on February 5, 2009 was void. *In re J.V.*, Cuyahoga App. No. 92869, 2010-Ohio-71, ¶23. The court remanded J.V.'s case "to the docket of the juvenile court for a new hearing." *Id.* at ¶24. But, because the juvenile court's jurisdiction over J.V. and over J.V.'s case terminated on March 11, 2009, his twenty-first birthday, the order of remand simply cannot be enforced.

## **II. Conclusion**

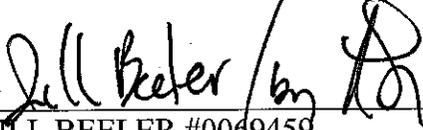
Juvenile courts make mistakes. But juvenile-court jurisdiction is limited; therefore, mistakes must be corrected before a child turns twenty-one years of age. In this case, the juvenile court had three chances to impose a proper serious youthful offender disposition in J.V.'s case before its jurisdiction was terminated. But, it wasn't until after a second remand from the court of appeals and nearly two years after J.V.'s turning twenty-one that the court made its final attempt to get J.V.'s sentence right. The juvenile court was without jurisdiction over J.V. and over J.V.'s case at the time it made its final attempt; therefore, the disposition that the court imposed is void and must be vacated. Accordingly, J.V. must be discharged from APA supervision.

**CONCLUSION**

For these reasons, amicus curiae respectfully requests this Court to adopt the appellant's proposition of law and to reverse the judgment of the Cuyahoga County Court of Appeals.

Respectfully submitted,

Office of the Ohio Public Defender

 / by  #0076418  
JILL BEELER #0069459

Assistant State Public Defender  
(COUNSEL OF RECORD)

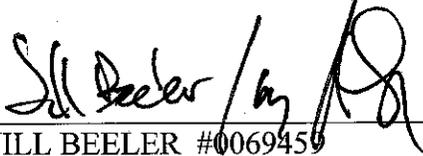
AMANDA J. POWELL #0076418  
Assistant State Public Defender

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

COUNSEL FOR AMICUS CURIAE,  
OHIO PUBLIC DEFENDER

**CERTIFICATION OF SERVICE**

This is to certify that a copy of the foregoing **MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLANT J.V. and APPENDIX TO MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLANT J.V. FILED UNDER SEAL**, was forwarded by regular U.S. Mail this 22<sup>nd</sup> day of August, 2011 to the office of Kristen Sobieski, Assistant Cuyahoga County Prosecutor, The Justice Center, 1200 Ontario Street, 9<sup>th</sup> Floor, Cleveland, Ohio 44113 and to Cullen Sweeney, Assistant Cuyahoga County Public Defender, 310 Lakeside Avenue, Suite 200, Cleveland, Ohio 44113.

 #0076418  
JILL BEELER #0069459  
Assistant State Public Defender

350530