

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 2 OF 2 TO MERIT BRIEF OF APPELLEE

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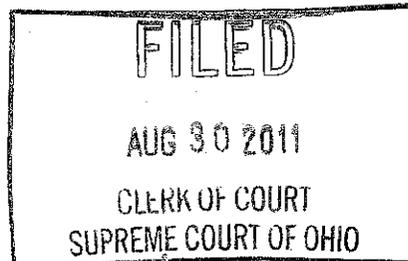
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Baldwin's Ohio Revised Code Annotated Currentness

Title XXI. Courts--Probate--Juvenile (Refs & Annos)

Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)

General Provisions

→ 2151.414 Procedures upon motion

(A)(1) Upon the filing of a motion pursuant to section 2151.413 of the Revised Code for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem. The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, 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, and 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.

The court shall conduct a hearing in accordance with section 2151.35 of the Revised Code to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody.

(2) The court shall hold the hearing scheduled pursuant to division (A)(1) of this section not later than one hundred twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline. The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than two hundred days after the agency files the motion.

If a motion is made under division (D)(2) of section 2151.413 of the Revised Code and no dispositional hearing has been held in the case, the court may hear the motion in the dispositional hearing required by division (B) of section 2151.35 of the Revised Code. If the court issues an order pursuant to section 2151.353 of the Revised Code granting permanent custody of the child to the agency, the court shall immediately dismiss the motion made under division (D)(2) of section 2151.413 of the Revised Code.

The failure of the court to comply with the time periods set forth in division (A)(2) of this section does not affect the authority 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.

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section 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) of this section that permanent custody is in the child's best interest.

(C) In making the determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child. A written report of the guardian ad litem of the child shall be submitted to the court prior to ~~or at the time of the hearing held pursuant to division (A) of this section or section 2151.35 of the Revised Code~~ but shall not be submitted under oath.

If the court grants permanent custody of a child to a movant 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. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of division (D)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) If all of the following apply, permanent custody is in the best interest of the child and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The parent is incarcerated for an offense committed against the child or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323,

2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, or 3716.11 of the Revised Code and the child or a sibling of the child was a victim of the offense or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

(16) Any other factor the court considers relevant.

(F) The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section.

CREDIT(S)

(2008 H 7, eff. 4-7-09; 2008 S 163, eff. 8-14-08; 2000 H 448, eff. 10-5-00; 1999 H 176, eff. 10-29-99; 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; 1980 H 695)

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Title XXI. Courts--Probate--Juvenile (Refs & Annos)

Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)

General Provisions

→ 2151.421 Persons required to report injury or neglect; procedures on receipt of report

(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; employee of a county department of job and family services who is a professional and who works with children and families; superintendent, board member, or employee of a county board of developmental disabilities; investigative agent contracted with by a county board of developmental disabilities; employee of the department of developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that

communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient relationship described in division (A)(2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The abuse or neglect does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(4)(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

(i) The penitent, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the

child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of

the report as determined pursuant to section 2151.422 of the Revised Code.

(F)(1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case to the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's

fees and costs to the party against whom the civil action or proceeding is brought.

(H)(1) Except as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (M) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report is not the defendant or an agent or employee of the defendant, has been redacted. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the

report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society;

(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to ~~division (A) or (B) of this section~~ and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect

or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(5) The clerk of the court of common pleas in the county may sign the memorandum of understanding prepared under division (J)(1) of this section. If the clerk signs the memorandum of understanding, the clerk shall execute all relevant responsibilities as required of officials specified in the memorandum.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

~~(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.~~

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the re-

port is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M) Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

(N)(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered nonpublic school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 or

Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

CREDIT(S)

(2009 S 79, eff. 10-6-09; 2008 H 280, eff. 4-7-09; 2008 S 163, eff. 8-14-08; 2008 H 314, eff. 6-20-08; 2006 S 238, eff. 9-21-06; 2006 S 17, eff. 8-3-06; 2004 S 66, eff. 5-6-05; 2004 S 185, eff. 4-11-05; 2004 H 106, eff. 9-16-04; 2004 S 178, eff. 1-30-04; 2002 S 221, eff. 4-9-03; 2002 H 374, eff. 4-7-03; 2002 H 510, eff. 3-31-03; 2000 H 448, eff. 10-5-00; 1999 H 471, eff. 7-1-00; 1998 H 606, eff. 3-9-99; 1998 S 212, eff. 9-30-98; 1997 H 408, eff. 10-1-97; 1997 H 215, eff. 6-30-97; 1996 S 223, eff. 3-18-97; 1996 S 269, eff. 7-1-96; 1996 H 274, eff. 8-8-96; 1992 H 154, eff. 7-31-92; 1990 S 3, H 44; 1989 H 257; 1986 H 529, H 528; 1985 H 349; 1984 S 321; 1977 H 219; 1975 H 85; 1969 H 338, S 49; 131 v H 218; 130 v H 765)

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.

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
 Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
 General Provisions
 → 2151.424 Notice of dispositional hearings

(A) If a child has been placed in a certified foster home or is in the custody of a relative of the child, other than a parent of the child, a court, prior to conducting any hearing pursuant to division (E)(2) or (3) of section 2151.412 or section 2151.28, 2151.33, 2151.35, 2151.414, 2151.415, 2151.416, or 2151.417 of the Revised Code with respect to the child, shall notify the foster caregiver or relative of the date, time, and place of the hearing. At the hearing, the foster caregiver or relative shall have the right to present evidence.

(B) If a public children services agency or private child placing agency has permanent custody of a child and a petition to adopt the child has been filed under Chapter 3107. of the Revised Code, the agency, prior to conducting a review under section 2151.416 of the Revised Code, or a court, prior to conducting a hearing under division (E)(2) or (3) of section 2151.412 or section 2151.416 or 2151.417 of the Revised Code, shall notify the prospective adoptive parent of the date, time, and place of the review or hearing. At the review or hearing, the prospective adoptive parent shall have the right to present evidence.

(C) The notice and the opportunity to present evidence do not make the foster caregiver, relative, or prospective adoptive parent a party in the action or proceeding pursuant to which the review or hearing is conducted.

CREDIT(S)

(2008 S 163, eff. 8-14-08; 2000 H 448, eff. 10-5-00; 1998 H 484, eff. 3-18-99)

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Title XXI. Courts--Probate--Juvenile (Refs & Annos)

▣ Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)

▣ Adult Cases

→ **2151.50 Forfeiture of bond**

When, as a condition of suspension of sentence under section 2151.49 of the Revised Code, bond is required and given, upon the failure of a person giving such bond to comply with the conditions thereof, such bond may be forfeited, the suspension terminated by the juvenile judge, the original sentence executed as though it had not been suspended, and the term of any sentence imposed in such case shall commence from the date of imprisonment of such person after such forfeiture and termination of suspension. Any part of such sentence which may have been served shall be deducted from any such period of imprisonment. When such bond is forfeited the judge may issue execution thereon without further proceedings.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 1639-50)

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.

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
 ☐ Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
 ☐ Interstate Compact for Juveniles
 → **2151.56 Interstate compact for juveniles**

The "interstate compact for juveniles" is hereby ratified, enacted into law, and entered into by the state of Ohio as a party to the compact with any other state that has legally joined in the compact as follows:

INTERSTATE COMPACT FOR JUVENILES

Article I--Purpose

The compacting states to this interstate compact for juveniles recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the policy of the compacting states that the activities conducted by the interstate commission for juveniles created by this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to do all of the following:

(A) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the

sending and receiving states are adequately protected;

(C) Return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(D) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(E) Provide for the effective tracking and supervision of juveniles;

(F) Equitably allocate the costs, benefits, and obligations of the compacting states;

(G) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;

(H) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(I) Establish procedures to resolve pending charges, such as detainers, against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(J) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile justice and criminal justice administrators;

(K) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(L) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity;

(M) Coordinate the implementation and operation of this compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

Article II--Definitions

As used in this compact, unless the context clearly requires a different construction:

(A) "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling its actions or conduct.

(B) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission under this compact, and policies adopted by the state council under this compact.

(C) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(D) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(E) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(F) "Interstate commission for juveniles" or "interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(G) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including any of the following:

(1) An "accused delinquent," which means a person charged with a violation of a law or municipal ordinance that, if committed by an adult, would be a criminal offense;

(2) An "adjudicated delinquent," which means a person found to have committed a violation of a law or municipal ordinance that, if committed by an adult, would be a criminal offense;

(3) An "accused status offender," which means a person charged with a violation of a law or municipal ordinance that would not be a criminal offense if committed by an adult;

(4) An "adjudicated status offender," which means a person found to have committed a violation of a law or municipal ordinance that would not be a criminal offense if committed by an adult;

(5) A "nonoffender," which means a person in need of supervision who is not an accused or adjudicated status offender or delinquent.

(H) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(I) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(J) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, that implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and that has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(K) "State" means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U. S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III--Interstate Commission for Juveniles

(A) The compacting states hereby create the "interstate commission for juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth in this compact, and any additional powers that may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(B) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created in the state in accordance with this compact. The commissioners are the voting representatives of each state. The commissioner for a state shall be the compact administrator or designee from that state who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

(C) In addition to the commissioners, the interstate commission also shall include individuals who are not commissioners but who are members of interested organizations. The noncommissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional ex officio, nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

(D) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum

is required by the bylaws of the interstate commission.

(E) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings, and all meetings, shall be open to the public.

(F) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the interstate commission's bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of any rulemaking or amendment to the compact. The executive committee shall do all of the following:

(1) Oversee the day-to-day activities of the administration of the compact, managed by an executive director and interstate commission staff;

(2) Administer enforcement and compliance with the provisions of this compact and the interstate commission's bylaws and rules;

(3) Perform any other duties as directed by the interstate commission or set forth in its bylaws.

(G) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council for interstate juvenile supervision for the state, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The interstate commission's bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(H) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent the information or official records would adversely affect personal privacy rights or proprietary interests.

(I) Public notice shall be given of all meetings of the interstate commission, and all of its meetings shall be open to the public, except as set forth in the commission's rules or as otherwise provided in this compact. The interstate commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to do any of the following:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

- (2) Disclose matters specifically exempted from disclosure by statute;
 - (3) Disclose trade secrets or commercial or financial information that is privileged or confidential;
 - (4) Involve accusing any person of a crime or formally censuring any person;
 - (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (6) Disclose investigative records compiled for law enforcement purposes;
 - (7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
 - (8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity;
 - (9) Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.
- (J) For every meeting closed pursuant to division (I) of this Article of this compact, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and that provide a full and accurate summary of any actions taken, and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in those minutes.
- (K) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate the interstate commission's information functions with the appropriate repository of records.

Article IV--Powers and Duties of the Interstate Commission

The interstate commission shall maintain its corporate books and records in accordance with its bylaws.

The interstate commission shall have all of the following powers and duties:

(A) To provide for dispute resolution among compacting states;

(B) To promulgate rules to affect the purposes and obligations as enumerated in this compact, which rules shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(C) To oversee, supervise, and coordinate the interstate movement of juveniles, subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

(D) To enforce compliance with the provisions of this compact, the rules promulgated by the interstate commission, and the interstate commission's bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(E) To establish and maintain offices, which shall be located within one or more of the compacting states;

(F) To purchase and maintain insurance and bonds;

(G) To borrow, accept, hire, or contract for services of personnel;

(H) To establish and appoint committees and hire staff that it considers necessary for the carrying out of its functions, including, but not limited to, an executive committee as required by Article III of this compact, which executive committee shall have the power to act on behalf of the interstate commission in carrying out its powers and duties under this compact;

(I) To elect or appoint officers, attorneys, employees, agents, or consultants, to fix their compensation, define their duties, and determine their qualifications, and to establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;

(J) To accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of same;

(K) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any real property, personal property, or mixed real and personal property;

(L) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any real property, personal property, or mixed real and personal property;

- (M) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
- (N) To sue and be sued;
- (O) To adopt a seal and bylaws governing the management and operation of the interstate commission;
- (P) To perform any functions that may be necessary or appropriate to achieve the purposes of this compact;
- (Q) To report annually to the legislatures, governors, judiciary, and state councils for interstate juvenile supervision of the compacting states concerning the activities of the interstate commission during the preceding year, and with the annual reports also including any recommendations that may have been adopted by the interstate commission.
- (R) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.
- (S) To establish uniform standards of the reporting, collecting and exchanging of data.

Article V--Organization and Operation of the Interstate Commission

Section A. Bylaws

The interstate commission, by a majority of the members present and voting and within twelve months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of this compact, including, but not limited to, bylaws that do all of the following:

- (1) Establish the fiscal year of the interstate commission;
- (2) Establish an executive committee and any other committees that may be necessary;
- (3) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
- (4) Provide reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;
- (5) Establish the titles and responsibilities of the officers of the interstate commission;

- (6) Provide a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of this compact after the payment or reserving of all of its debts and obligations, or both;
- (7) Provide start-up rules for initial administration of this compact;
- (8) Establish standards and procedures for compliance and technical assistance in carrying out this compact.

Section B. Officers and Staff

(1) The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the interstate commission's bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission, through its executive committee, shall appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission considers appropriate. The executive director shall serve as secretary to the interstate commission but shall not be a member of the interstate commission. The executive director shall hire and supervise such other staff as may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense, and Indemnification

(1) Except as otherwise provided in this subsection, the interstate commission's executive director and each of its employees shall be immune from suit and liability, either personally or in the executive director's or employee's official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the executive director or employee had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. The executive director or an employee shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the executive director's or employee's willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) Except as otherwise provided in this subsection, the interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities. The duty to defend described in this division does not apply if the actual or alleged act, error, or omission in question resulted from intentional or willful and wanton misconduct on the part of the executive director, employee, or representative of the interstate commission or the commissioner of a compacting state or the commissioner's representatives or employees.

(4) Except as otherwise provided in this subsection, the interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities. The duty to indemnify and hold harmless described in this division does not apply if the actual or alleged act, error, or omission in question resulted from intentional or willful and wanton misconduct on the part of the commissioner of a compacting state or the commissioner's representatives or employees or the interstate commission's representatives or employees.

Article VI--Rulemaking Functions of the Interstate Commission

(A) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of this compact.

(B) Rulemaking shall occur pursuant to the criteria set forth in this Article and the bylaws and rules adopted pursuant thereto. The rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or another administrative procedures act, as the interstate commission determines appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

(C) When promulgating a rule, the interstate commission, at a minimum, shall do all of the following:

(1) Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and be made publicly available;

(3) Provide an opportunity for an informal hearing, if petitioned by ten or more persons;

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(D) When the interstate commission promulgates a rule, not later than sixty days after the rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located, for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this division, evidence is substantial if it would be considered substantial evidence under the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000).

(E) If a majority of the legislatures of the compacting states rejects a rule, those states, by enactment of a statute or resolution in the same manner used to adopt the compact, may cause that such rule shall have no further force and effect in any compacting state.

(F) The existing rules governing the operation of the interstate compact on juveniles that is superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created under this compact.

(G) Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule. An emergency rule so promulgated shall become effective immediately upon adoption, provided that the usual rulemaking procedures specified in this Article shall be retroactively applied to the emergency rule as soon as reasonably possible, but not later than ninety days after the effective date of the emergency rule.

Article VII--Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

A [FN1] Oversight and Enforcement

(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

~~(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate this compact's purposes and intent. The provisions of this compact and the rules promulgated under it shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting~~

state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in the proceeding and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of this compact and on all issues and activities pertaining to compliance with the provisions of this compact and the interstate commission's bylaws and rules.

(2) The interstate commission, upon the request of a compacting state, shall attempt to resolve any disputes or other issues that are subject to this compact and that may arise among compacting states and between compacting and non-compacting states. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

Article VIII--Finance

(A) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(B) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff. The annual assessment shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding upon all compacting states that governs the assessment.

(C) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the obligations. The interstate commission shall not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

~~(D) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.~~

Article IX--The State Council

Each compacting state shall create a state council for interstate juvenile supervision. While each compacting state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator for the state. Each state council shall advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

Article X--Compacting States, Effective Date, and Amendment

(A) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(B) This compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, this compact shall become effective and binding as to any other compacting state upon enactment of this compact into law by that state. The governors of non-compacting states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of this compact by all states.

(C) The interstate commission may propose amendments to this compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI--Withdrawal, Default, Termination, and Judicial Enforcement

Section A. Withdrawal

(1) Once effective, this compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from this compact by specifically repealing the statute that enacted this compact into law.

(2) The effective date of withdrawal of a compacting state is the effective date of the state's repeal of the statute that enacted this compact into law.

(3) A compacting state that withdraws from this compact shall immediately notify the chairperson of the inter-

state commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of the interstate commission's receipt of the notice from the withdrawing state.

(4) A compacting state that withdraws from this compact is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) If a compacting state withdraws from this compact, reinstatement of the withdrawing state following withdrawal shall occur upon the withdrawing state reenacting this compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination, and Default

(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or under the interstate commission's bylaws or duly promulgated rules, the interstate commission may impose one or more of the following penalties:

(a) Remedial training and technical assistance as directed by the interstate commission;

(b) Alternative dispute resolution;

(c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(d) Suspension or termination of membership in this compact, provided that suspension or termination of membership shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor of the defaulting state, its chief justice or the chief judicial officer, the majority and minority leaders of its state legislature, and the state council for interstate juvenile supervision. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, by the interstate commission's bylaws, or by its duly promulgated rules, and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state shall be terminated from this compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within sixty days of the effective date of termination of a defaulting compacting state, the interstate commission shall notify the defaulting state's governor, its chief justice or chief judicial officer, the majority and minority leaders of its state legislature, and the state council for interstate juvenile supervision of the termination.

(3) A defaulting compacting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to a defaulting compacting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(5) If a defaulting compacting state is terminated, reinstatement of the defaulting state following termination requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to its rules.

Section C. Judicial Enforcement

The interstate commission, by majority vote of the members, may initiate legal action against any compacting state to enforce compliance with the provisions of this compact, and the interstate commission's duly promulgated rules and bylaws. Any such action, if initiated, shall be initiated in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation including reasonable attorney's fees.

D [FN2] Dissolution of Compact

(1) This compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in this compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, the business and affairs of the interstate commission shall be concluded, and any surplus funds shall be distributed in accordance with the interstate commission's bylaws.

Article XII--Severability and Construction [FN3]

(A) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(B) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIII--Binding Effect of Compact and Other Laws

Section A. Other Laws

- (1) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
- (2) All compacting states' laws, other than state constitutions and other interstate compacts, conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

- (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.
- (2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.
- (3) Upon the request of a party to a conflict over the meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding that meaning or interpretation.
- (4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of that state to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Article XIV--Financial Reimbursement

The state agency responsible for administering this compact shall have the legal authority to recoup fines, fees and costs imposed by the interstate commission as stated in Article XI, Section B, Subsection (1)(c) of this compact when the default in performance is the result of a decision made by an entity outside the jurisdiction of the agency administering this compact.

CREDIT(S)

(2011 S 122, eff. 6-30-11)

[FN1] So in original.

[FN2] So in original.

[FN3] So in original.

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.

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXI. Courts--Probate--Juvenile (Refs & Annos)

▣ Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)

▣ Miscellaneous Provisions

→ **2151.85 Minor female's complaint for abortion; hearing; appeal**

(A) A woman who is pregnant, unmarried, under eighteen years of age, and unemancipated and who wishes to have an abortion without the notification of her parents, guardian, or custodian may file a complaint in the juvenile court of the county in which she has a residence or legal settlement, in the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, or in the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be performed or induced is located, requesting the issuance of an order authorizing her to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian.

The complaint shall be made under oath and shall include all of the following:

- (1) A statement that the complainant is pregnant;
- (2) A statement that the complainant is unmarried, under eighteen years of age, and unemancipated;
- (3) A statement that the complainant wishes to have an abortion without the notification of her parents, guardian, or custodian;
- (4) An allegation of either or both of the following:
 - (a) That the complainant is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the notification of her parents, guardian, or custodian;
 - (b) That one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents, guardian, or custodian otherwise is not in her best interest.
- (5) A statement as to whether the complainant has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney.

(B)(1) The court shall fix a time for a hearing on any complaint filed pursuant to division (A) of this section and

shall keep a record of all testimony and other oral proceedings in the action. The court shall hear and determine the action and shall not refer any portion of it to a referee. The hearing shall be held at the earliest possible time, but not later than the fifth business day after the day that the complaint is filed. The court shall enter judgment on the complaint immediately after the hearing is concluded. If the hearing required by this division is not held by the fifth business day after the complaint is filed, the failure to hold the hearing shall be considered to be a constructive order of the court authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parent, guardian, or custodian, and the complainant and any other person may rely on the constructive order to the same extent as if the court actually had issued an order under this section authorizing the complainant to consent to the performance or inducement of an abortion without such notification.

(2) The court shall appoint a guardian ad litem to protect the interests of the complainant at the hearing that is held pursuant to this section. If the complainant has not retained an attorney, the court shall appoint an attorney to represent her. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court also may appoint him to serve as the complainant's attorney.

(C)(1) If the complainant makes only the allegation set forth in division (A)(4)(a) of this section and if the court finds, by clear and convincing evidence, that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(2) If the complainant makes only the allegation set forth in division (A)(4)(b) of this section and if the court finds, by clear and convincing evidence, that there is evidence of a pattern of physical, sexual, or emotional abuse of the complainant by one or both of her parents, her guardian, or her custodian, or that the notification of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(3) If the complainant makes both of the allegations set forth in divisions (A)(4)(a) and (b) of this section, the court shall proceed as follows:

(a) The court first shall determine whether it can make the finding specified in division (C)(1) of this section and, if so, shall issue an order pursuant to that division. If the court issues such an order, it shall not proceed pursuant to division (C)(3)(b) of this section. If the court does not make the finding specified in division (C)(1) of this section, it shall proceed pursuant to division (C)(3)(b) of this section.

(b) If the court pursuant to division (C)(3)(a) of this section does not make the finding specified in division (C)(1) of this section, it shall proceed to determine whether it can make the finding specified in division (C)(2) of this section and, if so, shall issue an order pursuant to that division. If the court does not make the finding specified in division (C)(2) of this section, it shall dismiss the complaint.

(D) The court shall not notify the parents, guardian, or custodian of the complainant that she is pregnant or that she wants to have an abortion.

(E) If the court dismisses the complaint, it immediately shall notify the complainant that she has a right to appeal under section 2505.073 of the Revised Code.

(F) Each hearing under this section shall be conducted in a manner that will preserve the anonymity of the complainant. The complaint and all other papers and records that pertain to an action commenced under this section shall be kept confidential and are not public records under section 149.43 of the Revised Code.

(G) The clerk of the supreme court shall prescribe complaint and notice of appeal forms that shall be used by a complainant filing a complaint under this section and by an appellant filing an appeal under section 2505.073 of the Revised Code. The clerk of each juvenile court shall furnish blank copies of the forms, without charge, to any person who requests them.

(H) No filing fee shall be required of, and no court costs shall be assessed against, a complainant filing a complaint under this section or an appellant filing an appeal under section 2505.073 of the Revised Code.

(I) As used in this section, "unemancipated" means that a woman who is unmarried and under eighteen years of age has not entered the armed services of the United States, has not become employed and self-sustaining, or has not otherwise become independent from the care and control of her parent, guardian, or custodian.

CREDIT(S)

(1985 H 319, eff. 3-24-86)

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.

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West's Colorado Revised Statutes Annotated Currentness

Title 19. Children's Code (Refs & Annos)

▣ Article 2. The Colorado Juvenile Justice System (Refs & Annos)

▣ Part 5. Entry Into System (Refs & Annos)

→ § 19-2-511. Statements

(1) No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and his or her parent, guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile may be admissible in evidence, notwithstanding the absence of a parent, guardian, or legal or physical custodian, if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and:

(I) The juvenile is eighteen years of age or older at the time of the interrogation or the juvenile misrepresents his or her age as being eighteen years of age or older and the law enforcement official acts in good faith reliance on such misrepresentation in conducting the interrogation;

(II) The juvenile is emancipated from the parent, guardian, or legal or physical custodian; or

(III) The juvenile is a runaway from a state other than Colorado and is of sufficient age and understanding.

(b) For the purposes of this subsection (2), "emancipated juvenile" is defined in section 19-1-103(45).

(3) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time.

(4) For the purposes of this section, "physical custodian" is defined in section 19-1-103(84).

(5) Notwithstanding the provisions of subsection (1) of this section, the juvenile and his or her parent, guardian, or legal or physical custodian may expressly waive the requirement that the parent, guardian, or legal or physical custodian be present during interrogation of the juvenile. This express waiver shall be in writing and shall be obtained only after full advisement of the juvenile and his or her parent, guardian, or legal or physical custodian of the juvenile's rights prior to the taking of the custodial statement by a law enforcement official. If said requirement is expressly waived, statements or admissions of the juvenile shall not be inadmissible in evidence by reason of the absence of the juvenile's parent, guardian, or legal or physical custodian during interrogation. Notwithstanding the provisions of this subsection (5), a county social services department and the department of human services, as legal or physical custodian, may not waive said requirement.

(6) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible into evidence by reason of the absence of a parent, guardian, or legal or physical custodian, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentation, conducts a custodial interrogation of the juvenile that does not comply with the requirements of subsection (1) of this section.

CREDIT(S)

Added by Laws 1996, H.B.96-1005, § 1, eff. Jan. 1, 1997. Amended by Laws 1999, Ch. 258, § 1, eff. Aug. 4, 1999; Laws 1999, Ch. 332, § 10, eff. July 1, 1999.

Current through laws effective July 1, 2011, see scope for further details

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West's Annotated Indiana Code Currentness

Title 31. Family Law and Juvenile Law (Refs & Annos)

▣ Article 32. Juvenile Law: Juvenile Court Procedures

▣ Chapter 5. Waiver of Rights (Refs & Annos)

→ **31-32-5-1 Waiver of rights guaranteed to child**

Sec. 1. Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

(1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

(A) that person knowingly and voluntarily waives the right;

(B) that person has no interest adverse to the child;

(C) meaningful consultation has occurred between that person and the child; and

(D) the child knowingly and voluntarily joins with the waiver; or

(3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:

(A) the child knowingly and voluntarily consents to the waiver; and

(B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

CREDIT(S)

As added by P.L.1-1997, SEC.15.

Current through end of 2011 1st Regular Sess.

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Connecticut General Statutes Annotated Currentness

Title 46B. Family Law (Refs & Annos)

▣ Chapter 815T. Juvenile Matters (Refs & Annos)

▣ Part I. General Provisions

→ § 46b-137. Admissibility of admission, confession or statement in juvenile proceedings. Exception

<Section effective until July 1, 2012. See, also, section effective July 1, 2012.>

(a) Any admission, confession or statement, written or oral, made by a child under the age of sixteen to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement unless made by such child in the presence of the child's parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements, and (3) that any statements the child makes may be introduced into evidence against the child.

(b) Any admission, confession or statement, written or oral, made by a child sixteen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement, unless (1) the police or Juvenile Court official has made reasonable efforts to contact a parent or guardian of the child, and (2) such child has been advised that (A) the child has the right to contact a parent or guardian and to have a parent or guardian present during any interview, (B) the child has the right to retain counsel or, if unable to afford counsel, to have counsel appointed on behalf of the child, (C) the child has the right to refuse to make any statement, and (D) any statement the child makes may be introduced into evidence against the child.

(c) The admissibility of any admission, confession or statement, written or oral, made by a child sixteen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be determined by considering the totality of the circumstances at the time of the making of such admission, confession or statement. When determining the admissibility of such admission, confession or statement, the court shall consider (1) the age, experience, education, background and intelligence of the child, (2) the capacity of the child to understand the advice concerning rights and warnings required under subdivision (2) of subsection (b) of this section, the nature of the privilege against self-incrimination under the United States and Connecticut Constitutions, and the consequences of waiving such rights and privilege, (3) the opportunity the child had to speak with a parent, guardian or some other suitable in-

dividual prior to or while making such admission, confession or statement, and (4) the circumstances surrounding the making of the admission, confession or statement, including, but not limited to, (A) when and where the admission, confession or statement was made, (B) the reasonableness of proceeding, or the need to proceed, without a parent or guardian present, and (C) the reasonableness of efforts by the police or Juvenile Court official to attempt to contact a parent or guardian.

(d) Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, uncared-for or dependent, shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of the person's right to retain counsel, and that if the person is unable to afford counsel, counsel will be appointed to represent the person, that the person has a right to refuse to make any statement and that any statements the person makes may be introduced in evidence against the person, except that any statement made by the mother of any child or youth, upon inquiry by the court and under oath if necessary, as to the identity of any person who might be the father of the child or youth shall not be inadmissible if the mother was not so advised.

CREDIT(S)

(1958 Rev., §§ 17-66d, 51-318; 1967, P.A. 630, § 10, eff. June 22, 1967; 1969, P.A. 794, §§ 13, 14; 1975, P.A. 75-183; 1975, P.A. 75-602, § 7, eff. Jan. 1, 1976; 1976, P.A. 76-436, § 591, eff. July 1, 1978; 1995, P.A. 95-225, § 20, eff. Oct. 1, 1995; 1998, P.A. 98-256, § 11; 2009, Sept.Sp.Sess., P.A. 09-7, § 75, eff. Jan. 1, 2010; 2010, June Sp.Sess., P.A. 10-1, § 31, eff. July 1, 2010; 2010, P.A. 10-43, § 39.)

Current through the Gen.St., Rev. to 1-1-2011

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Effective: July 1, 2011

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 705. Courts (Refs & Annos)

Juvenile Courts

Act 405. Juvenile Court Act of 1987 (Refs & Annos)

▣ Article V. Delinquent Minors (Refs & Annos)

▣ Part 1. General Provisions (Refs & Annos)

→ 405/5-170. Representation by counsel

§ 5-170. Representation by counsel.

(a) In a proceeding under this Article, a minor who was under 13 years of age at the time of the commission of an act that if committed by an adult would be a violation of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 [FN1] must be represented by counsel during the entire custodial interrogation of the minor.

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

CREDIT(S)

P.A. 85-601, Art. V, § 5-160, added by P.A. 91-915, § 5, eff. Jan. 1, 2001. Renumbered § 5-170 and amended by P.A. 92-16, § 87, eff. June 28, 2001. Amended by P.A. 94-345, § 5, eff. July 26, 2005; P.A. 96-1551, Art. 2, § 1030, eff. July 1, 2011.

[FN1] 720 ILCS 5/9-1, 5/9-1.2, 5/9-2, 5/9-2.1, 5/9-3, 5/9-3.2, 5/9-3.3, 5/11-1.20, 5/11-1.30, 5/11-1.40, 5/11-1.50, 5/11-1.60, 5/12-13, 5/12-14, 5/12-14.1, 5/12-15, 5/12-16.

Current through P.A. 97-154, with the exception of P.A. 97-81 and P.A. 97-151, of the 2011 Reg. Sess.

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Iowa Code Annotated Currentness

Title VI. Human Services [Chs. 216-255A]

Subtitle 5. Juveniles [Chs. 232-233B]

Chapter 232. Juvenile Justice (Refs & Annos)

▣ Division II. Juvenile Delinquency Proceedings

▣ Part I. General Provisions

→ **232.11. Right to assistance of counsel**

1. A child shall have the right to be represented by counsel at the following stages of the proceedings within the jurisdiction of the juvenile court under division II:

a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.

b. A detention or shelter care hearing as required by section 232.44.

c. A waiver hearing as required by section 232.45.

d. An adjudicatory hearing required by section 232.47.

e. A dispositional hearing as required by section 232.50.

f. Hearings to review and modify a dispositional order as required by section 232.54.

2. The child's right to be represented by counsel under subsection 1, paragraphs "b" to "f" of this section shall not be waived by a child of any age. The child's right to be represented by counsel under subsection 1, paragraph "a" shall not be waived by a child less than sixteen years of age without the written consent of the child's parent, guardian, or custodian. The waiver by a child who is at least sixteen years of age is valid only if a good faith effort has been made to notify the child's parent, guardian, or custodian that the child has been taken into custody and of the alleged delinquent act for which the child has been taken into custody, the location of the child, and the right of the parent, guardian, or custodian to visit and confer with the child.

3. If the child is not represented by counsel as required under subsection 1, counsel shall be provided as follows:

a. If the court determines, after giving the child's parent, guardian or custodian an opportunity to be heard, that

such person has the ability in whole or in part to pay for the employment of counsel, it shall either order that person to retain an attorney to represent the child or shall appoint counsel for the child and order the parent, guardian or custodian to pay for that counsel as provided in subsection 5.

b. If the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel to represent the child, it shall appoint counsel, who shall be reimbursed according to section 232.141, subsection 2, paragraph "b".

c. The court may appoint counsel to represent the child and reserve the determination of payment until the parent, guardian or custodian has an opportunity to be heard.

4. If the child is represented by counsel and the court determines that there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child and order the parent, guardian or custodian to pay for such counsel as provided in subsection 5.

5. If the court determines, after an inquiry which includes notice and reasonable opportunity to be heard that the parent, guardian or custodian has the ability to pay in whole or in part for the attorney appointed for the child, the court may order that person to pay such sums as the court finds appropriate in the manner and to whom the court directs. If the person so ordered fails to comply with the order without good reason, the court shall enter judgment against the person.

6. Nothing in this section shall be construed to prevent the child or the child's parent, guardian or custodian from retaining counsel to represent the child in proceedings under this division II of this chapter in which the alleged delinquent act constitutes a simple misdemeanor under the Iowa Code.

CREDIT(S)

Acts 1978 (67 G.A.) ch. 1088, § 6, eff. July 1, 1979. Amended by Acts 1979 (68 G.A.) ch. 56, § 3; Acts 1982 (69 G.A.) ch. 1209, § 2; Acts 1990 (73 G.A.) ch. 1168, § 34.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1979 amendment, in subsec. 3, added par. c relating to reserving the determination of payment.

The 1982 amendment rewrote subsec. 2, which prior thereto read:

"The child's right to be represented by counsel under subsection 1, paragraphs 'b' to 'f' of this section shall not

West's Kansas Statutes Annotated Currentness

Chapter 38. Minors

☞ Article 23. Revised Kansas Juvenile Justice Code

→ **38-2333. Juvenile less than 14, admission or confession from interrogation**

(a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

CREDIT(S)

Laws 2006, ch. 169, § 33.

Current through 2010 regular session

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West's Montana Code Annotated Currentness

Title 41. Minors

▣ Chapter 5. Youth Court Act

▣ Part 3. Custody and Detention

→ 41-5-331. Rights of youth taken into custody--questioning--waiver of rights

(1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver subject to the provisions of 41-5-333(2);

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver subject to the provisions of 41-5-333(2); or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

CREDIT(S)

Enacted 10-1218 by Laws 1974, ch. 329, § 18. Amended by Laws 1977, ch. 100, § 6; amended by Laws 1977, ch. 571, § 9; Revised Code of Montana 1947, 10-1218(1)(a), (1)(b); amended by Laws 1979, ch. 385, § 1; amended by Laws 1987, ch. 475, § 7; amended by Laws 1987, ch. 515, § 5. (2) thru (6) Enacted by Laws 1987, ch. 475, § 1; amended by Laws 1989, ch. 271, § 2; amended by Laws 1991, ch. 547, § 3; amended by Laws 1997, ch. 286, § 11; amended by Laws 1997, ch. 550, § 76; MCA 1995, § 41-5-303; redesignated 41-5-331 by Laws 1997, ch. 286, § 47; amended by Laws 2009, ch. 2, § 63, eff. Oct. 1, 2009; amended by Laws 2009, ch. 37, § 1, eff. Oct. 1, 2009.

Statutes are current with all 2011 laws effective through July 1, 2011, and all 2010 ballot measures. Statutory changes are subject to classification and revision by the Code Commissioner.

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West's North Carolina General Statutes Annotated Currentness

Chapter 7B. Juvenile Code (Refs & Annos)

▣ Subchapter II. Undisciplined and Delinquent Juveniles

▣ Article 21. Law Enforcement Procedures in Delinquency Proceedings

→ § 7B-2101. Interrogation procedures

(a) Any juvenile in custody must be advised prior to questioning:

(1) That the juvenile has a right to remain silent;

(2) That any statement the juvenile does make can be and may be used against the juvenile;

(3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and

(4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

CREDIT(S)

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

Current through Chapter 18.

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Oklahoma Statutes Annotated Currentness

Title 10A. Children and Juvenile Code

☐ Article 2. Oklahoma Juvenile Code (Refs & Annos)

☐ Chapter 2. Custody and Court Proceedings

→ § 2-2-301. Conduct of interrogations--Appointment of counsel--Guardians ad litem

A. No information gained by a custodial interrogation of a youthful offender under sixteen (16) years of age or a child nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the youthful offender or child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the Office of Juvenile Affairs is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child. No such custodial interrogation shall commence until the youthful offender or child and the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child have been fully advised of the constitutional and legal rights of the youthful offender or child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, "custodial interrogation" means questioning of a youthful offender under sixteen (16) years of age or child while that youthful offender or child is in law enforcement custody or while that youthful offender or child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the Office. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term "custodial interrogation" shall not be deemed to mean questioning of a youthful offender or child by a public school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the Office. Any information gained from noncustodial questioning of a child or youthful offender by a public school administrator or teacher concerning a wrongful act committed on public school property shall be admissible into evidence against the youthful offender or child.

B. A custodial interrogation of a youthful offender over sixteen (16) years of age shall conform with all the requirements for the interrogation of an adult.

C. If the youthful offender or child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of Section 2-2-104 of this title, the court shall appoint an attorney, who shall not be a district attorney, for the youthful offender or child regardless of any attempted waiver by the parent or other legal custodian of the youthful offender or child of the right of the youthful offender or child to be represented by counsel. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent.

D. Whenever a petition is filed alleging that a child is a delinquent child or a child in need of supervision, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child or the attorney of the child. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the child.

E. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or Section 846 of Title 21 of the Oklahoma Statutes.

CREDIT(S)

Laws 1995, c. 352, § 123, eff. July 1, 1995; Laws 1997, c. 293, § 16, eff. July 1, 1997. Renumbered from Title 10, § 7303-3.1 and amended by Laws 2009, c. 234, §§ 47, 179, emerg. eff. May 21, 2009.

Current with chapters of the First Regular Session of the 53rd Legislature (2011) effective July 1, 2011.

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West's Annotated Code of West Virginia Currentness

Chapter 49. Child Welfare (Refs & Annos)

▣ Article 5. Juvenile Proceedings (Refs & Annos)

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

- (a) The circuit court has original jurisdiction of proceedings brought under this article.
- (b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.
- (c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.
- (d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.
- (e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:
- (1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or
 - (2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

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

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

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

(i) In all proceedings under this article, the juvenile shall be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend: *Provided*, That in cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer: *Provided, however*, That in any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

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

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

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

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

CREDIT(S)

Acts 1936, 1st Ex. Sess., c. 1; Acts 1939, c. 105; Acts 1972, c. 61; Acts 1974, c. 9; Acts 1975, c. 126; Acts 1977, c. 65; Acts 1978, c. 14; Acts 1995, c. 55, eff. 90 days after March 4, 1995; Acts 1996, c. 82, eff. 90 days after March 9, 1996; Acts 1996, 1st Ex. Sess., c. 4, eff. July 14, 1996; Acts 1998, c. 188, eff. 90 days after March 14, 1998; Acts 2000, c. 72, eff. 90 days after March 11, 2000; Acts 2001, c. 54, eff. 90 days after April 12, 2001; Acts 2007, c. 171, eff. June 7, 2007.

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Page's Own General Code (1938) 157

If the expense of such medical and surgical treatment cannot be recovered from the parents, legal guardian or custodian of such child, the county commissioners of the county in which such child has a legal settlement shall reimburse the court for the reasonable cost of such emergency medical or surgical treatment, out of its county general fund.

§ 1639-29. [Class transferred to court having proper jurisdiction; hearing in other court.] When a child is arrested on and under any charge, complaint, affidavit or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a justice of the peace, judge of the police or municipal court or court of common pleas other than a juvenile judge, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the court exercising the powers and jurisdiction herein provided. The officers having such child in charge shall take it before the judge of such court, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before such judge in the first instance. Upon such transfer or taking of such child before such judge, all further proceedings upon or under the charge, complaint, affidavit or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court of common pleas other than a court exercising the powers and jurisdiction herein conferred, and the case against or relating to such child shall be heard and determined by the juvenile judge of such court as shall be deemed to be upon a complaint filed in such court as fully as if the appearance of such child had been upon a complaint filed in and a relation or warrant of arrest originally issued out of and by such court.

§ 1639-30. [Informal hearing; disposition; fine; reformatory; commitment not to be informal manner; and may adjourn the hearing from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. All cases involving children shall be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury. If the court shall find that a child is delinquent, neglected, dependent, or otherwise within the provisions of this act, it may by order duly entered proceed as follows:

1. Place the child on probation or under supervision in its own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;
2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency or to a suitable department of public welfare and authorized to care for children or to place them in suitable family homes;
3. If, in his judgment, it is for the best interests of a delinquent child, the judge may impose a fine upon such child not exceeding \$25.00 or costs, or both, and if such child is over fourteen years of age, he may order such child to stand committed until such fine and costs are paid.

Who is arrested with a charge and is held in custody before the juvenile judge, does not waive such objection, since neither the justice of the peace nor the court of common pleas had jurisdiction over the case. The court of common pleas under G. C. § 1631. Such orders may therefore be made by the court of common pleas under G. C. § 1631. A minor child under the age of eighteen years is arrested and taken before a justice of the peace or judge of the police or municipal court or court of common pleas provided in G. C. § 1639, costs are chargeable in favor of the justice of the peace and the constable and should be paid as provided in G. C. § 1631. 1919 A.G. Opns. vol. 1, p. 250. When a justice of the juvenile court, fore and costs of the justice of the peace and his constable, or of the justice of the peace and his constable, are to follow the case for the case for some and payment under G. C. § 1631, 1935 A.G. Opns. vol. 1, p. 250.

§ 1639-31. [Child committed to an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application. Whenever the court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning such child.

1. Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

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Whenever the court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning such child.

§ 1639-32. [Child committed to an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

§ 1639-33. [Child committed to an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

Whenever the court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning such child.

§ 1639-34. [Child committed to an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

Whenever the court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning such child.

§ 1639-35. [Child committed to an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any disability or shall be deemed a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be deemed a convict or convicted of a crime in any court, except as provided in section 1639-35, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

If the expense of such medical and surgical treatment cannot be recovered from the parents, legal guardians or custodian of such child, the county commissioners of the county in which such child has a legal settlement, shall reimburse the court for the reasonable cost of such emergency medical or surgical treatment, out of its county general fund.

§ 1639-29. (Cade transferred to court having proper jurisdiction, hearing in other court.) When a child is arrested on and under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a juvenile judge, the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the court exercising the powers and jurisdiction herein provided. The officers having such child in charge shall take it before the judge of such court, who shall proceed to hear and dispose of the case in the same manner as if the first instance. Upon such transfer or taking of such child before such judge, all further proceedings upon or under the charge, complaint, indictment or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court of common pleas other than a court exercising the powers and jurisdiction herein conferred, and the case against or relating to such child shall be returned to the court of common pleas or to a complaint filed in such court as fully as if the appearance of such child had been upon a commitment filed in and by such court.

§ 1639-29. (Cade transferred to court having proper jurisdiction, hearing in other court.) When a child is arrested on and under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a juvenile judge, the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the court exercising the powers and jurisdiction herein provided. The officers having such child in charge shall take it before the judge of such court, who shall proceed to hear and dispose of the case in the same manner as if the first instance. Upon such transfer or taking of such child before such judge, all further proceedings upon or under the charge, complaint, indictment or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court of common pleas other than a court exercising the powers and jurisdiction herein conferred, and the case against or relating to such child shall be returned to the court of common pleas or to a complaint filed in and by such court.

1. Make such further disposition as the court may deem best for the best interests of the child, as if in case of a male child over sixteen years of age who has committed an act which is committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

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Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

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Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

1. Make such further disposition as the court may deem best for the best interests of the child, as if in case of a male child over sixteen years of age who has committed an act which is committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, in the same manner as if the complaint and hearing were held before such child arrived at the age of eighteen years.

Ohio Page's Annotated (1968)

2. When the joint board has been duly formed and has thereafter proceeded with the duties imposed on it by the statute, a county cannot withdraw on the basis of a subsequent determination that it does not have the finances to proceed. 1969 OAG No. 60-112.

§ 2151.34, 14 § 2151.3414 County auditors adjust accounts.

The county auditors of the several counties composing a detention home district shall meet at the district detention home not less than once in six months to adjust accounts and to transact such other duties in connection with the institution as pertain to the business of their office. HISTORY: 123 v 1211 (1216), § 1, ER 11-2-59.

§ 2151.34, 15 § 2151.3415 Board of county commissioners; expenses.

Members of the board of county commissioners who meet by appointment to consider the organization of a district detention home shall, upon presentation of properly certified accounts, be paid their necessary expenses upon a warrant drawn by the county auditor of their county. HISTORY: 123 v 1211 (1216), § 1, ER 11-2-59.

§ 2151.35 Informal hearing; procedure; right of child to counsel; disposition.

The juvenile court may conduct its hearings in an informal manner, and may adjourn such hearings from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. The juvenile court shall permit a child to be represented by an attorney at law during any hearing before such court and shall extend to such child all the rights and privileges of section 2335.14 of the Revised Code. Such attorney at law, the parents or guardian of such child and any attorney at law representing them shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing. Any report or part thereof concerning such child which has been prepared by an employee of the court 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 or guardian of such child, upon written request prior to any hearing involving such child. 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 neglected, dependent, or crippled children. The court shall hear and determine all cases of children without a jury. If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever suitable, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes, or may place such delinquent children in foster care facilities approved by the youth commission under the provisions of sections 5139.36 to 5139.40, inclusive, of the Revised Code. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided for by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to a county or district training facility created under section 2151.65 of the Revised Code, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding fifty dollars and costs;

(D) Make such further disposition as the court deems proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever the child commits an act of delinquency before attaining at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child attains at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such

complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency, it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case. HISTORY: GC § 1698-206; 117 v 520 (639); 119 v 731 (723); 121 v 657 (664); 123 v 384; 127 v 247 (659); 81 v 130 v 631; 81 (ER 107-289); 130 v 623, § 1 (ER 161-169); 132 v 573; 81, ER 11-7-57.

Amendments to former GC §§ 1698 et seq., 1698. For discussion, see Schneider TEXT § 3.5.

Cross-reference to Related Sections Commission, RC § 5159-05. Determination by juvenile judge that truant child is dependent or delinquent, RC § 3321.22. Foster care facilities, RC § 5139.36. Intoxicating liquor, minor's attempt to purchase or consume; misrepresentation regarding, RC § 5501.65-6.

See RC § 2151.54 which refers to this section.

Comparative Legislation Informal hearing: Ind.—Burns Stat. 1936 Repl. § 9-3113 Ky.—KRS 208.060 Mass.—Am. Laws, ch. 119, § 65 Mich.—Stats. Ann. § 273176(58), 17 N.Y.—Family Court Act, § 741 Tenn.—Pardon's Stat. §§ 51, 53, 290, 260 Va.—Code Ann. § 17-1-5, 4 W.Va.—Code 1936, § 43-5-4

Research Aids Determination: Pages: Courts 154, Infant § 16 O.—Juven. Juv. Courts § 32 et seq

ALR Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 99 ALR 2d 516. Constitutionality, construction, and application of statutory provision against use in evidence in any other case of records or evidence in juvenile court proceedings, 147 ALR 443. Power of juvenile court to require children to testify, 151 ALR 1228.

Law Reviews Practice and procedure in the juvenile court, Walter G. Whitlatch, 21 CleveBj (No. 7) 107. Constitutional guarantees in the juvenile court, Hon. Benjamin S. Schwartz, 39 Ohio (No.47) 1952. Hon. Lawrence S. Wright, Reprint of 1929. C. Wright, 18 Juv. Reprint of 1929. Juvenile court: "neglected child" of the judiciary, Hon. Albert A. Woldman, 37 CleveBj (No. 11) 257. Welfare and social progress in the prevention and treatment of juvenile delinquency. Hon. William F. Burns, 5 CleveBj 35. Evidence problems in juvenile delinquency proceedings, Ronald J. Harpst, 11 CleveMatLw 486. Juvenile proceedings—juvenile not entitled to indictment or jury trial under Ohio constitution. (Case note), 58 CleveBj 123.

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1. When a defendant in a criminal case is permitted to introduce evidence of his life history, he waives the protection of this section, and may be cross-examined with reference to the disposition of any charges prior to 1968 OS 559, 23 OO 50, 41 NR(24) 387; W. Martinko, 138 OS 559, 23 OO 50, 41 NR(24) 387.

excuse the attendance of the child at the hearing in cases involving neglected, dependent, or crippled children. The court shall hear and determine all cases of children without a jury. If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes, or may place such delinquent children in foster care facilities approved by the youth commission under the provisions of sections 5139.36 to 5139.40, inclusive, of the Revised Code. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to a county or district training facility created under section 2151.65 of the Revised Code, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding fifty dollars and costs;

(D) Make such further disposition as the court deems proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever the child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such

complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case.

HISTORY: GC § 1639-30; 117 v 520 (530); 119 v 791 (792); 121 v 557 (564); 125 v 324; 127 v 547 (549); § 1; 130 v 621, § 1 (EF 10-7-69); 130 v 623, § 1 (EF 10-14-69); 132 v 5278, § 1. EF 11-7-67.

Analogous to former GC §§ 1650 et seq, 1669.

For discussion, see Schneider TEXT § 3.5.

Cross-References to Related Sections

Commitment to youth commission and powers of commission, RC § 5139.05.
Determination by juvenile judge that truant child is dependent or delinquent, RC § 3321.22.
Foster care facilities, RC § 5139.36.
Intoxicating liquor, minor's attempt to purchase or consume; misrepresentation regarding, RC § 4301.63.6.
See RC § 2151.54 which refers to this section.

Comparative Legislation

Informal hearing:
Ind.—Burns' Stat, 1956 Repl, § 9-3113
Ky.—KRS 208.060
Mass.—Ann Laws, ch 119, § 56
Mich.—Stats Ann, § 27.3178(598.17)
N.Y.—Family Court Act, § 741
Penn.—Purdon's Stat, tit 11, §§ 250, 260
Tenn.—Code Ann, § 37-237
W.Va.—Code 1966, § 49-5-6

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Page: Courts 154; Infant § 16
O-Jur2d: Juv. Courts § 32 et seq

ALR

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court. 89 ALR 2d 506.

Constitutionality, construction, and application of statutory provision against use in evidence in any other case of records or evidence in juvenile court proceedings. 147 ALR 443.

Power of juvenile court to require children to testify. 151 ALR 1229.

Law Reviews

Practice and procedure in the juvenile court. Walter G. Whitlatch. 21 ClevBJ (No. 7) 107.

Constitutional guarantees in the juvenile court. Hon. Benjamin S. Schwartz. 39 OBar (No.47) 1385.

The juvenile court, a court of law. Hon. Walter G. Whitlatch. 18 WestResLRev 1239.

Juvenile courts: "neglected child" of the judiciary. Hon. Albert A. Woldman. 37 ClevBJ (No. 11) 257.

Welfare and social progress in the prevention and treatment of juvenile delinquency. Hon. William F. Burns. 5 ClevMarLRev 35.

Evidence problems in juvenile delinquency proceedings. Ronald J. Harpst. 11 ClevMarLRev 486.
Juvenile proceedings—juvenile not entitled to indictment or jury trial under Ohio constitution. (Case note.) 32 ClnLRev 123.

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1. When a defendant in a criminal case is permitted to introduce evidence of his life history, he waives the protection of this section, and may be cross-examined with reference to the disposition of any charge preferred against him as a juvenile: State v. Marinski, 139 OS 559; 23 OO 50, 41 NE(2d) 387.

All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.

All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale *** shall be paid into the sinking fund or the bond retirement fund of the subdivision.

If a permanent improvement of the subdivision is sold, the amount received for the same shall be paid into the sinking fund, the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there is no such fund, into the general fund.

Money paid into any fund shall be used only for the purposes for which such fund is established.

Repeal.

Section 2. That existing section 5705.10 of the Revised Code is hereby repealed.

ROGER CLOUD,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed May 16, 1957.
Approved May 28, 1957.

C. WILLIAM O'NEILL,
Governor.

127 Ohio Laws 547

The sectional number herein is in conformity with the Revised Code.
OHIO LEGISLATIVE SERVICE COMMISSION
CHARLES W. INCELR, *Director.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 28th day of May, A. D. 1957.

TED W. BROWN,
Secretary of State.

File No. 57.

Effective August 27, 1957.

(Amended House Bill No. 161)

AN ACT

To amend sections 2151.02, 2151.18, 2151.23, 2151.27, and 2151.35 of the Revised Code and to enact supplemental section 2151.021 of the Revised Code relative to juvenile traffic offenders.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2151.02, 2151.18, 2151.23, 2151.27, and 2151.35 of the Revised Code be amended, and that supplemental section 2151.021 of the Revised Code be enacted to read as follows:

Delinquent child defined.

Sec. 2151.02. As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "delinquent child" includes any child:

- (A) Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state, *except as provided in section 2151.021 of the Revised Code;*
- (B) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (C) Who is an habitual truant from home or school;
- (D) Who so deports himself as to injure or endanger the morals or health of himself or others;
- (E) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority.

Juvenile traffic offender defined.

Sec. 2151.021. A child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or of any subdivision

of this state, shall be designated as a "juvenile traffic offender" and shall not be designated as a delinquent unless it be so ordered by the court after hearing the evidence.

Records; annual report; copies for distribution.

Sec. 2151.18. The juvenile court shall maintain records of all official cases brought before it, including an appearance docket, a journal, and a cashbook. *The court shall maintain a separate docket for traffic offenses, in which case, all traffic cases shall be recorded thereon instead of on the general appearance docket.* The parents of any child affected, if living, or if deceased, the nearest of kin, may inspect such records, either in person or by counsel during the hours in which such court is open.

Not later than June of each year, the court shall prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition thereof, and such other data pertaining to the work of the court as the juvenile judge directs or as the department of public welfare requests. Copies of such report shall be filed with such department and with the board of county commissioners. With the approval of such board copies may be printed for distribution to persons and agencies interested in the court or community program for dependents, neglected, ** or delinquent children and juvenile traffic offenders. The number of copies ordered printed and the estimated cost of each printed copy shall appear on each copy of such report printed for distribution.

Jurisdiction.

Sec. 2151.23. (A) The juvenile court has exclusive original jurisdiction under the Revised Code:

- (1) Concerning any child who is a *juvenile traffic offender or who is delinquent, neglected, dependent, crippled, or otherwise physically handicapped;*
 - (2) To determine the custody of any child not a ward of another court;
 - (3) To determine the paternity of any child alleged to have been born out of wedlock and to provide for the support of such child, subject to the concurrent jurisdiction of other courts;
- (B) Such court has original jurisdiction to determine all cases of misdemeanors charging adults:
- (1) With contributing to, encouraging, or tending to cause by any act or omission the delinquency, neglect, or dependency of any child;
 - (2) 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;
 - (3) With abandonment or failure to provide subsistence to any child for which he is legally responsible.

(C) Such court, except as to juvenile courts separately and independently created, has jurisdiction to hear, determine, and make a record of any action for divorce or alimony involving the custody or care of children filed in the court of common pleas and certified by the presiding

judge of the court of common pleas with all the papers filed therein to the court for trial, provided that no such certification shall be made to any court unless the consent of the juvenile judge is first obtained. After such certification is made and consent obtained, the court shall proceed as if such action were originally begun in said court, except as to awards for alimony or support due and unpaid at the time of certification, over which the court has no jurisdiction.

(D) Such court has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction, and to make disposition of said child in accordance with sections 2151.01 to 2151.54, inclusive, of the Revised Code.

Complaint involving child.

Sec. 2151.27. Any person having knowledge of a child under eighteen years of age who appears to be a *juvenile traffic offender or to be delinquent, neglected, or dependent, or of a crippled or otherwise physically handicapped child under twenty-one years of age may, with respect to such juvenile traffic offender or such delinquent, neglected, or dependent child, file a sworn complaint, and with respect to such crippled or otherwise physically handicapped child file an application for care in the juvenile court of the county in which such child has a residence or legal settlement, or in which such traffic offense, delinquency, neglect, or dependency occurred, or, in case of a crippled child, where such child is found.* Such application or sworn complaint may be upon information and belief and, *except for traffic offenses, shall be sufficiently definite by using the word delinquent, neglected, dependent, crippled, or physically handicapped, as the facts may be.*

Informal hearing; right of child to counsel; disposition; school district to bear cost.

Sec. 2151.35. The juvenile court may conduct its hearings in an informal manner, and may adjourn such hearings from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. *The juvenile court shall permit a child to be represented by an attorney-at-law during any hearing before such court and shall extend to such child all the rights and privileges of section 2935.17 of the Revised Code. Such attorney-at-law, the parents or guardian of such child and any attorney-at-law representing them shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing.*

Any report or part thereof concerning such child which has been prepared by an employee of the court 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 or guardian of such child, upon written request prior to any hearing involving such child. 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 neglected, dependent, or crippled children. The court shall hear

and determine all cases of children without a jury. If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situated, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding *** fifty dollars *** and costs ***;

(D) Make such further disposition as the court deems *** proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever a child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years, provided that no child over eighteen years of age at the time of the court hearing may be committed to the boys' or girls' industrial schools.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding, in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever *** a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case.

Repeal.

SECTION 2. That existing sections 2151.02, 2151.18, 2151.22, 2151.27, and 2151.35 of the Revised Code are hereby repealed.

Separability.

SECTION 3. The several sections, parts of sections, sentences, and parts of sentences of this act are declared to be separate and independent sections, parts of sections, sentences, and parts of sentences, and a decision holding any section, part of section, sentence, or part of sentence thereof for any reason to be unconstitutional and void shall not affect the validity of the remaining portions of the act.

ROGER CLOUD,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed May 29, 1957.

Approved June 15, 1957.

C. WILLIAM O'NEILL,
Governor.

The sectional numbers herein are in conformity with the Revised Code.
OHIO LEGISLATIVE SERVICE COMMISSION
CHARLES W. INGLER, Director

Filed in the office of the Secretary of State at Columbus, Ohio on the 15th day of June, A. D. 1957.

TED W. BROWN,
Secretary of State.

File No. 207.

Effective September 14, 1957.

Child charged with felony:

Sec. 2151.26. In any case involving a delinquent child under sections 2151.01 to 2151.54, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the *** youth commission, or by some other public or private agency, or by a person qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case. (Amended in Amended House Bill No. 348)

Informal hearing; procedure; right to counsel; disposition.

Sec. 2151.35. The juvenile court may conduct its hearings in an informal manner, and may adjourn such hearings from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. The juvenile court shall permit a child to be represented by an attorney at law during any hearing before such court and shall extend to such child all the rights and privileges of section 2935.14 of the Revised Code. Such attorney at law, the parents or guardian of such child and any attorney at law representing them shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing.

Any report or part thereof concerning such child which has been prepared by an employee of the court 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 or guardian of such child, upon written request prior to any hearing involving such child. 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 neglected, dependent, or crippled children. The court shall hear and determine all cases of children without a jury. If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes, or may place such delinquent children in foster care facilities approved by the youth commission under the provisions of sections 5139.36 to 5139.40, inclusive, of the Revised Code. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to a county or district training facility created under section 2151.65 of the Revised Code, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding fifty dollars and costs;

(D) Make such further disposition as the court deems proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever a child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime

in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case. (Amended in Amended Senate Bill No. 278)

Counsel for indigent children and parents.

Sec. 2151.351. When a child is brought before the juvenile court for hearing to determine whether or not such child is delinquent, dependent, neglected, or a juvenile traffic offender in cases where it appears that such juvenile traffic offender may be adjudged delinquent, if he and his parents are indigent, the court may assign counsel to such child and his parents. Such counsel shall not be a partner in the practice of law of any attorney representing any interest adverse to the child.

Counsel so assigned to represent a child and his parents shall be paid for their services by the county, and shall receive therefor such compensation as the juvenile court may approve, not exceeding three hundred dollars and expenses as the trial court may approve.

The fees and expenses approved by the court under this section shall be taxed as part of the costs. (Enacted in Amended Senate Bill No. 333)

Mentally ill, mentally deficient, or psychopathic adult offenders.

Sec. 2151.422. Sections 2947.25 to 2947.28, inclusive, of the Revised Code, relating to the psychiatric examination, court hearing, disposition of persons found guilty of certain offenses, and the placement of children under the care and custody of such

persons, shall apply to cases of adults tried and found guilty of the designated offenses in a juvenile court. (Enacted in Amended Senate Bill No. 316)

Charges against adults; defendant bound over to grand jury.

Sec. 2151.43. In cases against an adult under sections 2151.01 to 2151.54, inclusive, of the Revised Code, any person may file an affidavit with the clerk of the juvenile court setting forth briefly, in plain and ordinary language, the charges against the accused who shall be tried thereon. When the child is a recipient of aid pursuant to Chapter 5107, or 5118, of the Revised Code, the county welfare department shall file charges against any person who fails to provide support as provided in section 2151.42 of the Revised Code, unless charges are filed under section 2119.06 of the Revised Code.

In such prosecution an indictment by the grand jury or information by the prosecuting attorney shall not be required. The clerk shall issue a warrant for the arrest of the accused, who, when arrested, shall be taken before the juvenile judge and tried according to such sections.

The affidavit may be amended at any time before or during the trial.

The judge may bind such adult over to the grand jury, where the act complained of constitutes a felony. (Amended in Amended House Bill No. 390)

Jury trial; procedure.

Sec. 2151.47. Any adult arrested under section 2151.01 to 2151.54, inclusive, of the Revised Code, *** may demand a trial by jury, or the juvenile judge upon his own motion may call a jury. A demand for a jury trial must be made in writing in not less than three days before the date set for trial, or within three days after counsel has been retained, whichever is later. Sections 2945.17 and 2945.22 to 2945.36, inclusive, of the Revised Code, relating to the drawing and impaneling of jurors in criminal cases in the court of common pleas, other than in capital cases, shall apply to such jury trial. The compensation of jurors and costs of the clerk and sheriff shall be taxed and paid as in criminal cases in the court of common pleas. (Amended in Senate Bill No. 55)

Suspension of sentence.

Sec. 2151.49. In every case of conviction under sections 2151.01 to 2151.54, inclusive, of the Revised Code, where imprison-

Messrs. Jump-Dennis-Cook-Nye-Johnson-Kainrad-Levitt-Christianson-Norris

(as reported by the House Judiciary Committee)

requires the court to assign counsel when a child is brought before the juvenile court to determine whether he is delinquent, dependent, or neglected, or a juvenile traffic offender, and he and his parents cannot afford counsel. Compensation of counsel is paid by the county, in an amount approved by the court up to a maximum of \$300 and expenses, but it is taxed as part of the court costs.

Heretofore the system for juvenile court proceedings brought about by a desire to avoid the aura of criminality which would otherwise attach itself to such proceedings, and thus to the minor, has differed from that of other courts. But the results of this distinct system have not always been satisfactory. Failure to observe the fundamental requirements of due process has sometimes resulted in instances of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. L.S.C. research report No. 83, Ohio's Juvenile Correction System, discusses some of the problems involved. The U. S. Supreme Court has come to the conclusion that juveniles should enjoy the same procedural safeguards that adults have.

The bill brings Ohio law in line with the recent U. S. Supreme Court decision which extends the protection of the 14th amendment of the U. S. Constitution to juveniles, and requires that they be given notice sufficient to permit preparation of defense to charges, be advised of their right to counsel (including assigned counsel) and of their right to remain silent, and be afforded the right of confrontation and cross-examination. In re Gault, 35 LW 4399 (U.S. Supreme Court, May 15, 1967.)

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administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding fifty dollars and costs;

(D) Make such further disposition as the court deems proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever a child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years ***.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any

agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case. (Amended in Amended Substitute House Bill No. 299)

Hearing; counsel; disposition.

Sec. 2151.35. The juvenile court may conduct its hearings in an informal manner, and may adjourn such hearings from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. The juvenile court shall permit a child to be represented by an *** attorney at law during any hearing before such court and shall extend to such child all the rights and privileges of section *** 2935.14 of the Revised Code. Such *** attorney at law, the parents or guardian of such child, and any *** attorney at law representing them shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing.

Any report or part thereof concerning such child which has been prepared by an employee of the court 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 or guardian of such child, upon written request prior to any hearing involving such child. 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 neglected, dependent, or crippled children. The court shall hear and determine all cases of children without a jury. If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to a county or district training facility created under section 2151.65 of the Re-

vised Code, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a juvenile traffic offender or a delinquent child not exceeding fifty dollars and costs;

(D) Make such further disposition as the court deems proper;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory;

(F) Suspend or revoke the operator's or chauffeur's license issued to any minor found to be a juvenile traffic offender;

(G) Suspend or revoke the registration of all motor vehicles registered in the name of any minor found to be a juvenile traffic offender.

Whenever a child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years ***.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution, or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the

care, treatment, or placement required in the particular case. (Amended in Amended House Bill No. 879)

When jurisdiction of court ceases.

Sec. 2151.38. When a child is committed to the *** youth commission, or to the Ohio state reformatory, or to the permanent custody of the department of public welfare, or to the division of social administration in said department, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, the order shall state that such commitment is permanent and the jurisdiction of the juvenile court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the division or any county department, board, or certified organization having such permanent custody makes application to the court for the termination of such custody, the court upon such application, after notice and hearing and for good cause shown, may terminate such custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. All other commitments made by the court shall be temporary and shall continue for such period as designated by the court in its order, or until terminated or modified by the court, or until a child attains the age of twenty-one years. (Amended in Amended Substitute House Bill No. 299)

Prohibition against neglecting or mistreating child.

Sec. 2151.42. No person charged with the care, support, maintenance, or education of a legitimate or illegitimate child or no person being the father of an illegitimate child under eighteen years of age shall fail to care for, support, maintain, or educate such child, or shall abandon such child, or shall beat, neglect, injure, or otherwise ill-treat such child, or cause or allow him to engage in common begging. No person charged with the care, support, maintenance, or education of a legitimate or illegitimate child under twenty-one years of age who is physically or mentally handicapped shall fail to care for, support, maintain, or educate such child. Such neglect, nonsupport, or abandonment shall be deemed to have been committed in the county in which such child may be at the time of such neglect, nonsupport, or abandonment. Each day of such failure, neglect, or refusal shall constitute a separate offense. (Amended in Substitute House Bill No. 89)

Physician's report of injury or neglect.

Sec. 2151.421. Any physician, including a hospital intern or

To amend sections 2151.02, 2151.021, 2151.03, 2151.04, 2151.07, 2151.17, 2151.25, 2151.34, 2151.351, 2151.36, 2151.38, 2151.40, 2151.41, 2151.99, and 2505.17, to enact new sections 2151.01, 2151.011, 2151.022, 2151.23, 2151.26, 2151.27, 2151.271, 2151.28, 2151.281, 2151.29, 2151.31, 2151.311, 2151.312, 2151.313, 2151.314, 2151.35, 2151.352, 2151.353, 2151.354, 2151.355, 2151.356, 2151.357, 2151.358, and 2151.359, and to repeal sections 2151.01, 2151.28, 2151.26, 2151.27, 2151.28, 2151.29, 2151.31, and 2151.35 of the Revised Code, relative to courts dealing with children.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2151.02, 2151.021, 2151.03, 2151.04, 2151.07, 2151.17, 2151.25, 2151.34, 2151.351, 2151.36, 2151.38, 2151.40, 2151.41, 2151.99, and 2505.17 be amended, and new sections 2151.01, 2151.011, 2151.022, 2151.23, 2151.26, 2151.27, 2151.271, 2151.28, 2151.281, 2151.29, 2151.31, 2151.311, 2151.312, 2151.313, 2151.314, 2151.35, 2151.352, 2151.353, 2151.354, 2151.355, 2151.356, 2151.357, 2151.358, and 2151.359 of the Revised Code be enacted to read as follows:

Construction; purpose.

Sec. 2151.01. THE SECTIONS IN CHAPTER 2151 OF THE REVISED CODE, WITH THE EXCEPTION OF THOSE

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SECTION 2151.01. THE SECTIONS IN CHAPTER 2151 OF THE REVISED CODE, WITH THE EXCEPTION OF THOSE SUBJECT TO CHAPTER 2151 OF THE REVISED CODE:

(A) TO PROVIDE FOR THE CARE, PROTECTION, AND MENTAL AND PHYSICAL DEVELOPMENT OF CHILDREN SUBJECT TO CHAPTER 2151 OF THE REVISED CODE;

(B) TO PROTECT THE PUBLIC INTEREST IN REMOVING THE CONSEQUENCES OF CRIMINAL BEHAVIOR AND THE TAIN OF CRIMINALITY FROM CHILDREN COMMITTING DELINQUENT ACTS AND TO SUBSTITUTE THEREFOR A PROGRAM OF SUPERVISION, CARE, AND REHABILITATION;

(C) TO ACHIEVE THE FOREGOING PURPOSES, WHENEVER POSSIBLE, IN A FAMILY ENVIRONMENT, SEPARATING THE CHILD FROM ITS PARENTS ONLY WHEN NECESSARY FOR HIS WELFARE OR IN THE INTERESTS OF PUBLIC SAFETY;

(D) TO PROVIDE JUDICIAL PROCEDURES THROUGH WHICH CHAPTER 2151 OF THE REVISED CODE IS EXECUTED AND ENFORCED, AND IN WHICH THE PARTIES ARE ASSURED OF A FAIR HEARING, AND THEIR CONSTITUTIONAL AND OTHER LEGAL RIGHTS ARE RECOGNIZED AND ENFORCED.

Definitions.

Sec 2151.011. (A) AS USED IN THE REVISED CODE:

(1) "JUVENILE COURT" MEANS THE DIVISION OF THE COURT OF COMMON PLEAS OR A JUVENILE COURT SEPARATELY AND INDEPENDENTLY CREATED HAVING JURISDICTION UNDER CHAPTER 2151 OF THE REVISED CODE.

(2) "JUVENILE JUDGE" MEANS A JUDGE OF A COURT HAVING JURISDICTION UNDER CHAPTER 2151 OF THE REVISED CODE.

(B) AS USED IN SECTIONS 2151.01 TO 2151.99, INCLUDING OF THE REVISED CODE:

(1) "CHILD" MEANS A PERSON WHO IS UNDER THE AGE OF EIGHTEEN YEARS WITH THE EXCEPTION THAT ANY CHILD WHO VIOLATES A FEDERAL OR STATE LAW OR MUNICIPAL ORDINANCE PRIOR TO ATTAINING EIGHT OR NINE YEARS OF AGE SHALL BE DEEMED A "CHILD" IRRESPECTIVE OF HIS AGE AT THE TIME THE COMPLAINT IS FILED OR HEARING HAD THEREON.

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Sec. 2151.351. When a child is brought before the juvenile court for hearing to determine whether or not such child is delinquent, UNRULY, dependent, neglected, or a juvenile traffic offender in cases where it appears that such juvenile traffic offender may be adjudged delinquent, if he and his parents are indigent, the court may assign counsel to such child and his parents. Such counsel shall not be a partner in the practice of law of any attorney representing any interest adverse to the child.

Counsel so assigned to represent a child and his parents shall be paid for their services by the county, and shall receive therefor such compensation as the juvenile court may approve, not exceeding three hundred dollars and expenses as the trial court may approve.

The fees and expenses approved by the court under this section shall be taxed as part of the costs.

Right to counsel.

Sec. 2151.352. A CHILD, HIS PARENTS, CUSTODIAN, OR OTHER PERSON IN LOCO PARENTIS OF SUCH CHILD IS ENTITLED TO REPRESENTATION BY LEGAL COUNSEL AT ALL STAGES OF THE PROCEEDINGS AND IF, AS AN INDIGENT PERSON, HE IS UNABLE TO EMPLOY COUNSEL, TO HAVE THE COURT PROVIDE COUNSEL FOR HIM. IF A PARTY APPEARS WITHOUT COUNSEL, THE COURT SHALL ASCERTAIN WHETHER HE KNOWS OF HIS RIGHT TO COUNSEL AND OF HIS RIGHT TO BE PROVIDED WITH COUNSEL BY THE COURT IF HE IS AN INDIGENT PERSON. THE COURT MAY CONTINUE THE CASE TO ENABLE A PARTY TO OBTAIN COUNSEL AND SHALL PROVIDE COUNSEL FOR AN UNREPRESENTED INDIGENT PERSON UPON HIS REQUEST. THE COURT SHALL APPOINT COUNSEL FOR ANY PARTIES FOUND TO BE INDIGENT UNLESS REPRESENTATION IS COMPETENTLY AND INTELLIGENTLY WAIVED. COUNSEL MUST BE PROVIDED FOR A CHILD NOT REPRESENTED BY HIS PARENT, GUARDIAN, OR CUSTODIAN. IF THE INTERESTS OF TWO OR MORE SUCH PARTIES CONFLICT, SEPARATE COUNSEL SHALL BE PROVIDED FOR EACH OF THEM.

AN INDIGENT PERSON IS ONE WHO, AT THE TIME HIS NEED IS DETERMINED, IS UNABLE BY REASON OF LACK OF PROPERTY OR INCOME TO PROVIDE FOR THE FULL PAYMENT OF LEGAL COUNSEL AND ALL OTHER NECESSARY EXPENSES OF REPRESENTATION.

SECTION 2985.14 OF THE REVISED CODE SHALL APPLY

TO ANY COUNSEL APPOINTED BY THE COURT FOR 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.

Disposition of neglected or dependent child.

Sec. 2151.353. IF THE CHILD IS ADJUDGED A NEGLECTED OR DEPENDENT CHILD, THE COURT MAY MAKE ANY OF THE FOLLOWING ORDERS OF DISPOSITION:

(A) PERMIT THE CHILD TO REMAIN WITH HIS PARENTS, GUARDIAN, OR OTHER CUSTODIAN, SUBJECT TO SUCH CONDITIONS AND LIMITATIONS AS THE COURT PRESCRIBES, INCLUDING SUPERVISION AS DIRECTED BY THE COURT FOR THE PROTECTION OF THE CHILD;

(B) COMMIT THE CHILD TO THE TEMPORARY CUSTODY OF THE DEPARTMENT OF PUBLIC WELFARE, A COUNTY DEPARTMENT OF WELFARE WHICH HAS ASSUMED THE ADMINISTRATION OF CHILD WELFARE, COUNTY CHILDREN SERVICES BOARD, ANY OTHER CERTIFIED ORGANIZATION, THE OHIO YOUTH COMMISSION FOR THE PURPOSE OF DIAGNOSTIC STUDY AND REPORT AS PROVIDED BY DIVISION (B) OF SECTION 5139.05 OF THE REVISED CODE, EITHER PARENT OR A RELATIVE RESIDING WITHIN OR OUTSIDE THE STATE, OR A PROBATION OFFICER FOR PLACEMENT IN A CERTIFIED FOSTER HOME;

(C) COMMIT THE CHILD TO THE TEMPORARY CUSTODY OF ANY INSTITUTION OR AGENCY IN THIS STATE OR ANOTHER STATE AUTHORIZED AND QUALIFIED TO PROVIDE THE CARE, TREATMENT, OR PLACEMENT THAT THE CHILD REQUIRES;

(D) COMMIT THE CHILD PERMANENTLY TO THE COUNTY DEPARTMENT OF WELFARE WHICH HAS ASSUMED THE ADMINISTRATION OF CHILD WELFARE, COUNTY CHILDREN SERVICES BOARD, OR TO ANY OTHER CER-

Date of Analysis	For	Hessra. Mastics et al.
4/7/69	H. Judiciary	
6/17/69, p. 23	H. Third Reading	
6/24/69, p. 8	S. Judiciary	

Makes a variety of changes in the juvenile court law, with respect to categories of children covered, jurisdiction of the court, procedures, hearing, right to counsel, detention and disposition of children, expungement of the record, and other matters, as follows:

1. Definitions -- children. "Child" is defined as a person under 18. Persons violating a federal or state law or municipal ordinance prior to reaching 18 are considered children regardless of their age when the complaint is filed or hearing held. Existing law employs the same age limit, but makes no specific mention regarding treatment of the juvenile offender who reaches 18 after the violation but before any proceedings on it.

A "delinquent child" is one who commits an offense which, if committed by an adult, would constitute a crime, or who violates any lawful order of the juvenile court. This is considerably narrower than the existing definition, which also includes as delinquents children who are wayward, habitually disobedient, habitually truant from home or school, or guilty of immoral or dangerous conduct, or who attempt to marry without proper consent. At present, violation of a court order will not constitute the violator a delinquent.

A new category, the "unruly child" is created, utilizing the four categories dropped from the definition of a delinquent, i.e. children who are wayward or habitually disobedient, habitually truant, or guilty of dangerous or immoral deportment, or who attempt to marry without proper consent, are considered unruly children. In addition, a child is considered unruly if he is found in a disreputable place, patronizes a place prohibited by law, associates with ill-disposed characters, engages in an occupation prohibited by law, is in a situation dangerous to the health and morals of himself or others, or violates a law applicable only to children. With the exception of violation of a law applicable only to children, which is new, all of these last mentioned categories are presently under the definition of a "neglected child."

The definition of "neglected child" is changed by addition of any child whose parents, legal guardian, or custodian have placed or attempted to place such child into the custody of another person in violation of the placement and adoption laws. Under present law, this child would be in the "dependent child" category. Deleted from this category are children found patronizing a place prohibited by law, those associating with criminal, or immoral persons, those engaged in an unlawful occupation, and those in a situation dangerous to life, limb, health, or morals, which items are placed by the bill under the new category of "unruly child" (above). Retained in this category are abandoned children, and those who lack proper and necessary care.

The bill modifies the definition of "dependent child" only by deletion of the category placed by the bill under "neglected child," i.e. one whose parents attempt to be rid of him in violation of the placement laws. Otherwise, a dependent child

remains one who is homeless, destitute, or without proper care through no fault of his parents, or who lacks proper care or support by reason of the mental or physical condition of his parents, or whose condition or environment warrants his being placed in the care of the state, for his best interests.

2. Other definitions. The bill adds a number of new definitions to the law. "Detention" is the temporary, restrictive care of children pending disposition of their case. "Shelter" is the temporary, non-restrictive care of children pending disposition of their case. "Approved foster care" means facilities approved by the Youth Commission. "Legal custody" is a status created by court order giving the custodian the right to physical care and control of a child, to determine where and with whom he shall reside, to protect, train, and discipline him, and to provide him with food, shelter, education, and medical care. The rights arising out of legal custody must be exercised personally by the custodian, unless otherwise ordered by the court, and are subject to "residual parental rights, privileges, and responsibilities," which are defined to include, without limitation, reasonable visitation, consent to adoption, determination of the child's religious affiliation, and the responsibility for support. "Permanent custody" is a status created by court order vesting in a welfare agency or certified organization (and divesting the natural or adoptive parents) all parental rights, duties, and obligations to a child. "Temporary custody" is legal custody which may be terminated at any time in the court's discretion. "Commit" means to vest custody pursuant to court order. "Probation" is the status of a delinquent or unruly child or juvenile traffic offender, whereby pursuant to court order he is permitted to remain at home subject to supervision, or under the supervision of a welfare agency, and subject to return to the court for violation of probation. "Protective supervision" is defined as the status created by court order whereby a child is permitted to remain home under supervision, subject to return to the court during the period of protective supervision.

A number of definitions found in existing law are retained. These include: "juvenile court;" "juvenile judge;" "adult;" "foster home;" "certified foster home;" "organization;" and "certified organization."

The definitions of "relative," and "related by blood or marriage," are deleted.

3. Exclusive and original jurisdiction: This aspect of the court's jurisdiction is enlarged to include the unruly child, the adjudication of any application for a writ of habeas corpus involving the custody of a child, the adoption proceedings of a child otherwise within the court's jurisdiction (presently, the probate court has exclusive jurisdiction in adoption proceedings), the powers and jurisdiction of the probate court in Chapters 5122, and 5125, of the Revised Code over mentally ill or retarded children otherwise within the court's jurisdiction, all criminal cases charging adults with a violation under Chapter 2151, of the Revised Code, the Interstate compact on juveniles, and applications of minors for consent to marry where there is no parent or guardian to give the consent or where there is other imperative need.

The specific reference to children who are crippled or otherwise physically handicapped is deleted.

The bill specifies that such jurisdiction concerning juveniles alleged to be traffic offenders, delinquents, unruly, neglected, or dependent is to be determined by the wife set forth in the complaint against such child.

4. Original jurisdiction: This aspect of the court's jurisdiction is enlarged to include the uniform support of dependents act, and all matters duly certified by the court of common pleas involving custody and support of children after a divorce has been granted, including the power to modify judgments or decrees of the common pleas court.

The bill limits jurisdiction over a child certified to the juvenile court by any other court of competent jurisdiction in existing law, to the case where the child comes within the specified jurisdiction of the juvenile court. The bill deletes the requirement that the "presiding judge" of the court of common pleas certify to the juvenile court for hearing and determination of cases for divorce or alimony involving the custody or care of children filed in the court of common pleas.

5. Transfer to criminal court. Before a child who is alleged a delinquent can be transferred to another court for criminal prosecution, the court must find at a hearing that: (a) He was fifteen years of age or older at the time of the conduct charged; (b) There is probable cause he committed the act charged; (c) He cannot be committed to an institution for psychiatric care, or to an institution designed to care for delinquents; (d) The safety of the community requires he be legally restrained.

The determination of (c) and (d) must be made after a mental and physical examination of the child by the Youth Commission or other qualified person. Written notice of the hearing must be given to the parents or guardian and counsel for the child at least three days in advance.

Any criminal prosecution of a child 18 years of age or younger, other than after transfer as provided above, is stated by the bill to be a nullity. Upon transfer, the juvenile court is to state its reasons for the transfer. Transfer terminates the jurisdiction of the juvenile court.

6. Filing of complaint. The bill requires every complaint to state the particular facts upon which the allegation of delinquency, unruliness, neglect, dependency, or juvenile traffic offender is based. If, in a neglect or dependency case, the petitioner seeks permanent custody the complaint must specifically request the same.

7. Transfer of proceedings. The bill permits the juvenile court wherein a complaint is filed to transfer proceedings to the juvenile court in the county of the child's residence. When it appears to be in the interest of justice and convenience of the parties, the bill also permits the court to return the proceedings to the county wherein the complaint was filed.

8. Hearing and summons. The bill requires the court to fix a time for hearing not later than ten days after a complaint is filed whenever a child is in detention, and requires the issuance of a summons, before any hearing, to

parents and other persons, to be accompanied by a copy of the complaint. Whenever a complaint seeks permanent custody, or whenever a hearing is to be held to have temporary custody made permanent, the summons must contain an explanation to the parents that such custody permanently divests them of their parental rights. In addition, the summons must contain a statement advising parties of their right to counsel at the hearing and the right to appointment of counsel if they are indigent.

9. Guardian ad litem. At any proceeding concerning an alleged or adjudicated delinquent, unruly, neglected, or dependent child, the court is required to appoint a guardian to protect the interests of the child in the proceeding whenever:

(a) The child has no parent

(b) The court finds a conflict of interest between the child and his parents.

In the same manner, the court is required to appoint a guardian for the parent whenever the parent appears to be mentally incompetent or is under 18 years of age.

10. Detention procedures. When a child is brought before the court or delivered to a place of detention, an officer of the court is required to make an immediate investigation to determine if further detention is warranted. If the child is not released, an informal detention hearing is to be held within seventy-two hours. Notice of the time and place of the hearing is to be given to the parents as well as notice of right to counsel and the right of the child to remain silent with respect to delinquency allegations.

11. Finding, record. At the hearing upon the complaint, the court is required to determine from clear and convincing evidence that a child is a delinquent, unruly, neglected, or dependent child, or a juvenile traffic offender or it is required to dismiss the complaint. A complete record of all testimony and exhibits at the hearing is required to be kept unless waived by counsel or the parties and the court.

12. Counsel. The bill provides that the child and his parents are entitled to representation by legal counsel at all stages of the proceeding, and if they are indigent, to have the court provide them with counsel.

13. Taking into custody. The bill provides that a child may be taken into custody: (a) By court order whenever the court determines that such custody is necessary to keep the child from leaving the court's jurisdiction, or to protect the health or welfare of the child or others, or pursuant to other authority given the court; (b) Pursuant to the laws of arrest; (c) Whenever there are reasonable grounds to believe the child is ill, injured, or in immediate danger and his being placed in custody is necessary; (d) Whenever there are reasonable grounds to believe a child has run away from home.

removed from the jurisdiction; (c) The child has no parents or guardian; (d) The court orders detention or shelter care.

A person taking a child into custody is required, before taking the child elsewhere, to release the child to his parents and obtain their written promise to bring the child to court when requested or take the child before the court or place of detention designated by the court and give prompt written notice to the parents.

14. Fingerprints, photographs, expungement. The bill broadens the authority of police authorities by permitting a child to be fingerprinted whenever there is probable cause to believe the child has been involved in a felonious act. Present law (section 2151.31) requires the consent of the judge in each case. The bill provides that fingerprints or photographs taken of a child are to be delivered to the court after use for their original purpose and disposed of as the court may order. Fingerprints of a child must be destroyed whenever a complaint is not filed or is dismissed, or the child attains 21 years of age without a record for committing a crime between 18 and 21 years of age. A penalty of 1 to 10 days imprisonment and for \$5 to \$100 fine is provided for any person who fails to follow the procedures outlined by the bill for fingerprinting a child.

The bill also sets forth a procedure whereby any person who has been adjudicated a delinquent or unruly child may later apply to the court to have his juvenile record expunged or annulled.

15. Other rights. A child taken into custody is also given by the bill the rights of an adult who is taken into custody, including visits at any reasonable time with an attorney. The attorney of a child taken into custody is given access to any report prepared by the court as well as notice of any hearing.

16. Detention. The bill specifies that any child alleged to be a delinquent may be detained only: (a) in a licensed foster home or home approved by the court; (b) in a facility operated by a licensed child welfare agency; (c) in a detention home; (d) in a place designated by the court.

The child may be detained in a jail only if a detention home or center for delinquent children is not available or if the case is transferred to another court for criminal prosecution.

Children alleged to be neglected or dependent may be detained in a jail or in a facility with delinquent children upon order of the court. The bill provides that after June 30, 1972 no child may be placed in a building used as a jail or lockup for adults unless over 15 years of age and charged with conduct which would be a felony if committed by an adult.

17. Disposition. The bill provides, in detail, the manner of disposition of any child adjudged delinquent, unruly, neglected or dependent, or a juvenile traffic offender. Similar provisions are found in present section 2151.35 of the Revised Code.

18. Educational Costs. Under present law, the juvenile court is required to determine which school district must bear the cost of educating a child who is committed by the court to a detention home or other institution. The bill requires, in addition, that the school district pay such cost based upon the per capita cost of the educational facility within the detention home or institution in which the child is placed.

19. Restraining Order. The bill permits the court on its own motion or upon the application of a party to make an order restraining or otherwise controlling the conduct of any parent or guardian in his relationship to any child adjudged delinquent, unruly, neglected, or dependent. Notices of the motion or application and an opportunity to be heard must be given to the person against whom the order is directed.

20. Services of Prosecuting Attorney. The bill requires the prosecuting attorney, on request of the juvenile court judge, to represent the complainant at any hearing or proceeding where a child is alleged to be or is adjudicated a delinquent, unruly, neglected, or dependent child, or a juvenile traffic offender.

21. Modern Courts Resolution. The bill reflects changes made by the Modern Courts Resolution (Am. Sub. H.J.R. No. 42-1968) by designating the juvenile court a court of record within the division of domestic relations or probate of the court of common pleas and by defining a "juvenile court judge" to mean a judge of the court of common pleas. An exception is provided for Hamilton and Cuyahoga County where the juvenile court is to constitute a separate division of the court of common pleas. A further reflection of the changes made by the Modern Courts Resolution is the amendment of section 2151.17 of the Revised Code to permit the juvenile court to prescribe its own rules of procedure except where the supreme court has promulgated such rules.

22. Statement of Purpose. The bill contains a statement of purpose requiring the juvenile code (Chapter 2151, R.C.), with the exception of sections dealing with adult criminal prosecutions, to be liberally interpreted and construed to effectuate the care, protection, and mental and physical development of a child; provide procedures assuring parties of a fair hearing and the recognition of their lawful rights; remove the taint of criminality and the consequences of criminal behavior for children committing delinquent acts consistent with the protection of the public interest; and achieve, whenever possible, the supervision, care, and rehabilitation of a child in a family environment, separating him from his parents only when necessary for his own welfare or in the interests of public safety.

A description of Ohio's juvenile court system is contained in Staff Research Report No. 83 of the Legislative Service Commission, February, 1967.

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OHIO LEGISLATIVE
SERVICE COMMISSION

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**SUMMARY OF
1969 ENACTMENTS**

parties unless the board of county commissioners provides for payment; provides that hearings shall be conducted informally; requires all hearings and conferences to be held in private where only the parties, their counsel, officers and employees of the court, witnesses, and persons called to aid the court, may be present; allows a private conference to be held with a single party.

Provides that, upon hearing, the court may make such orders in respect to the conduct of the spouses and the subject of the controversy necessary to preserve the marriage or implement reconciliation; prescribes a 30 - day effective period for such orders unless the parties consent to a continuation or a longer time; permits a reconciliation agreement to be reduced to writing and, if the parties consent, an order to be given requiring compliance with such agreement; states that conciliation case files are closed, except to any party, his counsel, or other proper person, by written authority of the conciliation judge. (Effective November 19, 1969)

Am. Sub. H. B. 820—Messrs. Mastics - Tulley - Levey - McNamara - Reichel - Bartunek - Schmeier - Hollington - Miss Polcar - Messrs. Voinovich - Manning - Wilhelm - Goddard - Grube - Mayfield - Fraser - L. Hughes - Batcher - Celebrezze - Lancione - Russo - Flocca - Smith - Hing - Hill - Sweeney - Nowack - Flannery - James - Rutkowski - Delaine - Quilter - Parno - McCarthy - Schmidt - Norris - Albritton - Murdock - Hale - Regula - Bowen - Cook - Gillmor - Johnson - Leedy - Mottl - Nye - Taft - Dennis - Oasesk—Revises the juvenile court law, with respect to categories of children covered; jurisdiction of the court; procedures; hearing; right to counsel; detention and disposition of children; expungement of the record, and other matters, as follows:

Definitions. Defines "child" as a person under 18, including persons violating a federal or state law or municipal ordinance prior to reaching 18, regardless of their age when the complaint is filed or hearing held; defines "delinquent child" as one who commits an act which would constitute a crime if committed by an adult, or who violates a lawful order of the juvenile court; creates the category of "unruly child," defined as one who is wayward, habitually dis-

obedient, habitually truant, or guilty of dangerous or immoral deportment, or who attempts to marry without proper consent; defines "neglected child" as one whose parents attempt to place him in violation of the placement laws, or who is abandoned or without proper care, except that a child under treatment through prayer in lieu of medical or surgical treatment and according to a well - established religion, is not considered neglected for this reason only; defines "dependent child" as one who is homeless, destitute, or without proper care through no fault of his parents, or who lacks proper care or support by reason of the mental or physical condition of his parents, or whose condition warrants his being placed in state care for his best interests.

Creates new definitions of "juvenile court," "detention," "shelter," "approved foster care," "legal custody," "residual parental rights, privileges, and responsibilities," "permanent custody," "temporary custody," "commit," "probation," and "protective supervision."

Retains existing definitions of "juvenile judge," "adult," "foster home," "certified foster home," "organization," and "certified organization"; discards existing definitions of "relative" and "related by blood or marriage."

Jurisdiction. Enlarges the exclusive jurisdiction of the juvenile court to include unruly children, habeas corpus proceedings involving child custody, adoption of children otherwise in the court's jurisdiction, the powers and jurisdiction of the probate court over mentally ill or retarded children otherwise in the jurisdiction of the juvenile court, all criminal charges against adults under the juvenile code, the interstate compact on juveniles, and applications of minors for consent to marry; deletes the specific reference to crippled or physically handicapped children; specifies that the court's jurisdiction of juvenile traffic offenders, delinquents, and unruly, neglected, or dependent children, is determined by the date set forth in the complaint.

Expands the original jurisdiction of the juvenile court to include the uniform support of dependents act, and matters certified by the court of common pleas involving custody and support of children after a divorce has been granted, including the power to modify judgments of the common pleas court involving child custody and

support; deletes the requirement that the presiding judge of the common pleas court certify to the juvenile court cases of divorce or alimony involving custody or care of children; limits jurisdiction over a child certified to the juvenile court by any other court to cases in which the child comes within the specific jurisdiction of the juvenile court.

Transfer to criminal court. Provides that a juvenile can be transferred to another court for criminal prosecution only when: (a) he was 15 or older at the time of the conduct charged; (b) there is probable cause to believe he committed the act charged; (c) he cannot be committed to an institution for psychiatric care, or to an institution designed for the care of delinquents; and (d) the safety of the community necessitates his restraint; requires a mental and physical examination of the child; requires three - day's written notice of hearing to the child's parents, guardian, or counsel; provides that criminal prosecution of a child, except in accordance with the above procedure, is a nullity; specifies that the juvenile court must state its reasons for transfer to criminal court, and provides that upon transfer the jurisdiction of the juvenile court terminates.

Filing of complaint. Requires every complaint to state the particular facts on which it is based, and provides that if the petitioner seeks permanent custody of the child, the complaint must specifically request the same.

Custody and detention. Provides that a child may be taken into custody: (a) by court order when necessary to keep the child in the jurisdiction or to protect the child or others, or pursuant to other authority of the court; (b) pursuant to the laws of arrest; (c) upon reasonable grounds to believe the child is ill, injured, or in immediate danger, and custody is necessary; or (d) upon reasonable grounds to believe the child is a runaway.

When a child is brought before the court or detained, requires an immediate investigation to determine if further detention is warranted; if the child is not released, requires an informal detention hearing within 72 hours, with notice of hearing to the parents advising of the right to counsel and the right of the child against self-incrimination.

Specifies that an alleged delinquent child may be detained only: (a) in a licensed foster home

or home approved by the court; (b) in a facility operated by a licensed child welfare agency; (c) in a detention home; or (d) in a place designed by the court; permits a child to be detained in jail only if a detention home or center for delinquent children is not available, or if the case is transferred to another court for criminal prosecution; provides that alleged neglected or dependent children may be detained in jail or in a facility with delinquent children upon court order.

Transfer of proceedings. Permits the juvenile court in which a complaint is filed to transfer the case to the juvenile court in the county where the child resides; permits return of the case to the county where the complaint was filed, in the interests of justice and convenience of the parties.

Right to counsel; other rights. Gives a child taken into custody the same rights as an adult, including visits at any reasonable time with an attorney; gives counsel access to any report prepared by the court as well as notice of any hearing; provides that the child and his parents are entitled to representation by legal counsel at all stages of the proceedings, and, if indigent, are entitled to have counsel provided.

Guardian ad litem. Where a child has no parent, or there is a conflict of interest between the child and his parents, requires appointment of a guardian ad litem for the child; similarly, requires appointment of a guardian ad litem for the parent who is mentally incompetent or under 18.

Hearing and summons. Directs that hearing on a complaint must be within 10 days when the child is in detention; requires issuance of the summons, with a copy of the complaint, to the parents or other proper persons, and provides that the summons must contain a statement on the right to counsel and to appointment of counsel, where a complaint seeks permanent custody, requires the summons to explain its consequences.

Requires the county prosecutor, at the request of the juvenile judge, to represent the complainant at any hearing where a child is alleged to be delinquent, unruly, neglected, or dependent, or a juvenile traffic offender.

Finding; record. Requires clear and convincing evidence for the court to determine that a child is delinquent, unruly, neglected, or dependent.

dent, or a juvenile traffic offender; directs that a record of all testimony and oral proceedings must be kept at the request of the parties, in the same manner as required in common pleas court.

Disposition. Makes detailed provisions for the disposition of any child adjudged delinquent, unruly, neglected, or dependent, or a juvenile traffic offender, similar to provisions in existing law.

Permits the court on its own motion or the motion of a party to issue orders restraining or controlling the conduct of any parent or guardian in his relationship with any child adjudged delinquent unruly, neglected, or dependent; requires notice of the motion and opportunity to be heard to the person against whom the order is directed.

Requires the school district determined as responsible for the cost of educating a child committed to a detention home or institution by the juvenile court, to pay such cost based on the per capita cost of the educational facility within the detention home or institution in which the child is placed.

Fingerprints, photographs, expungement. Permits police authorities to fingerprint any child accused of a felonious act; requires fingerprints and photographs to be delivered to the court after use for their original purpose, and disposed of as the court may direct; provides for the destruction of fingerprints when a complaint is not filed or is dismissed, or when the child reaches 21 having a clean record from age 18; prescribes a penalty of a fine of from \$5 to \$100 or one to 10 days in jail, or both, for failure to follow the provisions relating to fingerprinting juveniles.

Provides a procedure whereby any person adjudged a delinquent or unruly child may have his juvenile record expunged or annulled.

H. J. R. 42 (107th General Assembly). Reflects changes made by sections 1 through 6 of Article IV, Ohio Constitution, adopted May 7, 1968, by designating the juvenile court a court of record within the domestic relations or probate divisions of the common pleas court, and by defining a juvenile judge as a judge of the court of common pleas, excepts Hamilton county, where the juvenile court is designated a separate division of the court of common pleas, and Cuyahoga county, where the court is given separate and independent status; permits the juvenile

court to prescribe its own rules of procedure, except where pre-empted by rules prescribed by the supreme court. (Effective November 19, 1969)

4. ACTIONS AND PROCEDURES

Am. S. B. 42—Messrs. Regula - Pottenger— Prohibits a guardian from opening his ward's safety deposit box, until its contents are examined in the guardian's presence by an employee of the county auditor, a verified report of the audit is filed in the probate court, and a release is issued to the guardian by the court. (Effective September 15, 1969)

Am S. B. 103—Messrs. Gillmor - Bowen - Schmidt - Fraser - Smith - Levey—Excepts specified actions from time limitations for filing claims against a decedent's estate, so that the action is governed by the statute of limitations otherwise applicable to such actions, as follows: (1) wrongful death; (2) actions for trespass on real property, recovery of personal property or real property, recovery of personal property or for taking or detaining it, fraud, and injury to plaintiff's rights not arising on contract and not enumerated in certain other statutes of limitations; (3) libel, slander, assault, battery, malicious prosecution, false imprisonment, malpractice, or upon a statute for a penalty or forfeiture; (4) actions on a bond. (Effective November 21, 1969)

Am. S. B. 104—Messrs. Gillmor - Schmidt - Smith - Fraser - Levey - Celebrezze - Reichel— Authorizes the awarding of reasonable funeral expenses in a wrongful death action; requires the verdict to separately state amounts thus awarded; requires that the amount for funeral expenses to be given to the personal representative of the deceased to be expended by him in payment of such expenses. (Effective November 21, 1969)

Am. S. B. 234—Messrs. Cook - Corts - Novak - Taft - Mottl - Guyer - Cruze - Smith - Batcheelder - Fraser—Specifies persons who may give consent to the performance of a post-mortem examination by a physician or surgeon upon the body of a deceased person, and requires the consent be given by such persons, who must be of sound

AN ACT

To amend sections 2151.28, 2151.314, 2151.352, 2301.24, 2941.51, 2945.72, and 2953.08, to enact sections 120.01 to 120.06, 120.18 to 120.19, 120.23 to 120.28, 120.33, 120.38 to 120.40, and to repeal sections 2151.351, 2941.50, 2941.52, and 2953.24 of the Revised Code to establish state, county, and joint county public defenders, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2151.28, 2151.314, 2151.352, 2301.24, 2941.51, 2945.72, and 2953.08 be amended, and sections 120.01, 120.02, 120.03, 120.04, 120.05, 120.06, 120.13, 120.14, 120.15, 120.16, 120.17, 120.18, 120.23, 120.24, 120.25, 120.26, 120.27, 120.28, 120.33, 120.38, 120.39, and 120.40 of the Revised Code be enacted to read as follows:

Sec. 120.01. THERE IS HEREBY CREATED THE OHIO PUBLIC DEFENDER COMMISSION TO PROVIDE, SUPERVISE, AND COORDINATE LEGAL REPRESENTATION AT STATE EXPENSE FOR INDIGENT AND OTHER PERSONS. THE COMMISSION SHALL CONSIST OF NINE MEMBERS, ONE OF WHOM SHALL BE CHAIRMAN. THE CHAIRMAN SHALL BE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE. FOUR MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE FROM EACH OF THE TWO MAJOR POLITICAL PARTIES. FOUR MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE FROM EACH OF THE TWO MAJOR POLITICAL PARTIES. FOUR MEMBERS SHALL BE APPOINTED BY THE SUPREME COURT, TWO OF WHOM SHALL BE FROM EACH OF THE TWO MAJOR POLITICAL PARTIES. THE CHAIRMAN, AND NOT LESS THAN TWO OF THE MEMBERS APPOINTED BY THE GOVERNOR, AND NOT LESS THAN TWO OF THE MEMBERS APPOINTED BY THE SUPREME COURT SHALL BE ATTOR-

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NEYS ADMITTED TO THE PRACTICE OF LAW IN THIS STATE.

WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE GOVERNOR AND THE SUPREME COURT SHALL MAKE INITIAL APPOINTMENTS TO THE COMMISSION OF THE INITIAL APPOINTMENTS MADE TO THE COMMISSION BY THE GOVERNOR, THE APPOINTMENT OF THE CHAIRMAN SHALL BE FOR A TERM OF TWO YEARS, OF THE OTHER FOUR APPOINTMENTS, ONE SHALL BE FOR A TERM ENDING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, ONE SHALL BE FOR A TERM ENDING TWO YEARS AFTER THAT DATE, ONE SHALL BE FOR A TERM ENDING THREE YEARS AFTER THAT DATE, AND ONE SHALL BE FOR A TERM ENDING FOUR YEARS AFTER THAT DATE. OF THE INITIAL APPOINTMENTS MADE TO THE COMMISSION BY THE SUPREME COURT, ONE SHALL BE FOR A TERM ENDING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, ONE SHALL BE FOR A TERM ENDING TWO YEARS AFTER THAT DATE, ONE SHALL BE FOR A TERM ENDING THREE YEARS AFTER THAT DATE, AND ONE SHALL BE FOR A TERM ENDING FOUR YEARS AFTER THAT DATE. THEREAFTER, TERMS OF OFFICE SHALL BE FOR FOUR YEARS, EACH TERM ENDING ON THE SAME DAY OF THE SAME MONTH OF THE YEAR AS DID THE TERM WHICH IT SUCCEEDS. ANY MEMBER APPOINTED TO FILL A VACANCY OCCURRING PRIOR TO THE EXPIRATION OF THE TERM FOR WHICH HIS PREDECESSOR WAS APPOINTED SHALL HOLD OFFICE FOR THE REMAINDER OF SUCH TERM. ANY MEMBER SHALL CONTINUE IN OFFICE SUBSEQUENT TO THE EXPIRATION DATE OF HIS TERM UNTIL HIS SUCCESSOR TAKES OFFICE OR UNTIL A PERIOD OF SIXTY DAYS HAS ELAPSED, WHICHEVER OCCURS FIRST.

Sec. 120.02. THE MEMBERS OF THE OHIO PUBLIC DEFENDER COMMISSION SHALL MEET AT LEAST QUARTERLY, AND AT SUCH OTHER TIMES AS CALLED BY THE CHAIRMAN OR AT THE REQUEST OF THE STATE PUBLIC DEFENDER. MEMBERS OF THE COMMISSION SHALL RECEIVE AN AMOUNT FIXED PURSUANT TO SECTION 124.14 OF THE REVISED CODE PER DIEM FOR EVERY MEETING OF THE BOARD THEY ATTEND, TOGETHER WITH THEIR NECESSARY EXPENSES, AND MILEAGE FOR EACH MILE NECESSARILY TRAVELED.

Sec. 120.03. (A) THE OHIO PUBLIC DEFENDER COMMISSION SHALL APPOINT THE STATE PUBLIC DEFENDER AND MAY REMOVE HIM FROM OFFICE ONLY FOR GOOD CAUSE.

(B) THE COMMISSION SHALL ESTABLISH RULES FOR THE CONDUCT OF THE OFFICES OF THE COUNTY AND

If the complaint contains a prayer for permanent custody in a neglect or dependency case, the summons served on the parents shall contain an explanation that the granting of such custody permanently divests the parents of their parental rights and privileges.

(B) The court may endorse upon the summons an order directing the parents or guardian of the child, 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.

(C) 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.

(D) If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or 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 shall serve the summons and shall take the child into immediate custody and bring him forthwith to the court.

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

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

(G) Any person whose presence is considered necessary and who is not summoned may be subpoenaed to appear and testify at the hearing. Any one 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 witness fees as are allowed in the court of common pleas.

Sec. 2151.314. 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 his detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

If he is not so released, a complaint under section 2151.27 of the Revised Code shall be filed and an informal detention hearing

held promptly, not later than seventy-two hours after he is placed in detention, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and, if they can be found, to his parents, guardian, or other custodian. 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, and of the child's right to remain silent with respect to any allegation of delinquency. Unless it appears from the hearing that the child's detention or shelter care is required under the provisions of section 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 filing of his affidavit stating these facts, the court shall rehear the matter without unnecessary delay.

Sec. 2151.352. A child, his parents, custodian or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to employ counsel, to have the court provide counsel PROVIDED for him PURSUANT TO CHAPTER 120. OF THE REVISED CODE. If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and if he is an indigent person. The court may continue the case to enable a party to obtain counsel OR TO BE REPRESENTED BY THE COUNTY PUBLIC DEFENDER OR THE JOINT COUNTY PUBLIC DEFENDER and shall provide counsel for an unrepresented indigent person PURSUANT TO CHAPTER 120. OF THE REVISED CODE. The court shall appoint counsel for any parties between whom there is a dispute in connection with and settlement of the case unless representation is competently and intelligently waived. Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

An indigent person is one who at the time his need is determined is unable by reason of lack of property or income to provide for the full payment of legal counsel and all other necessary expenses of representation.

Section 2935.14 of the Revised Code shall apply 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

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code. *

Robert W. Shuprio

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of OCTOBER, A. D. 2000.

Walter B. Barkwell

Secretary of State.

File No. 150

Effective Date July 21st 2000

*This certification has required my designation of the following in the left-hand margin as a proper code section number:

4723.171

Robert W. Shuprio
Director, Legislative Service Commission

(123rd General Assembly)
(Amended Substitute Senate Bill Number 179)

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Loss of Div's

AN ACT

38

To amend sections 2151.35 and 2945.17 of the Revised Code to remove the right to jury trial for an adult in a truancy case filed jointly against a truant child and the parent, guardian, or other person having care of the child and to amend sections 109.42, 109.54, 109.573, 133.01, 181.22, 307.02, 307.022, 329.05, 2151.01, 2151.011, 2151.022, 2151.07, 2151.08, 2151.10, 2151.11, 2151.12, 2151.14, 2151.141, 2151.18, 2151.211, 2151.23, 2151.24, 2151.25, 2151.26, 2151.27, 2151.271, 2151.28, 2151.29, 2151.31, 2151.311, 2151.312, 2151.313, 2151.314, 2151.315, 2151.34, 2151.341, 2151.343, 2151.35, 2151.352, 2151.354, 2151.356, 2151.357, 2151.358, 2151.359, 2151.3510, 2151.3511, 2151.36, 2151.38, 2151.62, 2151.65, 2151.651, 2151.652, 2151.655, 2151.78, 2151.79, 2151.99, 2153.16, 2301.03, 2301.31, 2701.03, 2744.01, 2744.03, 2919.24, 2921.32, 2923.211, 2923.32, 2923.33, 2923.34, 2923.36, 2923.44, 2923.45, 2925.42, 2925.43, 2929.01, 2929.12, 2929.23, 2930.12, 2930.13, 2938.02, 2941.141, 2941.142, 2941.144, 2941.145, 2941.146, 3109.41, 3301.121, 3313.66, 3321.19, 3321.22, 3730.07, 3730.99, 4109.08, 5103.03, 5120.16, 5120.172, 5139.01, 5139.02, 5139.04, 5139.05, 5139.06, 5139.07, 5139.11, 5139.18, 5139.191, 5139.20,

(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;

(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.

Sec. 2151.352. A child ~~has~~ OR THE CHILD'S parents, custodian, or other person in loco parents of such child is entitled to representation by legal counsel at all stages of the proceedings UNDER THIS CHAPTER OR CHAPTER 2152. OF THE REVISED CODE and if, as an indigent person, ~~the~~ ANY SUCH PERSON is unable to employ counsel, to have counsel provided for ~~him~~ THE PERSON pursuant to Chapter 120. of the Revised Code. If a party appears without counsel, the court shall ascertain whether ~~he~~ THE PARTY knows of his THE PARTY'S right to counsel and of ~~his~~ THE PARTY'S right to be provided with counsel if ~~he~~ THE PARTY is an indigent person. The court may continue the case to enable a party to obtain counsel or to be represented by the county public defender or the joint county public defender and shall provide counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by ~~his~~ 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.

Sec. 2151.354. (A) If the child is adjudicated an unruly child, the court may:

(1) Make any of the dispositions authorized under section 2151.353 of the Revised Code;

(2) Place the child on ~~probation~~ COMMUNITY CONTROL under any SANCTIONS, SERVICES, AND conditions that the court prescribes, AS DESCRIBED IN DIVISION (A)(3) OF SECTION 2152.19 OF THE REVISED CODE;

(3) Suspend or revoke the driver's license, probationary driver's license, or temporary instruction permit issued to the child and suspend or revoke the registration of all motor vehicles registered in the name of the child. A child whose license or permit is so suspended or revoked is ineligible for issuance of a license or permit during the period of suspension or revocation. At the end of the period of suspension or revocation the child shall not be reissued a license or permit until the child has paid any applicable reinstatement

the court prescribes, if the court's revenue for the preceding year equals or exceeds the expenditures for the operation of the court payable from the city treasury, or the annual compensation that the legislative authority prescribes, if the court's revenue for the preceding year is less than the expenditures for the operation of the court. Generally, in a municipal court with a population in the court territory of 100,000 or more, the clerk receives annual compensation equal to 85% of the salary of a judge of the court.

The act eliminates the specific compensation provision applicable to the clerk of the Medina Municipal Court. Thus, under the act, the general rule applicable to municipal courts with a population in the court territory of 100,000 or more applies. Under the act, then, the clerk of the Medina Municipal Court receives annual compensation equal to 85% of the salary of the judge of the court.

Removal of the right to counsel for indigents in certain civil juvenile proceedings

(R.C. 2151.352)

Continuing law gives any child, a child's parents or custodian, or any other person in loco parentis of a child the right to representation by legal counsel at all stages of proceedings in juvenile courts under R.C. Chapter 2151. or 2152. Under former law, if the person was indigent and unable to employ counsel, the person was entitled to have counsel appointed pursuant to R.C. Chapter 120. Counsel appointed pursuant to R.C. Chapter 120. include state public defenders, county public defenders, joint county public defenders, and counsel appointed through a county appointed counsel system.

For certain civil matters only, the act removes an indigent person's right to appointed counsel when the person is a party to a proceeding in juvenile court. Under the act, a child, a 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 a juvenile court proceeding. However, if the party is indigent, the party is not entitled to appointed counsel in a civil matter if the court is exercising jurisdiction pursuant to one of the following bases listed in R.C. 2151.23(A)(2), (3), (9), (10), (11), (12), or (13); (B)(2) through (6); (C); (D); or (F)(1) or (2):

(1) To determine the custody of any child not a ward of another Ohio court;

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



(3) To hear and determine requests for the extension of temporary custody agreements and requests for court approval of certain permanent custody agreements;

(4) To hear and determine applications for consent to marry;

(5) 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 abuse, or an action for support under the Uniform Interstate Family Support Act;

(6) To hear an action under R.C. 121.38 concerning an agency dispute with a county Family and Children First Council's decision regarding a child's services;

(7) To hear and determine a violation of the compulsory attendance laws;

(8) To determine the paternity of a child born out of wedlock;

(9) Any action under the Uniform Interstate Family Support Act;

(10) To hear and determine an application for a child support order for any child if the child is not a ward of another Ohio court;

(11) To hear and determine an action under R.C. 3111.28 regarding the rescission of an acknowledgment of paternity;

(12) To hear and determine a motion for relief from a paternity determination or support order under R.C. 3119.961;

(13) Certain actions for divorce or legal separation that involve the custody or care of children;

(14) All matters as to custody and support of children after a divorce decree has been granted.

Criminal justice regional information system

(R.C. 305.28, 2949.092, and 2949.093)

The act allows a board of county commissioners of any county containing 55 or more law enforcement agencies, by resolution, to elect to participate in a criminal justice regional information system. The board may either create and maintain a new criminal justice regional information system or participate in an existing criminal justice regional information system. The act defines a "criminal justice regional information system" as a governmental computer system that

