ORIGINAL

NO. 2011-0215

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO NO. 94737

IN RE: M.W.,
Adjudicated delinquent child

APPENDIX 1 OF 2 TO MERIT BRIEF OF APPELLEE

Counsel for Appellee
William D. Mason (#0037540)
Cuyahoga County Prosecutor

By: Daniel T. Van (#0084614)
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

Counsel for Appellant
Amanda J. Powell (#0076418)
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394

Counsel for Amicus Curiae:
Marsha L. Levick
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107

Kim B. Tandy (OH 0076173)
Children's Law Center
104 E. 7th Street
Covington, KY 41011

Nadia Serratan
National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, DC

Joshua Tepfer
Center on Wrongful Convictions of Youth
420 E. Superior Avenue
Chicago, IL 60611

FILED
AUG 30 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Baldwin's Ohio Revised Code Annotated Currentness
Rules of Juvenile Procedure (Refs & Annos)
→ **Juv R 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.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(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.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(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.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(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.

CREDIT(S)

(Adopted eff. 7-1-72; amended eff. 7-1-94, 7-1-98, 7-1-01, 7-1-02)

Current with amendments received through 2/1/11.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Rules of Juvenile Procedure (Refs & Annos)
➡ **Juv R 4 Assistance of counsel; guardian ad litem**

(A) Assistance of counsel

Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

(B) Guardian ad litem; when appointed

The court shall appoint a guardian *ad litem* to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

(1) The child has no parents, guardian, or legal custodian;

(2) The interests of the child and the interests of the parent may conflict;

(3) The parent is under eighteen years of age or appears to be mentally incompetent;

(4) The court believes that the parent of the child is not capable of representing the best interest of the child.

(5) Any proceeding involves allegations of abuse or neglect, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.

(6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for extension of the voluntary agreement.

(7) The proceeding is a removal action.

(8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

(C) Guardian ad litem as counsel

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist.

(2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.

(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.

(D) Appearance of attorneys

An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) Notice to guardian ad litem

The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) Withdrawal of counsel or guardian ad litem

An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) Costs

The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

CREDIT(S)

(Adopted eff. 7-1-72; amended eff. 7-1-76, 7-1-94, 7-1-95, 7-1-98)

Current with amendments received through 2/1/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
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 such child, and any attorney at law representing them or the child, shall be entitled to visit such child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of such hearing.

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

CREDIT(S)

(2005 H 66, eff. 9-29-05; 2000 S 179, § 3, eff. 1-1-02; 1975 H 164, eff. 1-13-76; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2935. Arrest, Citation, and Disposition Alternatives
Arrest
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.

CREDIT(S)

(128 v 97, eff. 1-1-60)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
General Provisions (Refs & Annos)
2152.01 Purposes; applicability of law

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02)

CROSS REFERENCES

Judges of the divisions of domestic relations, see 2301.03

LIBRARY REFERENCES

Infants ⚷ 68.2, 132.
Westlaw Topic No. 211.
C.J.S. Infants §§ 32, 41, 198 to 207.

~~RESEARCH REFERENCES~~

ALR Library

37 ALR 6th 55, State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register With

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
General Provisions (Refs & Annos)
2152.03 Transfer of cases to juvenile court

When a child is arrested under any charge, complaint, affidavit, or indictment for a felony or a misdemeanor, proceedings regarding the child initially shall be in the juvenile court in accordance with this chapter. If the child is taken before a judge of a county court, a mayor, a judge of a municipal court, or a judge of a court of common pleas other than a juvenile court, the judge of the county court, mayor, judge of the municipal court, or judge of the court of common pleas shall transfer the case to the juvenile court, and, upon the transfer, the proceedings shall be in accordance with this chapter. Upon the transfer, all further proceedings under the charge, complaint, information, or indictment shall be discontinued in the court of the judge of the county court, mayor, municipal judge, or judge of the court of common pleas other than a juvenile court subject to section 2152.12 of the Revised Code. The case relating to the child then shall be within the exclusive jurisdiction of the juvenile court, subject to section 2152.12 of the Revised Code.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02)

HISTORICAL AND STATUTORY NOTES

Ed. Note: 2152.03 is former 2151.25, amended and recodified by 2000 S 179, § 3, eff. 1-1-02; 1995 H 1, eff. 1-1-96; 1975 H 205, eff. 1-1-76; 1969 H 320; 129 v 582; 1953 H 1; GC 1639-29.

Amendment Note: 2000 S 179, § 3, eff. 1-1-02, substituted "2152.12" for "2151.26" twice; and made other nonsubstantive changes.

Amendment Note: 1995 H 1 inserted "subject to section 2151.26 of the Revised Code" throughout, and made other nonsubstantive changes.

CROSS REFERENCES

Certification to juvenile court, see 3109.06
Minor under sixteen not to be confined with adult prisoner, see 341.11
Right to counsel, see 2151.352

LIBRARY REFERENCES

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders
2152.12 Transfer of cases from juvenile court

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

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

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

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

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

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

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

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

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

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

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

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

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

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

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

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

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

CREDIT(S)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders
2152.13 Serious youthful offender dispositional sentence

(A) A juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in accordance with this division, and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process in any of the following ways:

(1) Obtaining an indictment of the child as a serious youthful offender;

(2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;

(3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;

(4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:

(a) The date of the child's first juvenile court hearing regarding the complaint;

(b) The date the juvenile court determines not to transfer the case under section 2152.12 of the Revised Code.

After a written notice is filed under division (A)(4) of this section, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case.

(B) If an alleged delinquent child is not indicted or charged by information as described in division (A)(1) or (2) of this section and if a notice or complaint as described in division (A)(3) or (4) of this section indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

(C) (1) A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence. The grand jury may be impaneled by the court of common pleas or the juvenile court.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held under Title XXIX of the Revised Code commences on whichever of the following dates is applicable:

(a) If the child is indicted or charged by information, on the date of the filing of the indictment or information.

(b) If the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint.

(c) If the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

(2) If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except as provided in division (D) of section 2152.14 of the Revised Code, all provisions of Title XXIX of the Revised Code and the Criminal Rules shall apply in the case and to the child. The juvenile court shall afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

(D) (1) If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

(a) The juvenile court shall impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(b) The juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20, and, if applicable, section 2152.17 of the Revised Code.

(c) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the successful completion of the traditional juvenile dispositions imposed.

(2)(a) If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

(i) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in section 2152.01 of the Revised Code will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(ii) If a sentence is imposed under division (D) (2)(a)(i) of this section, the juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20 and, if applicable, section 2152.17 of the Revised Code.

(iii) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(b) If the juvenile court does not find that a sentence should be imposed under division (D) (2)(a)(i) of this section, the juvenile court may impose one or more traditional juvenile dispositions under sections 2152.16, 2152.19, 2152.20, and, if applicable, section 2152.17 of the Revised Code.

(3) A child upon whom a serious youthful offender dispositional sentence is imposed under division (D) (1) or (2) of this section has a right to appeal under division (A)(1), (3), (4), (5), or (6) of section 2953.08 of the Revised Code the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court shall consider the appeal as if the adult portion were not stayed.

CREDIT(S)

(2002 H 393, eff. 7-5-02; 2000 S 179, § 3, eff. 1-1-02)

UNCODIFIED LAW

2000 S 179, § 8, eff. 4-9-01, reads:

The General Assembly hereby encourages the Supreme Court to take appropriate action to collect data from

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders
2152.17 Felony specifications

(A) Subject to division (D) of this section, if a child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 of the Revised Code, that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, 2941.1414, or 2941.1415 of the Revised Code, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply:

(1) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.141 of the Revised Code, the court may commit the child to the department of youth services for the specification for a definite period of up to one year.

(2) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.145 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1415 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than three years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(3) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.144, 2941.146, or 2941.1412 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1414 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than five years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(B) Division (A) of this section also applies to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

(C) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.142 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child for the specification to the legal custody of the department of youth services for institutionalization in a secure facility for a definite period of not less than one and not more than three years, subject to division (D)(2) of this section, and the court also shall commit the child to the department for the underlying delinquent act.

(D)(1) If the child is adjudicated a delinquent child for committing an act that would be an offense of violence that is a felony if committed by an adult and is committed to the legal custody of the department of youth services pursuant to division (A)(1) of section 2152.16 of the Revised Code and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.1411 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court may commit the child to the custody of the department of youth services for institutionalization in a secure facility for up to two years, subject to division (D)(2) of this section.

(2) A court that imposes a period of commitment under division (A) of this section is not precluded from imposing an additional period of commitment under division (C) or (D)(1) of this section, a court that imposes a period of commitment under division (C) of this section is not precluded from imposing an additional period of commitment under division (A) or (D)(1) of this section, and a court that imposes a period of commitment under division (D)(1) of this section is not precluded from imposing an additional period of commitment under division (A) or (C) of this section.

(E) The court shall not commit a child to the legal custody of the department of youth services for a specification pursuant to this section for a period that exceeds five years for any one delinquent act. Any commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with and prior to, a period of commitment ordered under this chapter for the underlying delinquent act, and each commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with, any other period of commitment imposed under those divisions. If a commitment is imposed under division (A) or (B) of this section and a commitment also is imposed under division (C) of this section, the period imposed under division (A) or (B) of this section shall be served prior to the period imposed under division (C) of this section.

In each case in which a court makes a disposition under this section, the court retains control over the commitment for the entire period of the commitment.

The total of all the periods of commitment imposed for any specification under this section and for the underlying offense shall not exceed the child's attainment of twenty-one years of age.

(F) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to section 2152.13 or 2152.16 of the Revised Code, the court may order that all of the peri-

© 2011 Thomson Reuters. ⊠ Claim to Orig. US Gov. Works.

ods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services, provided that those periods of commitment shall be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to division (A), (B), (C), or (D)(1) of this section. A court shall not commit a delinquent child to the legal custody of the department of youth services under this division for a period that exceeds the child's attainment of twenty-one years of age.

CREDIT(S)

(2006 H 95, eff. 8-3-06; 2004 H 52, eff. 6-1-04; 2002 H 130, § 3, eff. 1-1-02 (Effective date questioned); 2002 H 393, eff. 7-5-02; 2000 S 179, § 3, eff. 1-1-02)

UNCODIFIED LAW

2002 H 130, § 5, eff. 4-7-03, reads, in part:

(B) Section 2152.17 of the Revised Code, as presented in this act, includes matter that was amended into former section 2151.355 of the Revised Code by Am. Sub. S.B. 222 of the 123rd General Assembly. Paragraphs of former section 2151.355 of the Revised Code containing Am. Sub. S.B. 222 amendments were transferred to section 2152.17 of the Revised Code by Am. Sub. S.B. 179 of the 123rd General Assembly as part of its general revision of the juvenile sentencing laws. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the version of section 2152.17 of the Revised Code presented in this act is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

HISTORICAL AND STATUTORY NOTES

Ed. Note: 2002 H 130, § 3, eff. 1-1-02. O Const Art II, § 1c and 1d, and RC 1.471, state that codified sections of law are subject to the referendum unless providing for tax levies, state appropriations, or are emergency in nature. Since this Act is apparently not an exception, and 1-1-02 is within the ninety-day period, the effective date should probably be 4-7-03.

Amendment Note: 2006 H 95 deleted division (G), which read:

"(G) If a child is adjudicated a delinquent child for committing an act that if committed by an adult would be aggravated murder, murder, rape, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, involuntary manslaughter, a felony of the first or second degree resulting in the death of or physical harm to a person, complicity in or an attempt to commit any of those offenses, or an offense under an existing or former law of this state that is or was substantially equivalent to any of those offenses and if the court in its order of disposition for that act commits the child to the custody of the department of youth services, the adjudication shall be considered a conviction for purposes of a future determination pursuant to Chapter 2929. of the Re-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Orders Restraining Parents
2152.61 Orders restraining parents, guardians, or custodians

(A) In any proceeding in which a child has been adjudicated a delinquent child or a juvenile traffic offender, on the application of a party or the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of the individual to the child if the court finds that an order of that type necessary to do either of the following:

(1) Control any conduct or relationship that will be detrimental or harmful to the child;

(2) Control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made.

(B) Due notice of the application or motion and the grounds for the application or motion under division (A) of this section, and an opportunity to be heard, shall be given to the person against whom the order under that division is directed. The order may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or control required by the court.

(C) A person's failure to comply with any order made by the court under this section is contempt of court under Chapter 2705. of the Revised Code.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02)

LIBRARY REFERENCES

Infants ⚷ 69(1), 221.
Westlaw Topic No. 211.
C.J.S. Infants §§ 57, 69 to 85, 198, 206 to 209.

RESEARCH REFERENCES

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Sex Offenses
2152.81 Deposition of child sex offense victim

(A)(1) As used in this section, "victim" includes any of the following persons:

(a) A person who was a victim of a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult;

(b) A person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult.

(2) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 2919.22 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another depos-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division, and, in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(B)(1) At any proceeding in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a juvenile judge may order the testimony of a child victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F)(1) If a juvenile judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (A)(3) of this section or a proceeding under division (C) or (D) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02)

HISTORICAL AND STATUTORY NOTES

Ed. Note: 2152.81 is former 2151.3511, amended and recodified by 2000 S 179, § 3, eff. 1-1-02; 2000 H 442, eff. 10-17-00; 1997 S 53, eff. 10-14-97; 1996 H 445, eff. 9-3-96; 1986 H 108, eff. 10-14-86.

Amendment Note: 2000 S 179, § 3, eff. 1-1-02, added references to indictments and informations throughout the section.

© 2011 Thomson Reuters. ⊠ Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Juvenile Offender Registrants
2152.811 Testimony of mentally retarded or developmentally disabled victim

(A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes any of the following persons:

(a) A mentally retarded person or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult;

(b) A mentally retarded person or developmentally disabled person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult.

(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a mentally retarded person or developmentally disabled person, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (C) of this section. If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the mentally retarded or developmentally disabled victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition also shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(1) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally retarded or developmentally disabled victim giving the deposition during the deposition.

The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section. If a deposition that is videotaped under this division is admitted as evidence at the proceeding, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act.

(E) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a juvenile judge may order the testimony of a mentally retarded or developmentally disabled victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the mentally retarded or developmentally disabled victim to testify despite judicial requests to do so;

(2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying.

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

CREDIT(S)

(2007 S 10, eff. 1-1-08)

HISTORICAL AND STATUTORY NOTES

Ed. Note: RC 2152.811 is former RC 2152.821 recodified by 2007 S 10, eff. 1-1-08; 2004 S 178, eff. 1-30-04.

Ed. Note: Former RC 2152.811 repealed by 2007 S 10, eff. 1-1-08; 2003 S 5, eff. 7-31-03.

LIBRARY REFERENCES

Infants ⚷ 201, 207.
Westlaw Topic No. 211.
C.J.S. Infants §§ 41 to 54, 62 to 67.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Family Law § 1648, Depositions.

OH Jur. 3d Family Law § 1686, Testimony of Child.

OH Jur. 3d Family Law § 1722, Sexually Oriented and Child-Victim Offenses; Registration.

R.C. § 2152.811, OH ST § 2152.811

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Administration, Officials, and Jurisdiction
2151.211 Employee's attendance at proceeding; employer may not penalize

No employer shall discharge or terminate from employment, threaten to discharge or terminate from employment, or otherwise punish or penalize any employee because of time lost from regular employment as a result of the employee's attendance at any proceeding pursuant to a subpoena under this chapter or Chapter 2152. of the Revised Code. This section generally does not require and shall not be construed to require an employer to pay an employee for time lost as a result of attendance at any proceeding under either chapter. However, if an employee is subpoenaed to appear at a proceeding under either chapter and the proceeding pertains to an offense against the employer or an offense involving the employee during the course of the employee's employment, the employer shall not decrease or withhold the employee's pay for any time lost as a result of compliance with the subpoena. Any employer who knowingly violates this section is in contempt of court.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02; 1984 S 172, eff. 9-26-84)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Administration, Officials, and Jurisdiction
2151.23 Jurisdiction of juvenile court; orders for child support

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

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

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

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

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

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

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

(16) To hear and determine a petition for a protection order against a child under section 2151.34 or 3113.31 of the Revised Code and to enforce a protection order issued or a consent agreement approved under either section against a child until a date certain but not later than the date the child attains nineteen years of age.

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

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

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

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

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

(J) In exercising its exclusive original jurisdiction under division (A)(16) of this section with respect to any proceedings brought under section 2151.34 or 3113.31 of the Revised Code in which the respondent is a child, the juvenile court retains all dispositionary powers consistent with existing rules of juvenile procedure and may also exercise its discretion to adjudicate proceedings as provided in sections 2151.34 and 3113.31 of the Revised Code, including the issuance of protection orders or the approval of consent agreements under those sections.

CREDIT(S)

(2010 H 10, eff. 6-17-10; 2008 H 214 §5, eff. 5-14-08; 2007 S 10, eff. 1-1-08; 2006 S 238, eff. 9-21-06; 2004 S 185, eff. 4-11-05; 2004 H 38, eff. 6-17-04; 2001 S 3, eff. 1-1-02; 2000 S 179, § 3, eff. 1-1-02; 2000 S 180, eff. 3-22-01; 2000 S 218, eff. 3-15-01; 2000 H 583, eff. 6-14-00; 2000 S 181, eff. 9-4-00; 1997 H 352, eff. 1-1-98;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Administration, Officials, and Jurisdiction
2151.231 Action for child support order

The parent, guardian, or custodian of a child, the person with whom a child resides, or the child support enforcement agency of the county in which the child, parent, guardian, or custodian of the child resides may bring an action in a juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code under this section requesting the court to issue an order requiring a parent of the child to pay an amount for the support of the child without regard to the marital status of the child's parents. No action may be brought under this section against a person presumed to be the parent of a child based on an acknowledgment of paternity that has not yet become final under former section 3111.211 or 5101.314 or section 2151.232, 3111.25, or 3111.821 of the Revised Code.

The parties to an action under this section may raise the issue of the existence or nonexistence of a parent-child relationship, unless a final and enforceable determination of the issue has been made with respect to the parties pursuant to Chapter 3111. of the Revised Code or an acknowledgment of paternity signed by the child's parents has become final pursuant to former section 3111.211 or 5101.314 or section 2151.232, 3111.25, or 3111.821 of the Revised Code. If a complaint is filed under this section and an issue concerning the existence or nonexistence of a parent-child relationship is raised, the court shall treat the action as an action pursuant to sections 3111.01 to 3111.18 of the Revised Code. An order issued in an action under this section does not preclude a party to the action from bringing a subsequent action pursuant to sections 3111.01 to 3111.18 of the Revised Code if the issue concerning the existence or nonexistence of the parent-child relationship was not determined with respect to the party pursuant to a proceeding under this section, a proceeding under Chapter 3111. of the Revised Code, or an acknowledgment of paternity that has become final under former section 3111.211 or 5101.314 or section 2151.232, 3111.25, or 3111.821 of the Revised Code. An order issued pursuant to this section shall remain effective until an order is issued pursuant to sections 3111.01 to 3111.18 of the Revised Code that a parent-child relationship does not exist between the alleged father of the child and the child or until the occurrence of an event described in section 3119.88 of the Revised Code that would require the order to terminate.

The court, in accordance with sections 3119.29 to 3119.56 of the Revised Code, shall include in each support order made under this section the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court.

CREDIT(S)

(2002 H 657, eff. 12-13-02; 2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; 1996 H 710, § 7, eff. 6-11-96;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

1995 H 167, eff. 6-11-96; 1992 S 10, eff. 7-15-92)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Administration, Officials, and Jurisdiction
2151.232 Action for child support order before acknowledgment becomes final

If an acknowledgment has been filed and entered into the birth registry pursuant to section 3111.24 of the Revised Code but has not yet become final, either parent who signed the acknowledgment may bring an action in the juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code under this section requesting that the court issue an order requiring a parent of the child to pay an amount for the support of the child in accordance with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

The parties to an action under this section may raise the issue of the existence or nonexistence of a parent-child relationship. If an action is commenced pursuant to this section and the issue of the existence or nonexistence of a parent-child relationship is raised, the court shall treat the action as an action commenced pursuant to sections 3111.01 to 3111.18 of the Revised Code. If the issue is raised, the court shall promptly notify the office of child support in the department of job and family services that it is conducting proceedings in compliance with sections 3111.01 to 3111.18 of the Revised Code. On receipt of the notice by the office, the acknowledgment of paternity signed by the parties and filed pursuant to section 3111.23 of the Revised Code shall be considered rescinded.

If the parties do not raise the issue of the existence or nonexistence of a parent-child relationship in the action and an order is issued pursuant to this section prior to the date the acknowledgment filed and entered on the birth registry becomes final, the acknowledgment shall be considered final as of the date of the issuance of the order. An order issued pursuant to this section shall not affect an acknowledgment that becomes final pursuant to section 3111.25 of the Revised Code prior to the issuance of the order.

CREDIT(S)

(2000 S 180, eff. 3-22-01; 1999 H 471, eff. 7-1-00; 1997 H 352, eff. 1-1-98)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.271 Transfer to juvenile court of another county

Except in a case in which the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code, if the child resides in a county of the state and the proceeding is commenced in a juvenile court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory, or dispositional hearing, for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes. The proceeding shall be so transferred if other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

Whenever a case is transferred to the county of the child's residence and it appears to the court of that county that the interests of justice and the convenience of the parties requires that the adjudicatory hearing be had in the county in which the complaint was filed, the court may return the proceeding to the county in which the complaint was filed for the purpose of the adjudicatory hearing. The court may thereafter proceed as to the transfer to the county of the child's legal residence as provided in this section.

Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02; 1969 H 320, eff. 11-19-69)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.28 Summons

(A) No later than seventy-two hours after the complaint is filed, the court shall fix a time for an adjudicatory hearing. The court shall conduct the adjudicatory hearing within one of the following periods of time:

(1) Subject to division (C) of section 2152.13 of the Revised Code and division (A)(3) of this section, if the complaint alleged that the child violated section 2151.87 of the Revised Code or is a delinquent or unruly child or a juvenile traffic offender, the adjudicatory hearing shall be held and may be continued in accordance with the Juvenile Rules.

(2) If the complaint alleged that the child is an abused, neglected, or dependent child, the adjudicatory hearing shall be held no later than thirty days after the complaint is filed, except that, for good cause shown, the court may continue the adjudicatory hearing for either of the following periods of time:

(a) For ten days beyond the thirty-day deadline to allow any party to obtain counsel;

(b) For a reasonable period of time beyond the thirty-day deadline to obtain service on all parties or any necessary evaluation, except that the adjudicatory hearing shall not be held later than sixty days after the date on which the complaint was filed.

(3) If the child who is the subject of the complaint is in detention and is charged with violating a section of the Revised Code that may be violated by an adult, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention extended.

(B) At an adjudicatory hearing held pursuant to division (A)(2) of this section, the court, in addition to determining whether the child is an abused, neglected, or dependent child, shall determine whether the child should remain or be placed in shelter care until the dispositional hearing. When the court makes the shelter care determination, all of the following apply:

(1) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child otherwise would remain or be placed in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

custodian of the child, unless the court appoints another relative as custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(2) The court shall comply with section 2151.419 of the Revised Code.

(3) The court shall schedule the date for the dispositional hearing to be held pursuant to section 2151.35 of the Revised Code. The parents of the child have a right to be represented by counsel; however, in no case shall the dispositional hearing be held later than ninety days after the date on which the complaint was filed.

(C)(1) The court shall direct the issuance of a summons directed to the child except as provided by this section, the parents, guardian, custodian, or other person with whom the child may be, and any other persons that appear to the court to be proper or necessary parties to the proceedings, requiring them to appear before the court at the time fixed to answer the allegations of the complaint. The summons shall contain the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons. A child alleged to be an abused, neglected, or dependent child shall not be summoned unless the court so directs. A summons issued for a child who is under fourteen years of age and who is alleged to be a delinquent child, unruly child, or a juvenile traffic offender shall be served on the parent, guardian, or custodian of the child in the child's behalf.

If the person who has physical custody of the child, or with whom the child resides, is other than the parent or guardian, then the parents and guardian also shall be summoned. A copy of the complaint shall accompany the summons.

(2) In lieu of appearing before the court at the time fixed in the summons and prior to the date fixed for appearance in the summons, a child who is alleged to have violated section 2151.87 of the Revised Code and that child's parent, guardian, or custodian may sign a waiver of appearance before the clerk of the juvenile court and pay a fine of one hundred dollars. If the child and that child's parent, guardian, or custodian do not waive the court appearance, the court shall proceed with the adjudicatory hearing as provided in this section.

(D) If the complaint contains a prayer for permanent custody, temporary custody, whether as the preferred or an alternative disposition, or a planned permanent living arrangement in a case involving an alleged abused, neglected, or dependent child, the summons served on the parents shall contain as is appropriate an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges, an explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or an explanation that the issuance of an order for a planned permanent living arrangement will cause the removal of the child from the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

legal custody of the parents if any of the conditions listed in divisions (A)(5)(a) to (c) of section 2151.353 of the Revised Code are found to exist.

(E)(1) Except as otherwise provided in division (E)(2) of this section, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(2) In cases in which the complaint alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school, the court shall endorse upon the summons an order directing the parent, guardian, or other person having care of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(F)(1) The summons shall contain a statement advising that any party is entitled to counsel in the proceedings and that the court will appoint counsel or designate a county public defender or joint county public defender to provide legal representation if the party is indigent.

(2) In cases in which the complaint alleges a child to be an abused, neglected, or dependent child and no hearing has been conducted pursuant to division (A) of section 2151.314 of the Revised Code with respect to the child or a parent, guardian, or custodian of the child does not attend the hearing, the summons also shall contain a statement advising that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of failure to comply with a journalized case plan.

(G) If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, that the child may abscond or be removed from the jurisdiction of the court, or that the child will not be brought to the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer serve the summons and take the child into immediate custody and bring the child forthwith to the court.

(H) A party, other than the child, may waive service of summons by written stipulation.

(I) Before any temporary commitment is made permanent, the court shall fix a time for hearing in accordance with section 2151.414 of the Revised Code and shall cause notice by summons to be served upon the parent or guardian of the child and the guardian ad litem of the child, or published, as provided in section 2151.29 of the Revised Code. The summons shall contain an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges.

(J) Any person whose presence is considered necessary and who is not summoned may be subpoenaed to appear and testify at the hearing. Anyone summoned or subpoenaed to appear who fails to do so may be punished, as in other cases in the court of common pleas, for contempt of court. Persons subpoenaed shall be paid the same wit-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ness fees as are allowed in the court of common pleas.

(K) The failure of the court to hold an adjudicatory hearing within any time period set forth in division (A)(2) of this section does not affect the ability of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(L) If the court, at an adjudicatory hearing held pursuant to division (A) of this section upon a complaint alleging that a child is an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, determines that the child is a dependent child, the court shall incorporate that determination into written findings of fact and conclusions of law and enter those findings of fact and conclusions of law in the record of the case. The court shall include in those findings of fact and conclusions of law specific findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's determination that the child is a dependent child.

CREDIT(S)

(2002 H 393, eff. 7-5-02; 2002 H 180, eff. 5-16-02; 2000 S 179, § 3, eff. 1-1-02; 2000 S 218, eff. 3-15-01; 2000 S 181, eff. 9-4-00; 1998 H 484, eff. 3-18-99; 1996 H 274, eff. 8-8-96; 1996 H 419, eff. 9-18-96; 1988 S 89, eff. 1-1-89; 1975 H 164, H 85; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.281 Guardian ad litem

(A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:

(1) The child has no parent, guardian, or legal custodian.

(2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.

(B)(1) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to section 2151.414 of the Revised Code. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

(2) The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against any person who is required by division (A)(1) or (4) of section 2151.421 of the Revised Code to file a report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred if that person knows, or has reasonable cause to suspect or believe based on facts that would cause a reasonable person in a similar position to suspect or believe, as applicable, that the child for whom the guardian ad litem is appointed is the subject of child abuse or child neglect and does not file the required report and if the child suffers any injury or harm as a result of the child abuse or child neglect that is known or reasonable suspected or believed to have occurred or suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent.

(D) The court shall require the guardian ad litem to faithfully discharge the guardian ad litem's duties and, upon the guardian ad litem's failure to faithfully discharge the guardian ad litem's duties, shall discharge the guardian ad litem and appoint another guardian ad litem. The court may fix the compensation for the service of the guardian ad litem, which compensation shall be paid from the treasury of the county, subject to rules adopted by the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

supreme court.

(E) A parent who is eighteen years of age or older and not mentally incompetent shall be deemed sui juris for the purpose of any proceeding relative to a child of the parent who is alleged or adjudicated to be an abused, neglected, or dependent child.

(F) In any case in which a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of that parent shall be summoned to appear at any hearing respecting the child, who is alleged or adjudicated to be an abused, neglected, or dependent child.

(G) In any case involving an alleged or adjudicated abused or neglected child or an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with section 5103.15 of the Revised Code, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. In any case involving an alleged dependent child in which the parent of the child appears to be mentally incompetent or is under eighteen years of age, there is a conflict of interest between the child and the child's parents, guardian, or custodian, or the court believes that the parent of the child is not capable of representing the best interest of the child, the court shall appoint a guardian ad litem for the child. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;

(2) All dispositional orders relative to the child have terminated;

(3) The legal custody of the child is granted to a relative of the child, or to another person;

(4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;

(5) The child reaches the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired or the child reaches the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired;

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

CREDIT(S)

(2006 S 238, eff. 9-21-06; 2006 S 17, eff. 8-3-06; 1999 H 471, eff. 7-1-00; 1996 H 274, eff. 8-8-96; 1996 H 419, eff. 9-18-96; 1988 S 89, eff. 1-1-89; 1986 H 529; 1984 S 321; 1980 H 695; 1975 H 85; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.31 Apprehension, custody, and detention

(A) A child may be taken into custody in any of the following ways:

(1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of section 2930.05 of the Revised Code;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 of the Revised Code, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

(4) By an enforcement official, as defined in section 4109.01 of the Revised Code, under the circumstances set forth in section 4109.08 of the Revised Code;

(5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

(a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endan-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

gering the health, welfare, or safety of the child.

(b) A complaint has been filed with respect to the child under section 2151.27 or 2152.021 of the Revised Code or the child has been indicted under division (A) of section 2152.13 of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.

(c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

(d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

(B)(1) The taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.

(2) Except as provided in division (C) of section 2151.311 of the Revised Code, a child taken into custody shall not be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held.

(C)(1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2152.04 of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

(D) Upon receipt of notice from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of the child into custody if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after the judge or referee determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.

(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than seventy-two hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, it shall order the child released to the custody of the child's parents, guardian, or custodian. If the court determines at the hearing that there is probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

(1) Ensure that a complaint is filed or has been filed;

(2) Comply with section 2151.419 of the Revised Code;

(3) Hold a hearing pursuant to section 2151.314 of the Revised Code to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of section 2151.031 of the Revised Code, the court may do any of the following:

(1) Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;

(2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;

(3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

CREDIT(S)

(2002 H 180, eff. 5-16-02; 2000 S 179, § 3, eff. 1-1-02; 1999 H 3, eff. 11-22-99; 1999 H 176, eff. 10-29-99; 1998 H 484, eff. 3-18-99; 1997 H 408, eff. 10-1-97; 1994 H 571, eff. 10-6-94; 1989 H 166, eff. 2-14-90; 1988 S 89; 1978 H 883; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.314 Detention hearing

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that the child's detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

If the child is not so released, a complaint under section 2151.27 or 2152.021 or an information under section 2152.13 of the Revised Code shall be filed or an indictment under division (B) of section 2152.13 of the Revised Code shall be sought and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention or shelter care hearing shall be given to the child and, if they can be found, to the child's parents, guardian, or custodian. In cases in which the complaint alleges a child to be an abused, neglected, or dependent child, the notice given the parents, guardian, or custodian shall inform them that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of the failure to comply with a journalized case plan.

Prior to the hearing, the court shall inform the parties of their right to counsel and to appointed counsel or to the services of the county public defender or joint county public defender, if they are indigent, of the child's right to remain silent with respect to any allegation of delinquency, and of the name and telephone number of a court employee who can be contacted during the normal business hours of the court to arrange for the prompt appointment of counsel for any party who is indigent. Unless it appears from the hearing that the child's detention or shelter care is required under the provisions of section 2151.31 of the Revised Code, the court shall order the child's release as provided by section 2151.311 of the Revised Code. If a parent, guardian, or custodian has not been so notified and did not appear or waive appearance at the hearing, upon the filing of an affidavit stating these facts, the court shall rehear the matter without unnecessary delay.

(B) When the court conducts a hearing pursuant to division (A) of this section, all of the following apply:

(1) The court shall determine whether an alleged abused, neglected, or dependent child should remain or be placed in shelter care;

(2) The court shall determine whether there are any relatives of the child who are willing to be temporary cus-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

todians of the child. If any relative is willing to be a temporary custodian, the child would otherwise be placed or retained in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as temporary custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and to the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(3) The court shall comply with section 2151.419 of the Revised Code.

(C) If a child is in shelter care following the filing of a complaint pursuant to section 2151.27 or 2152.021 of the Revised Code, the filing of an information, or the obtaining of an indictment or following a hearing held pursuant to division (A) of this section, any party, including the public children services agency, and the guardian ad litem of the child may file a motion with the court requesting that the child be released from shelter care. The motion shall state the reasons why the child should be released from shelter care and, if a hearing has been held pursuant to division (A) of this section, any changes in the situation of the child or the parents, guardian, or custodian of the child that have occurred since that hearing and that justify the release of the child from shelter care. Upon the filing of the motion, the court shall hold a hearing in the same manner as under division (A) of this section.

(D) Each juvenile court shall designate at least one court employee to assist persons who are indigent in obtaining appointed counsel. The court shall include in each notice given pursuant to division (A) or (C) of this section and in each summons served upon a party pursuant to this chapter, the name and telephone number at which each designated employee can be contacted during the normal business hours of the court to arrange for prompt appointment of counsel for indigent persons.

CREDIT(S)

(2002 H 393, eff. 7-5-02; 2000 S 179, § 3, eff. 1-1-02; 1999 H 176, eff. 10-29-99; 1998 H 484, eff. 3-18-99; 1996 H 274, eff. 8-8-96; 1988 S 89, eff. 1-1-89; 1975 H 164; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.33 Temporary care; emergency medical treatment; reimbursement

(A) Pending hearing of a complaint filed under section 2151.27 of the Revised Code or a motion filed or made under division (B) of this section and the service of citations, the juvenile court may make any temporary disposition of any child that it considers necessary to protect the best interest of the child and that can be made pursuant to division (B) of this section. Upon the certificate of one or more reputable practicing physicians, the court may summarily provide for emergency medical and surgical treatment that appears to be immediately necessary to preserve the health and well-being of any child concerning whom a complaint or an application for care has been filed, pending the service of a citation upon the child's parents, guardian, or custodian. The court may order the parents, guardian, or custodian, if the court finds the parents, guardian, or custodian able to do so, to reimburse the court for the expense involved in providing the emergency medical or surgical treatment. Any person who disobeys the order for reimbursement may be adjudged in contempt of court and punished accordingly.

If the emergency medical or surgical treatment is furnished to a child who is found at the hearing to be a nonresident of the county in which the court is located and if the expense of the medical or surgical treatment cannot be recovered from the parents, legal guardian, or custodian of the child, the board of county commissioners of the county in which the child has a legal settlement shall reimburse the court for the reasonable cost of the emergency medical or surgical treatment out of its general fund.

(B)(1) After a complaint, petition, writ, or other document initiating a case dealing with an alleged or adjudicated abused, neglected, or dependent child is filed and upon the filing or making of a motion pursuant to division (C) of this section, the court, prior to the final disposition of the case, may issue any of the following temporary orders to protect the best interest of the child:

(a) An order granting temporary custody of the child to a particular party;

(b) An order for the taking of the child into custody pursuant to section 2151.31 of the Revised Code pending the outcome of the adjudicatory and dispositional hearings;

(c) An order granting, limiting, or eliminating parenting time or visitation rights with respect to the child;

(d) An order requiring a party to vacate a residence that will be lawfully occupied by the child;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(e) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;

(f) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(2) Prior to the final disposition of a case subject to division (B)(1) of this section, the court shall do both of the following:

(a) Issue an order pursuant to Chapters 3119. to 3125. of the Revised Code requiring the parents, guardian, or person charged with the child's support to pay support for the child.

(b) Issue an order requiring the parents, guardian, or person charged with the child's support to continue to maintain any health insurance coverage for the child that existed at the time of the filing of the complaint, petition, writ, or other document, or to obtain health insurance coverage in accordance with sections 3119.29 to 3119.56 of the Revised Code.

(C)(1) A court may issue an order pursuant to division (B) of this section upon its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it. Any notice sent by the court as a result of a motion pursuant to this division shall contain a notice that any party to a juvenile proceeding has the right to be represented by counsel and to have appointed counsel if the person is indigent.

(2) If a child is taken into custody pursuant to section 2151.31 of the Revised Code and placed in shelter care, the public children services agency or private child placing agency with which the child is placed in shelter care shall file or make a motion as described in division (C)(1) of this section before the end of the next day immediately after the date on which the child was taken into custody and, at a minimum, shall request an order for temporary custody under division (B)(1)(a) of this section.

(3) A court that issues an order pursuant to division (B)(1)(b) of this section shall comply with section 2151.419 of the Revised Code.

(D) The court may grant an ex parte order upon its own motion or a motion filed or made pursuant to division (C) of this section requesting such an order if it appears to the court that the best interest and the welfare of the child require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to the parents, guardian, or custodian of the child who is the subject of the request. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action and shall appoint a guardian ad litem for the child prior to the hearing.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

The written notice shall be given by all means that are reasonably likely to result in the party receiving actual notice and shall include all of the following:

(1) The date, time, and location of the hearing;

(2) The issues to be addressed at the hearing;

(3) A statement that every party to the hearing has a right to counsel and to court-appointed counsel, if the party is indigent;

(4) The name, telephone number, and address of the person requesting the order;

(5) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.

If the court does not grant an ex parte order pursuant to a motion filed or made pursuant to division (C) of this section or its own motion, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed. The court shall give notice of the hearing to all affected parties in the same manner as set forth in the Juvenile Rules.

(E) The court, pending the outcome of the adjudicatory and dispositional hearings, shall not issue an order granting temporary custody of a child to a public children services agency or private child placing agency pursuant to this section, unless the court determines and specifically states in the order that the continued residence of the child in the child's current home will be contrary to the child's best interest and welfare and the court complies with section 2151.419 of the Revised Code.

(F) Each public children services agency and private child placing agency that receives temporary custody of a child pursuant to this section shall maintain in the child's case record written documentation that it has placed the child, to the extent that it is consistent with the best interest, welfare, and special needs of the child, in the most family-like setting available and in close proximity to the home of the parents, custodian, or guardian of the child.

(G) For good cause shown, any court order that is issued pursuant to this section may be reviewed by the court at any time upon motion of any party to the action or upon the motion of the court.

CREDIT(S)

(2002 H 657, eff. 12-13-02; 2000 S 180, eff. 3-22-01; 1999 H 176, eff. 10-29-99; 1998 H 484, eff. 3-18-99; 1997 H 352, eff. 1-1-98; 1996 H 274, eff. 8-8-96; 1988 S 89, eff. 1-1-89; 1953 H 1; GC 1639-28)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Practice and Procedure
2151.34 Protection orders

(A) As used in this section:

(1) "Court" means the juvenile division of the court of common pleas of the county in which the person to be protected by the protection order resides.

(2) "Victim advocate" means a person who provides support and assistance for a person who files a petition under this section.

(3) "Family or household member" has the same meaning as in section 3113.31 of the Revised Code.

(4) "Protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

(5) "Petitioner" means a person who files a petition under this section and includes a person on whose behalf a petition under this section is filed.

(6) "Respondent" means a person who is under eighteen years of age and against whom a petition is filed under this section.

(7) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(8) "Electronic monitoring" has the same meaning as in section 2929.01 of the Revised Code.

(B) The court has jurisdiction over all proceedings under this section.

(C)(1) Any of the following persons may seek relief under this section by filing a petition with the court:

(a) Any person on behalf of that person;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(b) Any parent or adult family or household member on behalf of any other family or household member;

(c) Any person who is determined by the court in its discretion as an appropriate person to seek relief under this section on behalf of any child.

(2) The petition shall contain or state all of the following:

(a) An allegation that the respondent engaged in a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, committed a sexually oriented offense, or engaged in a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order, including a description of the nature and extent of the violation;

(b) If the petitioner seeks relief in the form of electronic monitoring of the respondent, an allegation that at any time preceding the filing of the petition the respondent engaged in conduct that would cause a reasonable person to believe that the health, welfare, or safety of the person to be protected was at risk, a description of the nature and extent of that conduct, and an allegation that the respondent presents a continuing danger to the person to be protected;

(c) A request for relief under this section.

(3) The court in its discretion may determine whether or not to give notice that a petition has been filed under division (C)(1) of this section on behalf of a child to any of the following:

(a) A parent of the child if the petition was filed by any person other than a parent of the child;

(b) Any person who is determined by the court to be an appropriate person to receive notice of the filing of the petition.

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing as soon as possible after the petition is filed, but not later than the next day after the court is in session after the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, that the court finds necessary for the safety and protection of the person to be protected by the order. Immediate and present danger to the person to be protected by the protection order constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm or in which the respondent previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, a sexually oriented offense, or a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(2)(a) If the court, after an ex parte hearing, issues a protection order described in division (E) of this section, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court also shall give notice of the full hearing to the parent, guardian, or legal custodian of the respondent. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court may grant a continuance of the full hearing to a reasonable time determined by the court:

(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

(ii) The parties consent to the continuance.

(iii) The continuance is needed to allow a party to obtain counsel.

(iv) The continuance is needed for other good cause.

(b) An ex parte order issued under this section does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under division (D)(2)(a) of this section or because the court grants a continuance under that division.

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1)(a) After an ex parte or full hearing, the court may issue any protection order, with or without bond, that contains terms designed to ensure the safety and protection of the person to be protected by the protection order.

(b) After a full hearing, if the court considering a petition that includes an allegation of the type described in division (C)(2)(b) of this section or the court, upon its own motion, finds upon clear and convincing evidence that the petitioner reasonably believed that the respondent's conduct at any time preceding the filing of the petition endangered the health, welfare, or safety of the person to be protected and that the respondent presents a continuing danger to the person to be protected and if division (N) of this section does not prohibit the issuance of an order that the respondent be electronically monitored, the court may order that the respondent be electronically monitored for a period of time and under the terms and conditions that the court determines are appropriate. Electronic monitoring shall be in addition to any other relief granted to the petitioner.

(2)(a) Any protection order issued pursuant to this section shall be valid until a date certain but not later than the date the respondent attains nineteen years of age.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(b) Any protection order issued pursuant to this section may be renewed in the same manner as the original order was issued.

(3) A court may not issue a protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do or to refrain from doing under division (E)(1) of this section unless all of the following apply:

(a) The respondent files a separate petition for a protection order in accordance with this section.

(b) The petitioner is served with notice of the respondent's petition at least forty-eight hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.

(c) If the petitioner has requested an ex parte order pursuant to division (D) of this section, the court does not delay any hearing required by that division beyond the time specified in that division in order to consolidate the hearing with a hearing on the petition filed by the respondent.

(d) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, a sexually oriented offense, or a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order issued pursuant to division (E)(3) of this section, or has violated a protection order issued pursuant to this section or section 2903.213 of the Revised Code relative to the person to be protected by the protection order issued pursuant to division (E)(3) of this section.

(4) No protection order issued pursuant to this section shall in any manner affect title to any real property.

(5)(a) A protection order issued under this section shall clearly state that the person to be protected by the order cannot waive or nullify by invitation or consent any requirement in the order.

(b) Division (E)(5)(a) of this section does not limit any discretion of a court to determine that a respondent alleged to have violated section 2919.27 of the Revised Code, violated a municipal ordinance substantially equivalent to that section, or committed contempt of court, which allegation is based on an alleged violation of a protection order issued under this section, did not commit the violation or was not in contempt of court.

(6) Any protection order issued pursuant to this section shall include a provision that the court will automatically seal all of the records of the proceeding in which the order is issued on the date the respondent attains the age of nineteen years unless the petitioner provides the court with evidence that the respondent has not complied with all of the terms of the protection order. The protection order shall specify the date when the respondent attains the age of nineteen years.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(F)(1) The court shall cause the delivery of a copy of any protection order that is issued under this section to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the respondent and the parent, guardian, or legal custodian of the respondent on the same day that the order is entered.

(2) Upon the issuance of a protection order under this section, the court shall provide the parties to the order with the following notice orally or by form:

"NOTICE

As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8). If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney."

(3) All law enforcement agencies shall establish and maintain an index for the protection orders delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order delivered, each agency shall note on the index the date and time that it received the order.

(4) Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction pursuant to division (M) of this section, any officer of a law enforcement agency shall enforce a protection order issued pursuant to this section by any court in this state in accordance with the provisions of the order, including removing the respondent from the premises, if appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that a protection order may be obtained under this section with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order, or that refuses to grant a protection order, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies or any other available remedies under Chapter 2151. or 2152. of the Revised Code.

(H) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 of the Revised Code or by any other law.

(I) Any law enforcement agency that investigates an alleged violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, an alleged commission of a sexually oriented offense, or an alleged violation of a municipal ordinance that is substantially equivalent to any of those offenses shall provide information to the victim and the family or household members of the victim regarding the relief available under this section.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or by a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition pursuant to this section, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K)(1) A person who violates a protection order issued under this section is subject to the following sanctions:

(a) A delinquent child proceeding or a criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order constitutes a violation of that section;

(b) Punishment for contempt of court.

(2) The punishment of a person for contempt of court for violation of a protection order issued under this section does not bar criminal prosecution of the person or a delinquent child proceeding concerning the person for a violation of section 2919.27 of the Revised Code. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of or adjudication as a delinquent child for a violation of that section, and a person convicted of or adjudicated a delinquent child for a violation of that section shall not subsequently be punished for contempt of court arising out of the same activity.

(L) In all stages of a proceeding under this section, a petitioner may be accompanied by a victim advocate.

(M)(1) A petitioner who obtains a protection order under this section may provide notice of the issuance or approval of the order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county pursuant to division (M)(2) of this section and filing a copy of the registered order with a law enforcement agency in the other county in accordance with that division. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to section 2919.272 of the Revised Code and filing a copy of the registered order with a law enforcement agency in that county.

(2) A petitioner may register a protection order issued pursuant to this section in a county other than the county in which the court that issued the order is located in the following manner:

(a) The petitioner shall obtain a certified copy of the order from the clerk of the court that issued the order and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order is to be registered.

(b) Upon accepting the certified copy of the order for registration, the clerk of the court of common pleas, municipal court, or county court shall place an endorsement of registration on the order and give the petitioner a copy

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of the order that bears that proof of registration.

(3) The clerk of each court of common pleas, municipal court, or county court shall maintain a registry of certified copies of protection orders that have been issued by courts in other counties pursuant to this section and that have been registered with the clerk.

(N) If the court orders electronic monitoring of the respondent under this section, the court shall direct the sheriff's office or any other appropriate law enforcement agency to install the electronic monitoring device and to monitor the respondent. Unless the court determines that the respondent is indigent, the court shall order the respondent to pay the cost of the installation and monitoring of the electronic monitoring device. If the court determines that the respondent is indigent and subject to the maximum amount allowable to be paid in any year from the fund and the rules promulgated by the attorney general under section 2903.214 of the Revised Code, the cost of the installation and monitoring of the electronic monitoring device may be paid out of funds from the reparations fund created pursuant to section 2743.191 of the Revised Code. The total amount paid from the reparations fund created pursuant to section 2743.191 of the Revised Code for electronic monitoring under this section and sections 2903.214 and 2919.27 of the Revised Code shall not exceed three hundred thousand dollars per year. When the total amount paid from the reparations fund in any year for electronic monitoring under those sections equals or exceeds three hundred thousand dollars, the court shall not order pursuant to this section that an indigent respondent be electronically monitored.

(O) The court, in its discretion, may determine if the respondent is entitled to court-appointed counsel in a proceeding under this section.

CREDIT(S)

(2010 H 10, eff. 6-17-10)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.35 Hearing procedure; findings; record

(A)(1) Except as otherwise provided by division (A)(3) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed.

Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants and except as otherwise provided in section 2152.13 of the Revised Code, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except cases involving serious youthful offenders under section 2152.13 of the Revised Code.

If a complaint alleges a child to be a delinquent child, unruly child, or juvenile traffic offender, the court shall require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

If the court finds from clear and convincing evidence that the child violated section 2151.87 of the Revised Code, the court shall proceed in accordance with divisions (F) and (G) of that section.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 or Chapter 2152. of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the proper disposition to be made in regard to the child under division (C)(1) of section 2151.354 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent child for being a chronic truant or for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or that the child is a delinquent child for either of those reasons and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (A)(7)(a) of section 2152.19 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (A)(7)(b) of section 2152.19 of the Revised Code.

If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

(2) A record of all testimony and other oral proceedings in juvenile court shall be made in all proceedings that are held pursuant to section 2151.414 of the Revised Code or in which an order of disposition may be made pursuant to division (A)(4) of section 2151.353 of the Revised Code, and shall be made upon request in any other proceedings. The record shall be made as provided in section 2301.20 of the Revised Code.

(3) The authority of a juvenile court to exclude the general public from its hearings that is provided by division (A)(1) of this section does not limit or affect any right of a victim of a crime or delinquent act, or of a victim's representative, under Chapter 2930. of the Revised Code.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The court, upon the request of any party or the guardian ad litem of the child, may continue a dispositional hearing for a reasonable time not to exceed the time limits set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed.

If the dispositional hearing is not held within the period of time required by this division, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

(2) The dispositional hearing shall be conducted in accordance with all of the following:

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(3) After the conclusion of the dispositional hearing, the court shall enter an appropriate judgment within seven days and shall schedule the date for the hearing to be held pursuant to section 2151.415 of the Revised Code. The court may make any order of disposition that is set forth in section 2151.353 of the Revised Code. A copy of the judgment shall be given to each party and to the child's guardian ad litem. If the judgment is conditional, the order shall state the conditions of the judgment. If the child is not returned to the child's own home, the court shall determine which school district shall bear the cost of the child's education and shall comply with section 2151.36 of the Revised Code.

(4) As part of its dispositional order, the court may issue any order described in division (B) of section 2151.33 of the Revised Code.

(C) The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules.

(D) If the court issues an order pursuant to division (A)(4) of section 2151.353 of the Revised Code committing a child to the permanent custody of a public children services agency or a private child placing agency, the parents of the child whose parental rights were terminated cease to be parties to the action upon the issuance of the order. This division is not intended to eliminate or restrict any right of the parents to appeal the permanent custody order issued pursuant to division (A)(4) of section 2151.353 of the Revised Code.

(E) Each juvenile court shall schedule its hearings in accordance with the time requirements of this chapter.

(F) In cases regarding abused, neglected, or dependent children, the court may admit any statement of a child that the court determines to be excluded by the hearsay rule if the proponent of the statement informs the adverse party of the proponent's intention to offer the statement and of the particulars of the statement, including the name of the declarant, sufficiently in advance of the hearing to provide the party with a fair opportunity to prepare to challenge, respond to, or defend against the statement, and the court determines all of the following:

(1) The statement has circumstantial guarantees of trustworthiness;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(2) The statement is offered as evidence of a material fact;

(3) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts;

(4) The general purposes of the evidence rules and the interests of justice will best be served by the admission of the statement into evidence.

(G) If a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition. On motion of the prosecuting attorney, guardian ad litem, or any party, or in its own discretion, the court may order that the deposition be videotaped. Any deposition taken under this division shall be taken with a judge or referee present.

If a deposition taken under this division is intended to be offered as evidence at the hearing, it shall be filed with the court. Part or all of the deposition is admissible in evidence if counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination and the judge determines that there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of participating at the hearing.

CREDIT(S)

(2002 H 400, eff. 4-3-03; 2000 S 179, § 3, eff. 1-1-02; 2000 S 179, § 1, eff. 4-9-01; 2000 S 218, eff. 3-15-01; 2000 S 181, eff. 9-4-00; 1996 H 124, eff. 3-31-97; 1996 H 274, eff. 8-8-96; 1995 H 1, eff. 1-1-96; 1988 S 89, eff. 1-1-89; 1980 H 695; 1975 H 85; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.353 Disposition of abused, neglected, or dependent child

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

(1) Place the child in protective supervision;

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

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

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

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

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

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child con-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

tains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

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

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

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

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

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

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

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

(2) Any public children services agency, any private child placing agency, the department of job and family ser-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. In resolving the motion, the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of section 2151.415 of the Revised Code.

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

shall issue an order extending the order for protective supervision six months.

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

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

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

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

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

(2) The grounds for the motion or application;

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

CREDIT(S)

(2008 H 7, eff. 4-7-09; 2006 S 238, eff. 9-21-06; 2004 S 185, eff. 4-11-05; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 1999 H 471, eff. 7-1-00; 1998 H 484, eff. 3-18-99; 1996 H 265, eff. 3-3-97; 1996 H 274, eff. 8-8-96; 1996 H 419, eff. 9-18-96; 1993 H 152, eff. 7-1-93; 1988 S 89; 1986 H 428; 1981 H 440; 1980 H 695; 1975 H 85; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.356 Criteria for sealing records; notice

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

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the Revised Code.

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

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

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

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

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

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

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

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

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

(iii) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

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

(i) The age of the person;

(ii) The nature of the case;

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(b) Explains what sealing a record means;

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

(d) Explains what expunging a record means.

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

CREDIT(S)

(2006 H 137, eff. 10-9-06)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.357 Effect of sealed records; retention; limited disclosure

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

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

copy of the order and compliance with division (A)(3) of this section, a public office or agency shall expunge its record relating to the case, except a record of the adjudication or arrest or taking into custody that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order.

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

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

(a) The name of the person who is the subject of the sealed record;

(b) An alphanumeric identifier relating to the person who is the subject of the sealed record;

(c) The word "sealed";

(d) The name of the court that has custody of the sealed record.

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

(a) The social security number of the person who is subject of the sealed record;

(b) The name or a description of the act committed.

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

(1) By the court;

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

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

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

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

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

(F) No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to section 2151.356 of the Revised Code and the release, dissemination, or making available of which is not expressly permitted by this section. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

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

CREDIT(S)

(2007 S 10, eff. 7-1-07; 2006 H 137, eff. 10-9-06)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.358 Expungement of sealed records

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

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

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

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

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

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

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

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

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

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

(a) The age of the person;

(b) The nature of the case;

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

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

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

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

(D)(1) A juvenile court that issues a protection order or approves a consent agreement under section 2151.34 or 3113.31 of the Revised Code shall automatically seal all of the records of the proceeding in which the order was issued or agreement approved on the date the person against whom the protection order was issued or the consent agreement approved attains the age of nineteen years if the court determines that the person has complied with all of the terms of the protection order or consent agreement.

(2) In a proceeding under section 2151.34 of the Revised Code, if the juvenile court does not issue any protection order under division (E) of that section, the court shall automatically seal all of the records in that proceeding. In a proceeding under section 3113.31 of the Revised Code, if the juvenile court does not issue any protection order or approve any consent agreement under division (E) of that section, the court shall automatically seal all of the records in that proceeding.

(3)(a) If a juvenile court that issues a protection order or approves a consent agreement under section 2151.34 or 3113.31 of the Revised Code determines that the person against whom the protection order was issued or the consent agreement approved has not complied with all of the terms of the protection order or consent agreement, the court shall consider sealing all of the records of the proceeding in which the order was issued or agreement approved upon the court's own motion or upon the application of a person. The court may make the motion or

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the person who is the subject of the records under consideration may apply for an order sealing the records of the proceeding at any time after two years after the expiration of the protection order or consent agreement.

(b) In making a determination whether to seal records pursuant to division (D)(3) of this section, all of the following apply:

(i) The court may require a person filing an application under division (D)(3) of this section to submit any relevant documentation to support the application.

(ii) The court shall promptly notify the victim or the victim's attorney of any proceedings to seal records initiated pursuant to division (D)(3) of this section.

(iii) The victim or the victim's attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings.

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

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

(iv) After conducting a hearing in accordance with division (D)(3)(b)(iii) of this section or after due consideration when a hearing is not conducted, the court may order the records of the person that are the subject of the motion or application to be sealed.

(4) Inspection of the records sealed pursuant to division (D)(1), (2), or (3) of this section may be made only by the following persons or for the following purposes:

(a) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(b) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(c) Upon application by the person who is the subject of the records, by the persons named in the application;

(d) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(e) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;

(f) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;

(g) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;

(h) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

(i) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in section 109.77 of the Revised Code is to be awarded;

(j) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of section 109.572 of the Revised Code that was requested pursuant to any of the sections identified in division (B)(1) of that section;

(k) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in section 311.41 of the Revised Code;

(l) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code.

When the nature and character of the offense with which a person is to be charged would be affected by the in-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

formation, it may be used for the purpose of charging the person with an offense.

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

CREDIT(S)

(2010 H 10, eff. 6-17-10; 2006 H 137, eff. 10-9-06)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.359 Control of conduct of parent, guardian, or custodian; contempt

(A)(1) In any proceeding in which a child has been adjudicated an unruly, abused, neglected, or dependent child, on the application of a party, or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of that individual to the child if the court finds that an order of that type is necessary to do either of the following:

(a) Control any conduct or relationship that will be detrimental or harmful to the child.

(b) Control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made.

(2) The court shall give due notice of the application or motion under division (A) of this section, the grounds for the application or motion, and an opportunity to be heard to the person against whom an order under this division is directed. The order may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or control required by the court.

(B) The authority to make an order under division (A) of this section and any order made under that authority is in addition to the authority to make an order pursuant to division (C)(2) of section 2151.354 or division (A)(7)(b) of section 2152.19 of the Revised Code and to any order made under either division.

(C) A person's failure to comply with any order made by the court under this section is contempt of court under Chapter 2705. of the Revised Code.

CREDIT(S)

(2002 H 400, eff. 4-3-03; 2000 S 179, § 3, eff. 1-1-02; 2000 S 181, eff. 9-4-00; 1975 H 85, eff. 11-28-75; 1969 H 320)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.40 Cooperation with court

Every county, township, or municipal official or department, including the prosecuting attorney, shall render all assistance and co-operation within his jurisdictional power which may further the objects of sections 2151.01 to 2151.54 of the Revised Code. All institutions or agencies to which the juvenile court sends any child shall give to the court or to any officer appointed by it such information concerning such child as said court or officer requires. The court may seek the co-operation of all societies or organizations having for their object the protection or aid of children.

On the request of the judge, when the child is represented by an attorney, or when a trial is requested the prosecuting attorney shall assist the court in presenting the evidence at any hearing or proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child or juvenile traffic offender.

CREDIT(S)

(1975 H 85, eff. 11-28-75; 1969 H 320; 1953 H 1; GC 1639-55)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
General Provisions
2151.412 Case plans

(A) Each public children services agency and private child placing agency shall prepare and maintain a case plan for any child to whom the agency is providing services and to whom any of the following applies:

(1) The agency filed a complaint pursuant to section 2151.27 of the Revised Code alleging that the child is an abused, neglected, or dependent child;

(2) The agency has temporary or permanent custody of the child;

(3) The child is living at home subject to an order for protective supervision;

(4) The child is in a planned permanent living arrangement.

Except as provided by division (A)(2) of section 5103.153 of the Revised Code, a private child placing agency providing services to a child who is the subject of a voluntary permanent custody surrender agreement entered into under division (B)(2) of section 5103.15 of the Revised Code is not required to prepare and maintain a case plan for that child.

(B)(1) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the content and format of case plans required by division (A) of this section and establishing procedures for developing, implementing, and changing the case plans. The rules shall at a minimum comply with the requirements of Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 671 (1980), as amended.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code requiring public children services agencies and private child placing agencies to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not required by division (A) of this section. The agencies shall maintain case plans as required by those rules; however, the case plans shall not be subject to any other provision of this section except as specifically required by the rules.

(C) Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. If the agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child.

(D) Any agency that is required by division (A) of this section to prepare a case plan shall attempt to obtain an agreement among all parties, including, but not limited to, the parents, guardian, or custodian of the child and the guardian ad litem of the child regarding the content of the case plan. If all parties agree to the content of the case plan and the court approves it, the court shall journalize it as part of its dispositional order. If the agency cannot obtain an agreement upon the contents of the case plan or the court does not approve it, the parties shall present evidence on the contents of the case plan at the dispositional hearing. The court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(E)(1) All parties, including the parents, guardian, or custodian of the child, are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

(2) Any party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(3) If an agency has reasonable cause to believe that a child is suffering from illness or injury and is not receiving proper care and that an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm, to believe that a child is in immediate danger from the child's surroundings and that an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm to the child, or to believe that a parent, guardian, custodian, or other member of the child's household has abused or neglected the child and that the child is in danger of immediate or threatened physical or emotional harm from that person unless the agency makes an appropriate change in the child's case plan, it may implement the change without prior agreement or a court hearing and, before the end of the next day after the change is made, give all parties, the guardian ad litem of the child, and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency shall file a statement of the change with the court and give notice of the filing accompanied by a copy of the statement to all parties and the guardian ad litem. All parties and the guardian ad litem shall have ten days from the date the notice is sent to object to and request a hearing on the change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency shall continue to administer the case plan with the change after the hearing, if the court approves the change. If the court does not approve the change, the court shall make appropriate changes to the case plan and shall journalize the case plan.

(b) If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it shall journalize the case plan with the change within fourteen days after receipt of the change. If the court does not approve the change to the case plan, it shall schedule a hearing under section 2151.417 of the Revised Code to be held no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child.

(F)(1) All case plans for children in temporary custody shall have the following general goals:

(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the general goals of case plans for children subject to dispositional orders for protective supervision, a planned permanent living arrangement, or permanent custody.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(G) In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

(1) A child who is residing with or can be placed with the child's parents within a reasonable time should remain in their legal custody even if an order of protective supervision is required for a reasonable period of time;

(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the child, the child should be placed in the legal custody of a suitable member of the child's extended family;

(3) If a child described in division (G)(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable nonrelative who shall be made a party to the proceedings after being given legal custody of the child;

(4) If the child has no suitable member of the child's extended family to accept legal custody of the child and no suitable nonrelative is available to accept legal custody of the child and, if the child temporarily cannot or should not be placed with the child's parents, guardian, or custodian, the child should be placed in the temporary custody of a public children services agency or a private child placing agency;

(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable nonrelative is available to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child placing agency;

(6) If the child is to be placed for adoption or foster care, the placement shall not be delayed or denied on the basis of the child's or adoptive or foster family's race, color, or national origin.

(H) The case plan for a child in temporary custody shall include at a minimum the following requirements if the child is or has been the victim of abuse or neglect or if the child witnessed the commission in the child's household of abuse or neglect against a sibling of the child, a parent of the child, or any other person in the child's household:

(1) A requirement that the child's parents, guardian, or custodian participate in mandatory counseling;

(2) A requirement that the child's parents, guardian, or custodian participate in any supportive services that are required by or provided pursuant to the child's case plan.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(I) A case plan may include, as a supplement, a plan for locating a permanent family placement. The supplement shall not be considered part of the case plan for purposes of division (D) of this section.

CREDIT(S)

(1999 H 471, eff. 7-1-00; 1998 H 484, eff. 3-18-99; 1996 H 274, eff. 8-8-96; 1996 H 419, eff. 9-18-96; 1988 H 403, eff. 1-1-89)

Current through 2011 Files 1 to 27, 30 to 34, 37, 38 and 41 of the 129th GA (2011-2012), apv. by 7/15/2011, and filed with the Secretary of State by 7/18/11.

(c) 2011 Thomson Reuters

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.