

ORIGINAL

IN THE SUPREME COURT OF OHIO

In Re: H.V. : Case No. 2012-1688  
: :  
: : On Appeal from the Lorain  
: : County Court of Appeals  
: : Ninth Appellate District  
: :  
: : C.A. Case Nos. 11CA010139  
: : 11CA010140

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**MERIT BRIEF OF APPELLANT H.V.**

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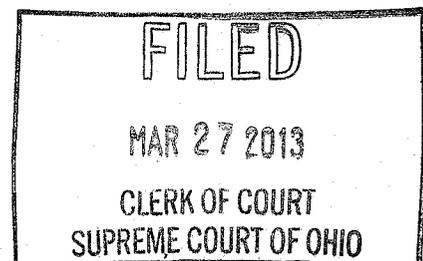


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## STATEMENT OF THE CASE AND FACTS

In December 2010, the Lorain County Juvenile Court found H.V. (“Henry”) delinquent of attempted domestic violence, a fourth-degree felony if committed by an adult, in case number 10JV30861. (December 8, 2010 Judgment Entry). The court committed Henry to DYS for a minimum period of six months, maximum of his twenty-first birthday. (December 8, 2010 Judgment Entry). Henry requested a judicial release, but the juvenile court denied his request. (January 4, 2011 Judgment Entry). Henry completed his minimum sentence, and was released to supervised release (“parole”). While still on parole, the juvenile court found Henry delinquent for the offense of felonious assault, a second-degree felony if committed by an adult, in case number 11JV34396. (November 23, 2011 Judgment Entry; A-8). The court committed Henry to DYS for the new felonious assault adjudication for a minimum period of one year, maximum of his twenty-first birthday. (November 23, 2011 Judgment Entry; A-8). The court also revoked Henry’s parole in the attempted domestic violence case, and committed him to DYS for a minimum period of ninety days, to be served consecutively to the commitment for felonious assault. (November 23, 2011 Judgment Entry; A-10).

Henry timely appealed, and argued that the juvenile court erred by committing him to DYS for the parole violation for a minimum period that was longer than the statutory minimum of thirty days, and erred by ordering the parole revocation to be served consecutively to the new commitment. The court of appeals affirmed the juvenile court’s decision. *In re H.V.*, 9th Dist. Nos. 11CA010139 & 11CA010140, 2012-Ohio-3742.

## ARGUMENT

**FIRST PROPOSITION OF LAW:** When a juvenile court revokes a child's supervised release, the court is limited to determining whether the child should be returned to the Department of Youth Services, and may not commit a child for a prescribed period of time.

**SECOND PROPOSITION OF LAW:** A juvenile court may not order a revocation of supervised release to be served consecutively to a new commitment to the Department of Youth Services.

### A. Introduction

This case is about statutory interpretation and the statutory authority of juvenile courts. The General Assembly set forth in plain language, juvenile courts' power to commit children to the Department of Youth Services. The Revised Code specifies the lengths of commitments permitted, and the specific, limited circumstances in which a court may order commitments to be served consecutively to each other. R.C. 2152.16; 2152.17; 2152.22. To a contrary, when a child has violated the terms of parole, the Revised Code authorizes the juvenile court to return the child to DYS, but vests discretion to the DYS Release Authority to determine the length of the revocation. 5139.52(F). This means that DYS, not the juvenile court, determines the length of the revocation. In this case, the juvenile court exceeded its statutory authority when it committed Henry for a longer term of revocation than is authorized by law, and ordered that commitment to be served consecutively to his new commitment.

### B. Statutory authority for the revocation of a child's supervised release

When a juvenile court commits a child to DYS for a felony adjudication, the court must impose an indefinite commitment consisting of a minimum period of a length designated by statute for the particular offense and felony level, and a maximum period of the child's 21<sup>st</sup>

birthday.<sup>1</sup> R.C. 2152.16(A). In most cases, the child is released from DYS in one of two ways: the juvenile court may grant the child a judicial release to court or DYS supervision before the child has completed the minimum period of commitment pursuant to R.C. 2152.22; or, the DYS Release Authority grants the child supervised release (“parole”) any time after the child has served the minimum period of commitment, pursuant to R.C. 5139.51. If the child has been granted a judicial release pursuant to R.C. 2152.22, the revocation of supervision and return to DYS is governed by R.C. 2152.22(D). If the child has completed his minimum period of commitment and is released to parole pursuant to R.C. 5139.51, revocation of his supervision and return to DYS is governed by R.C. 5139.52(F).

In this case, Henry completed his original minimum commitment for attempted domestic violence and was released to supervision on parole by the DYS Release Authority. Therefore, the revocation of Henry’s supervision was governed by R.C. 5139.52(F).

When a juvenile court finds that a child who is on supervised release as defined by R.C. 5139.01(A)(22), has violated one or more terms of his parole, the court may either order the child returned to DYS or make any other disposition authorized by law. R.C. 5139.52(F). The statute requires:

If the court orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of thirty days, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period.

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<sup>1</sup> For an act that would be murder or aggravated murder if committed by an adult, a court may commit a child until his 21<sup>st</sup> birthday. R.C. 2152.16(A)(1)(a).

R.C. 5139.52(F). Although the court can return the child to DYS, it is the DYS Release Authority that has the discretion to hold the child for a period longer than 30 days. R.C. 5139.52(F). The Revised Code does not provide for a child to be committed to DYS by a juvenile court for a specific minimum commitment.

Upon its review of the statutory language, the Second District Court of Appeals determined, when a court finds that the child has committed a serious violation, it may either revoke the supervised release, or impose “another authorized disposition,” such as an inpatient program, house arrest, or confinement in juvenile detention. *In re I.M.*, 2d Dist. No. 12 CA 20, 2012-Ohio-3847, ¶ 25. If the child is returned to DYS, “the child shall remain institutionalized for a minimum period of thirty days,” and “the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release \* \* \*.” *Id.*

**a. Conflict among Ohio’s appellate districts**

The Second District Court of Appeals reasoned in *I.M.* that the 30-day minimum period is a “limitation on DYS’s authority,” and not carte blanche to the juvenile court to choose any length of minimum commitment: “We disagree with the Eighth, Ninth, and Eleventh Districts, which have held that R.C. 5139.52(F) establishes a minimum, not an exact, amount of time for which *the trial court* must recommit the juvenile.” (Emphasis sic.) *In re I.M.* at ¶ 28, citing *In re A.N.*, 11th Dist. Nos. 2011-A-57 and 2011-A-58, 2012-Ohio-1789, ¶ 12; *In re T.K.*, 9th Dist. No. 26076, 2012-Ohio-906; *In re D.B.*, 8th Dist. No. 97445, 2012-Ohio-2505. Unlike the initial disposition in which the juvenile court imposes a minimum and maximum period and has control of the commitment period, “R.C. 5139.52(F) expressly limits the juvenile court’s discretion to the determination of whether to return the juvenile to DYS, and that statute grants DYS more authority to determine a release date \* \* \*.” *I.M.* at ¶ 30.

Conversely, the Eleventh District held that “a juvenile court is not prohibited from imposing a definite sentence of more than 30 days for a parole violation,” reasoning that “the statute does not speak to a maximum allowable time, nor does it require the court to impose an indefinite term \* \* \*.” *A.N.* at ¶ 12. Similarly, the Ninth District Court of Appeals reasoned that although R.C. 5139.52(F) requires that the child “*remain institutionalized* for a minimum of thirty days,” juvenile courts are not prohibited from committing a child to a “longer stay, not to exceed his 21st birthday.” (Emphasis sic.) *In re T.K.*, 2012-Ohio-906, ¶ 10. The Eighth District agreed with the Ninth, finding, “The statute does not limit the court from sentencing a child to a longer stay.” *In re D.B.*, 2012-Ohio-2505, ¶ 19.

This Court should reject the reasoning that a juvenile court may revoke a child’s supervision for any length of time. This reasoning violates the tenets of statutory interpretation, and moreover, the Eighth, Ninth, and Eleventh Districts have misread the statute. R.C. 5139.52(F) authorizes the juvenile court to revoke the supervision, and vests the DYS Release Authority with the authority to determine whether the child shall be held longer than the statutory thirty-day minimum period. R.C. 5139.52(F).

In *In re I.M.*, the Second District Court of Appeals correctly applied the plain meaning of R.C. 5139.52(F), which does not permit the juvenile court to impose a prescribed minimum period of institutionalization. *I.M.* at ¶ 30. In contrast, the Ninth District below reasoned that “R.C. 5139.52(F) prohibits a child from being released from DYS in less than 30 days, but does not limit the court from imposing a sentence longer than 30 days.” *H.V.* at ¶ 7. Like the Eighth and Eleventh Districts, the Ninth District improperly extended the plain meaning of the statute to give juvenile courts discretion to choose however long a commitment it wishes for a parole violation, including a commitment that may be longer than the original DYS commitment for the underlying felony. *Id.*

Recently, the Twelfth District Court of Appeals agreed with the Second District, and held that for a serious violation of parole, “[u]nder R.C. 5139.52(F), the available sanctions \* \* \* are either a revocation of his supervised release or another authorized disposition (e.g. half-way house, inpatient drug program, house arrest, confinement in the local juvenile detention facility, etc.)” *In re L.B.B.*, 12th Dist. No. CA2012-01-011, 2012-Ohio-4641, ¶ 12. Like the Second District, the Twelfth District reasoned that the Revised Code grants the Release Authority the power to determine a child’s release date. “The juvenile court may not impose a longer minimum period of institutionalization [than 30 days] as doing so would encroach upon DYS’s statutory authority to determine a child’s release date following a parole violation and recommitment.” *Id.*

The language in R.C. 5139.52(F) is plain and unambiguous, and makes sense when considered with the purpose of the juvenile justice system. *See Meeks v. Papadopulos*, 62 Ohio St.2d. 187, 190, 404 N.E.2d 159 (1980) (“Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion [to] resort to rules of statutory interpretation.”). The statute comports with the overriding purposes of juvenile delinquency dispositions, “to provide for the care, protection, and mental and physical development of children[,] \* \* \* protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and rehabilitate the offender.” R.C. 2152.01. The purposes of delinquency dispositions are best served when, after a serious parole violation, the Release Authority reviews a youth’s progress and determines whether he is appropriate for release; not when a juvenile court is given unbridled discretion to select any length of commitment for a parole violation.

**C. Juvenile courts are without authority to impose consecutive DYS commitments for parole violations**

A juvenile court's authority to impose consecutive DYS commitments is set forth in R.C. 2152.17. Revised Code 2152.17(A)-(E) applies to consecutive commitments for various specifications and underlying offenses. Revised Code Section 2152.17(F) does not allow a court to impose a consecutive commitment for a parole violation:

If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to section 2152.13 or 2152.16 of the Revised Code, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services[...]

R.C. 2152.17(F).

Revised Code Section 2152.17(F) authorizes consecutive commitments after adjudication for two or more acts that would be felonies if committed by an adult, and when the court commits the child to DYS "for those acts" pursuant to R.C. 2152.13 (imposes a SYO dispositional sentence) or 2152.16 (DYS commitment for a new felony disposition). R.C. 2152.17(F). It does not authorize consecutive commitments for violations under R.C. 5139.52(F).

In this case, the juvenile court committed Henry to DYS for a new commitment in case 11JV34396, pursuant to R.C. 2152.16, and ordered his parole revocation in case 10JV30861, pursuant to R.C. 5139.52(F), to run consecutively. Revised Code Section 2152.17 does not permit a consecutive commitment for a parole revocation under R.C. 5139.52(F). Although Henry's offense in case 11JV34396 was a felony offense that may have served as the predicate behavior for the parole rule violation, the parole violation itself is not a new felony—it is an administrative rule violation. R.C. 5139.52. A juvenile court cannot order a consecutive

commitment for a parole revocation under R.C. 5139.52(F) by relying on the felony behavior of felonious assault, because that would result in consecutive commitments for the same act twice.

The court of appeals found that “R.C. 2152.17(F) only applies when the child has been adjudicated delinquent for the commission of two or more acts that would be felonies,” and so R.C. 2152.17(F) “does not apply” to Henry in this case. The court concluded that “just because R.C. 2152.17(F) does not apply that fact (sic) does not necessitate the conclusion that the court was without authority to sentence H.V. to consecutive sentences for his parole violation.” *H.V.* at ¶ 10. The court of appeals resorted to the general rule that juvenile courts have broad discretion to craft an appropriate disposition for a child, and ignored the fact that the R.C. 2152.17(F) enumerates the circumstances in which a juvenile court may impose a consecutive commitment, which do not include a commitment for a parole revocation under R.C. 5139.52(F).

The canon, *expressio unius est exclusio alterius*, (expression of one thing suggests the exclusion of others) is relevant here, and supports that the General Assembly intended and specified—in direct and express terms—when, and under what specific circumstances, a court can impose consecutive DYS commitments. *See Myers v. City of Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353 852 N.E.2d 1176 (2006), ¶ 24; *State ex rel. Rear Door Bookstore v. Tenth District Court of Appeals*, 63 Ohio St. 3d 354, 361, 588 N.E.2d 116 (1992); *Investors REIT One v. Jacobs*, 46 Ohio St. 3d 176, 181, 546 N.E.2d 206 (1989) (reasoning that the express inclusion of certain enumerated alternatives implies the exclusion of other non-enumerated alternatives); and R.C. 2152.17. The specific statutory provisions are limiting, and the direct and express terms indicate that a juvenile court may only order DYS commitments to run consecutively to each other when those commitments are either for specifications or felony adjudications that the court ordered under R.C. 2152.13 or 2152.16. R.C. 2152.17(F).

The juvenile court below disregarded the Revised Code's requirements and illegally ordered consecutive commitments for Henry's parole revocation and new adjudication. The court of appeals ignored that the Revised Code specifies the circumstances in which a court may impose a consecutive commitment, and relied upon the general rule that juvenile courts have broad discretion to craft a disposition. *H.V.* at ¶ 10. The court of appeals violated the rules of statutory interpretation, and improperly extended the juvenile court's authority.

The Ohio Administrative Code provision that governs parole revocations and new prison terms for adult offenders in Department of Rehabilitation and Correction is instructive.<sup>2</sup> It provides that when a parolee is sentenced to prison for a new offense, his parole is automatically revoked, and the Ohio Parole Board decides whether to recommend parole again, or to add additional time. OAC 5120:1-1-21(A). The common pleas court does not impose a separate sentence for the revocation; the Parole Board decides when to grant parole. Just as the Ohio Parole Board decides when to release adult offenders whose indefinite sentences have been revoked by a new felony offense, the DYS Release Authority decides when to release juveniles who are returned to DYS for a new commitment and a parole violation.

**D. This Court must interpret the relevant statutes against the State, and liberally in favor of juvenile parole violators.**

This Court should reject the interpretation of R.C. 5139.52(F) that gives a juvenile court unfettered discretion to order a consecutive commitment of any length under the statutory catch-all that the court "may make any other disposition of the child authorized by law that the court considers proper." *In re A.N.*, 11th Dist. Nos. 2011-A-57 and 2011-A-58, 2012-Ohio-1789, ¶ 12; *In re T.K.*, 9th Dist. No. 26076, 2012-Ohio-906; *In re D.B.*, 8th Dist. No. 97445, 2012-Ohio-

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<sup>2</sup> This does not apply to those who are supervised on post-release control, and receive definite revocation commitments or judicial sanctions, but for those on "old law" parole or offenses that automatically carry indefinite sentences.

2505. Instead, this Court must hold that R.C. 5139.52(F) means what it says, that the statutorily authorized minimum period for which a child “shall remain institutionalized” for a revocation of supervised release is “a minimum period of thirty days.” R.C. 5139.52(F). Further, this Court should hold that the specifically enumerated circumstances in which a court may order commitments to run consecutively to each other, do not include a revocation under R.C. 5139.52(F). This Court must hold juvenile courts to the plain language of the statute, and not interpret it so broadly as to permit courts to impose lengthier DYS commitments than are authorized by law.

The statutes must be interpreted against the State, and liberally in the delinquent child’s favor. *See, e.g., State v. Williams*, 114 Ohio St.3d 103, 2007-Ohio-3268, 868 N.E.2d 969, ¶ 10 (“R.C. 2901.04 requires that statutes defining offenses or penalties shall be strictly construed against the state and liberally in favor of the defendant. Therefore, this section of the law is subject to strict interpretation against the state, and must be liberally interpreted in favor of the accused.”). There is no ambiguous language in R.C. 5139.52(F) regarding the dispositions available to a court when a juvenile is found to have committed a serious violation of the terms of parole. The court may order the youth returned to DYS, in which case the child’s term of institutionalization is to be a minimum period of 30 days, and the child’s release is to be determined by the DYS Release Authority. R.C. 5139.52(F); *In re I.M.*, 2d Dist. No. 12 CA 20, 2012-Ohio-3847, ¶ 25; *In re L.B.B.*, 12th Dist. No. CA2012-01-011, 2012-Ohio-4641, ¶ 12.

Further, there is no ambiguous language in R.C. 2152.17 as to the circumstances in which a court may impose consecutive commitments—after adjudication for two or more acts that would be felonies if committed by an adult, when the court commits the child to DYS “for those acts” pursuant to R.C. 2152.13 (imposes a SYO dispositional sentence) or 2152.16 (DYS commitment for a new felony disposition). R.C. 2152.17(F). This Court should hold that the

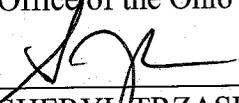
juvenile court was not authorized to impose a 90-day minimum commitment for Henry's violation of supervised release, or order that his parole revocation be served consecutively to his new commitment.

**E. Conclusion**

For the foregoing reasons, this Court should reverse the decision of the Ninth District Court of Appeals, and remand the case for further proceedings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Merit Brief of Appellant H.V. and the Appendix to the Merit Brief of Appellant H.V.**, was forwarded by regular U.S. Mail, postage prepaid, this 27th day of March, 2013 to Chris A. Pyanowski, Assistant Lorain County Prosecutor, 225 Court Street, 3rd Floor, Elyria, Ohio 44035 and by email to Chris.Pyanowski@LCProsecutor.org.

  
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IN THE SUPREME COURT OF OHIO

In Re: H.V.

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: County Court of Appeals  
: Ninth Appellate District  
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: C.A. Case Nos. 11CA010139  
: 11CA010140

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**APPENDIX TO**

**MERIT BRIEF OF MINOR CHILD-APPELLANT H.V.**

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IN THE SUPREME COURT OF OHIO

12-1688

IN RE: H.V.,  
adjudicated delinquent child

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

On Appeal from the Lorain  
County Court of Appeals  
Ninth Appellate District

C.A. Case Nos. 11CA010139  
11CA010140

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NOTICE OF APPEAL OF MINOR CHILD-APPELLANT H.V.

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FILED  
OCT 05 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF MINOR CHILD-APPELLANT H.V.**

H.V. hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Judgment Entry of the Lorain County Court of Appeals, Ninth Appellate District, entered in Court of Appeals Case Nos. 11CA010139 and 11CA010140 on August 20, 2012. This case involves a felony-level offense, a substantial constitutional question, and is of public or great general interest.

Respectfully submitted,

Office of the Ohio Public Defender



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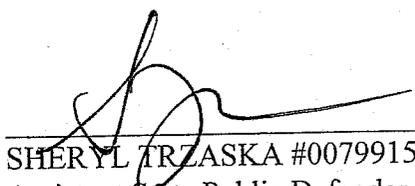
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**CERTIFICATE OF SERVICE**

A copy of the foregoing **Notice of Appeal of Minor Child-Appellant H.V.** was served by ordinary U.S. Mail, postage-prepaid, this 5<sup>th</sup> day of October, 2012, to the office of Dennis P. Will, Lorain County Prosecutor, 225 Court Street, 3rd Floor, Elyria, Ohio 44035.



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STATE OF OHIO

COUNTY OF LORAIN

IN RE: H.V.

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

2012 AUG 21 12:36 PM

C.A. Nos. 11CA010139  
11CA010140

9th APPELLATE DISTRICT

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE Nos. 10 JV 30861 & 11 JV 34396

DECISION AND JOURNAL ENTRY

Dated: August 20, 2012

WHITMORE, Presiding Judge.

{¶1} Appellant, H.V., appeals from judgments of the Lorain County Court of Common Pleas, Juvenile Division. This Court affirms.

I

{¶2} In December 2010, in case number 10JV30861, the trial court found H.V. to be a delinquent child for committing the offense of attempted domestic violence, a felony of the fourth degree. The court sentenced H.V. to the custody of the Ohio Department of Youth Services ("DYS") for an indefinite period of six months to twenty-one years of age. H.V. was released on parole approximately three months later.

{¶3} While still on parole, the trial court found H.V. to be a delinquent child in case number 11JV34396, for committing the offense of felonious assault, a felony of the second degree. The court sentenced H.V. to the custody of DYS for an indefinite period of one year up until the age of twenty-one. The court also revoked H.V.'s parole for the domestic violence case,

2505, ¶18-19; *In re A.N.*, 11th Dist. Nos. 2011-A-0057 & 2011-A-0058, 2012-Ohio 1789, ¶10-13. Accordingly, H.V.'s first assignment of error is overruled.

Assignment of Error Number Two

THE JUVENILE COURT ERRED IN COMMITTING THE YOUTH TO A  
CONSECUTIVE SENTENCE.

{¶8} In his second assignment of error, H.V. argues that the court erred when it ran his sentences consecutively. Specifically, H.V. argues that R.C. 2152.17(F) does not allow his parole violation to be run consecutively to the felonious assault because the parole violation would not be a felony if committed by an adult. H.V. argues that (1) the parole violation is not a new felony, but instead is an administrative rule violation, and therefore, does not implicate R.C. 2152.17(F) and (2) without R.C. 2152.17(F) the court was not permitted to run his sentences consecutively. We agree that R.C. 2152.17(F) is not applicable, but disagree that the court lacked authority to run H.V.'s sentence for his parole violation consecutively.

{¶9} R.C. 2152.17(F) states, in relevant part:

[i]f a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization \* \* \*, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services \* \* \*.

R.C. 2152.17(F) only applies when the child has been adjudicated delinquent for the commission of two or more acts that would be felonies. H.V. was adjudicated delinquent in 2010 for an act that constituted attempted domestic violence. H.V. was subsequently released on parole and committed another act which constituted felonious assault. The court adjudicated him delinquent for that single act of felonious assault. Because the court was not, at that time, adjudicating H.V. delinquent for two or more acts, R.C. 2152.17(F) does not apply. However, just because R.C.

violation of parole, the court had the inherent authority to run his sentence consecutive to his sentence for the new offense of felonious assault.

{¶13} At the dispositional hearing, the probation department, DYS, and H.V.'s mother all expressed concern for H.V.'s safety and requested the court commit H.V. to the custody of DYS. After reviewing the record, we cannot conclude that the court abused its discretion in its order of disposition. Accordingly, H.V.'s second assignment of error is overruled.

Assignment of Error Number Three

PLAIN ERROR WAS COMMITTED WHEN TRIAL COUNSEL FAILED TO OBJECT TO THE JUVENILE COURT'S IMPROPER SENTENCE.

{¶14} In his third assignment of error, H.V. argues that his counsel committed plain error when he failed to object to his sentence of more than 30 days for his parole violation, and when it ran his sentences consecutively. Because of the reasons set forth above in assignments of error one and two, we conclude the court did not err, and therefore, cannot find plain error. H.V.'s third assignment of error is overruled.

Assignment of Error Number Four

APPELLANT WAS NOT AFFORDED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION AND OHIO CONSTITUTION.

{¶15} In his fourth assignment of error, H.V. argues that his counsel was ineffective for failing to object to the alleged sentencing errors. Because we have concluded that the court did not err in sentencing, we cannot conclude that counsel was ineffective for failing to object. H.V.'s fourth assignment of error is overruled.

BELFANCE, J.  
CONCURRING IN JUDGMENT ONLY.

{¶17} With respect to H.V.'s second assignment of error, I concur that R.C. 2152.17(F) does not apply for the reasons stated in the main opinion. I note that H.V. has based his argument entirely on the notion that R.C. 2152.17(F) does not apply, without considering the possibility that other authority would allow such a result. Because I believe there is authority which would support the trial court's decision to impose consecutive sentences, I concur in the majority's judgment. See *In re Caldwell*, 76 Ohio St.3d 156 (1996); R.C. 2152.19(A)(8); R.C. 5139.52(F); R.C. 2152.22(E).

APPEARANCES:

KARRI A. PECK, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and CHRIS A. PYANOWSKI, Assistant Prosecuting Attorney, for Appellee.

FILED  
DOMESTIC RELATIONS

2011 NOV 23 AM 11:49

LORAIN COUNTY  
JUVENILE DIVISION

- CC: FILE ✓
- APA PYANOWSKI ✓
- ATTY ROBINSON ✓
- ATTY MCGUIRE ✓
- CCO: SZILAGYI ✓
- RESTITUTION ✓
- MERIT ✓
- LORAIN CITY SCHOOLS ✓
- LCBOE ✓
- CSEA ✓
- ODYS: HAVERMAN ✓
- WILSON ✓
- LCDH ✓
- ZEPEDA ✓
- JUV/PARENT ✓

11-23  
TMA

**JOURNAL ENTRY**  
**COURT OF COMMON PLEAS**  
**Juvenile Division**  
**Lorain County, Ohio**

Case No: 11 JV 34396

IN THE MATTER OF:

H.     V.

Delinquent Child

Date: 11/23/2011

DISPOSITIONAL HEARING HAD.

COUNT I: JUVENILE TO RECEIVE A PERMANENT COMMITMENT TO THE OHIO DEPARTMENT OF YOUTH SERVICES. SAID COMMITMENT TO RUN CONSECUTIVE TO THE REVOCATION UNDER CASE #10JV30861.

MOTHER, S.           L.           , TO ASSUME ALL MEDICAL AND DENTAL COSTS.

LORAIN CITY SCHOOLS TO ASSUME COSTS OF EDUCATION, SUBJECT TO RE-DETERMINATION BY THE DEPARTMENT OF EDUCATION.

CSEA IS HEREBY ORDERED TO ESTABLISH, REDIRECT, OR REINSTATE SUPPORT ORDER AGAINST MOTHER, S.           L.           (ADDRESS:

DEB 2

), PAYABLE TO LORAIN COUNTY DOMESTIC  
RELATIONS COURT EFFECTIVE 11/23/2011. JUVENILE: H. V.

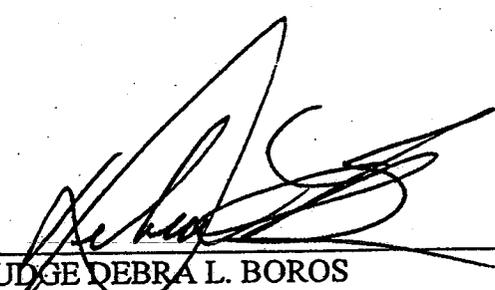
CSEA IS HEREBY ORDERED TO ESTABLISH, REDIRECT, OR REINSTATE  
SUPPORT ORDER AGAINST FATHER, E. V. (ADDRESS:  
UNKNOWN), PAYABLE TO LORAIN COUNTY DOMESTIC RELATIONS COURT  
EFFECTIVE 11/23/2011. JUVENILE: H. V.

RESTITUTION, IF ANY, FOR OUT OF POCKET EXPENSES.

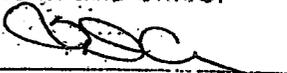
LETTER OF APOLOGY TO THE VICTIM, TO BE COMPLETED WITHIN ONE  
WEEK.

THROUGH REVIEW OF THE DOCUMENTATION AND AVAILABLE  
INFORMATION, THE COURT FINDS THAT ALL REASONABLE EFFORTS HAVE  
BEEN MADE TO PREVENT THE REMOVAL OF SAID CHILD FROM THE HOME;  
HOWEVER, THOSE EFFORTS HAVE BEEN UNSUCCESSFUL. FURTHER, THE  
COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD TO BE  
PLACED AT THE OHIO DEPARTMENT OF YOUTH SERVICES.

COUNT II: COURT COSTS OF \$99.00 TO BE ASSESSED, COSTS SUSPENDED  
DUE TO INDIGENCE.

  
\_\_\_\_\_  
JUDGE DEBRA L. BOROS

I hereby certify that the foregoing is true  
and correct as shown on the original  
on file in this office.

By  Deputy

2011 NOV 23 AM 11:49

LORAIN COUNTY  
JUVENILE DIVISION

CC: FILE —  
APA PYANOWSKI —  
ATTY ROBINSON —  
ATTY MCGUIRE —  
CCO: SZILAGYI —  
LORAIN CITY SCHOOLS —  
LCBOE —  
CSEA —  
ODYS: HAVERMAN —  
WILSON —  
LCDH —  
ZEPEDA —  
JUV/PARENT —

11-23  
tmo

**JOURNAL ENTRY**

**COURT OF COMMON PLEAS  
Juvenile Division  
Lorain County, Ohio**

**Case No: 10 JV 30861**

IN THE MATTER OF:

H.        V.

Delinquent Child

Date: 11/23/2011

FURTHER DISPOSITIONAL HEARING HAD.

COUNT I: PAROLE PREVIOUSLY GRANTED ON 03/17/2011 IS HEREBY REVOKED FOR A MINIMUM PERIOD OF 90 DAYS. JUVENILE IS HEREBY GIVEN A PERMANENT COMMITMENT TO THE OHIO DEPARTMENT OF YOUTH SERVICES.

MOTHER, S.            L.            TO ASSUME ALL MEDICAL AND DENTAL COSTS.

LORAIN CITY SCHOOLS TO ASSUME COSTS OF EDUCATION, SUBJECT TO RE-DETERMINATION BY THE DEPARTMENT OF EDUCATION.

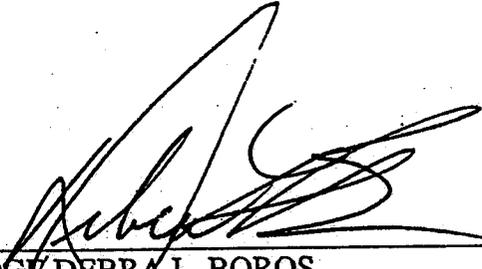
CSEA IS HEREBY ORDERED TO ESTABLISH, REDIRECT, OR REINSTATE SUPPORT ORDER AGAINST MOTHER, S.            L.            (ADDRESS:

DSS 2

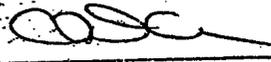
), PAYABLE TO LORAIN COUNTY DOMESTIC  
RELATIONS COURT EFFECTIVE 11/23/2011. JUVENILE: H. V.

CSEA IS HEREBY ORDERED TO ESTABLISH, REDIRECT, OR REINSTATE  
SUPPORT ORDER AGAINST FATHER, E. V. (ADDRESS:  
UNKNOWN), PAYABLE TO LORAIN COUNTY DOMESTIC RELATIONS COURT  
EFFECTIVE 11/23/2011. JUVENILE: H. V.

THROUGH REVIEW OF THE DOCUMENTATION AND AVAILABLE  
INFORMATION, THE COURT FINDS THAT ALL REASONABLE EFFORTS HAVE  
BEEN MADE TO PREVENT THE REMOVAL OF SAID CHILD FROM THE HOME;  
HOWEVER, THOSE EFFORTS HAVE BEEN UNSUCCESSFUL. FURTHER, THE  
COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD TO BE  
PLACED AT THE OHIO DEPARTMENT OF YOUTH SERVICES.

  
\_\_\_\_\_  
JUDGE DEBRA L. BOROS

I hereby certify this to be a true  
and correct copy of the original  
on file in this office.

By  Deputy

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

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*ORC Ann. 2152.01 (2013)*

§ 2152.01. Purposes of dispositions under chapter; application of Chapter 2151

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

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

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

**HISTORY:**

148 v S 179. Eff 1-1-2002.

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

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ORC Ann. 2152.13 (2013)

§ 2152.13. Serious youthful offender dispositional sentence

(A) A juvenile court shall impose a serious youthful dispositional sentence on a child when required under division (B)(3) of *section 2152.121 of the Revised Code*. In such a case, the remaining provisions of this division and divisions (B) and (C) do not apply to the child, and the court shall impose the mandatory serious youthful dispositional sentence under division (D)(1) of this section.

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

- (1) Obtaining an indictment of the child as a serious youthful offender;
- (2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;
- (3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;
- (4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:
  - (a) The date of the child's first juvenile court hearing regarding the complaint;
  - (b) The date the juvenile court determines not to transfer the case under *section 2152.12 of the Revised Code*.

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

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

(C) (1) A child for whom a serious youthful offender dispositional sentence is sought by a prosecuting attorney has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is

eligible by age for a serious youthful offender dispositional sentence. The grand jury may be impaneled by the court of common pleas or the juvenile court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**HISTORY:**

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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

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ORC Ann. 2152.16 (2013)

§ 2152.16. Commitment to youth services department for secure confinement; release by department; effect of prior delinquency adjudication

(A) (1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of the department of youth services for secure confinement as follows:

(a) For an act that would be aggravated murder or murder if committed by an adult, until the offender attains twenty-one years of age;

(b) For a violation of *section 2923.02 of the Revised Code* that involves an attempt to commit an act that would be aggravated murder or murder if committed by an adult, a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of twenty-one years of age;

(c) For a violation of *section 2903.03, 2905.01, 2909.02, or 2911.01* or division (A) of *section 2903.04 of the Revised Code* or for a violation of any provision of *section 2907.02 of the Revised Code* other than division (A)(1)(b) of that section when the sexual conduct or insertion involved was consensual and when the victim of the violation of division (A)(1)(b) of that section was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of twenty-one years of age;

(d) If the child is adjudicated a delinquent child for committing an act that is not described in division (A)(1)(b) or (c) of this section and that would be a felony of the first or second degree if committed by an adult, for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of twenty-one years of age.

(e) For committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult or for a violation of division (A) of *section 2923.211 of the Revised Code*, for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of twenty-one years of age.

(2) In each case in which a court makes a disposition under this section, the court retains control over the commitment for the minimum period specified by the court in divisions (A)(1)(a) to (e) of this section. During the minimum period, the department of youth services shall not move the child to a nonsecure setting without the permission of the court that imposed the disposition.

(B) (1) Subject to division (B)(2) of this section, if a delinquent child is committed to the department of youth services under this section, the department may release the child at any time after the minimum period specified by the court in division (A)(1) of this section ends.

(2) A commitment under this section is subject to a supervised release or to a discharge of the child from the custody of the department for medical reasons pursuant to *section 5139.54 of the Revised Code*, but, during the minimum period specified by the court in division (A)(1) of this section, the department shall obtain court approval of a supervised release or discharge under that section.

(C) If a child is adjudicated a delinquent child, at the dispositional hearing and prior to making any disposition pursuant to this section, the court shall determine whether the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance. If the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance, the court, for purposes of entering an order of disposition of the delinquent child under this section, shall consider the previous delinquent child adjudication as a conviction of a violation of the law or ordinance in determining the degree of the offense the current act would be had it been committed by an adult. This division also shall apply in relation to the imposition of any financial sanction under *section 2152.19 of the Revised Code*.

**HISTORY:**

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

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 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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*ORC Ann. 2152.17 (2013)*

§ 2152.17. Commitment for specification; consecutive periods of commitment

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

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

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

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

(B) (1) If a child is adjudicated a delinquent child for committing an act, other than a violation of *section 2923.12 of the Revised Code*, that would be a felony if committed by an adult, if the court determines that the child is complicit in another person's conduct that is of such a nature that the other person would be guilty of a specification of the type set forth in *section 2941.141, 2941.144, 2941.145, or 2941.146 of the Revised Code* if the other person was an adult, if the other person's conduct relates to the child's underlying delinquent act, and if the child did not furnish, use, or dispose of any firearm that was involved with the underlying delinquent act or with the other person's specification-related conduct, in addition to any other disposition the court imposes for the underlying delinquent act, the court may commit the child to the department of youth services for the specification for a definite period of not more than one year, subject to division (D)(2) of this section.

(2) Except as provided in division (B)(1) of this section, division (A) of this section also applies to a child who is an accomplice regarding a firearm specification of the type set forth in *section 2941.1412, 2941.1414, or 2941.1415 of*

*the Revised Code* to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

(C) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in *section 2941.142 of the Revised Code* in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child for the specification to the legal custody of the department of youth services for institutionalization in a secure facility for a definite period of not less than one and not more than three years, subject to division (D)(2) of this section, and the court also shall commit the child to the department for the underlying delinquent act.

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

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

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

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

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

(F) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to *section 2152.13 or 2152.16 of the Revised Code*, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services, provided that those periods of commitment shall be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to division (A), (B), (C), or (D)(1) of this section. A court shall not commit a delinquent child to the legal custody of the department of youth services under this division for a period that exceeds the child's attainment of twenty-one years of age.

#### **HISTORY:**

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 130. Eff 4-7-2003.\*; 150 v H 52, § 1, eff. 6-1-04; 151 v H 95, § 1, eff. 8-3-06; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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

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*ORC Ann. 2152.22* (2013)

§ 2152.22. Court control of child following commitment to department; judicial release

(A) When a child is committed to the legal custody of the department of youth services under this chapter, the juvenile court relinquishes control with respect to the child so committed, except as provided in divisions (B), (C), (D), and (H) of this section or in *sections 2152.82 to 2152.86 of the Revised Code*. Subject to divisions (B), (C), and (D) of this section, *sections 2151.353 and 2151.412 to 2151.421 of the Revised Code, sections 2152.82 to 2152.86 of the Revised Code*, and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

The department shall not release the child from a department facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court in division (A)(1) of *section 2152.16 of the Revised Code* and any term of commitment imposed under *section 2152.17 of the Revised Code* or prior to the child's attainment of twenty-one years of age, except upon the order of a court pursuant to division (B), (C), or (D) of this section or in accordance with *section 5139.54 of the Revised Code*.

(B) (1) Unless the court grants judicial release under division (D)(1)(b) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department desires to release a child during a period specified in division (B)(1) of this section, it shall request the court that committed the child to grant a judicial release of the child to court supervision under this division. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for a judicial release to court supervision under this division from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following: approve the release by journal entry; schedule within thirty days after the request is received a time for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release to court supervision within the applicable period. The additional request may be made no earlier than thirty days after the filing of the prior request for a judicial release to court supervision. Upon the filing of a second request for a judicial release to court supervision, the court shall

either approve or disapprove the release by journal entry or schedule within thirty days after the request is received a time for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (B)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves the release under this division, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

(C) (1) Unless the court grants judicial release under division (D)(1)(b) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child to department of youth services supervision under this division during the second half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* has ended.

(2) If the department desires to release a child during a period specified in division (C)(1) of this section, it shall request the court that committed the child to grant a judicial release to department of youth services supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to department of youth services supervision. Upon receipt of a request for judicial release to department of youth services supervision, the child, or the child's parent, or upon its own motion at any time during that period, the court shall do one of the following: approve the release by journal entry; schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for release under this division by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of ninety days that the child is in a secure department facility after the filing of a prior request for early release. Upon the filing of a request for release under this division subsequent to an initial request, the court shall either approve or disapprove the release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (C)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and shall order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to department of youth services supervision.

If the court approves the judicial release to department of youth services supervision, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (F) of this section that shall include the conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by the department as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional conditions, it shall enter those additional conditions in its journal and shall send to the department a copy of the journal entry of the additional conditions.

If the court approves the judicial release to department of youth services supervision, the actual date on which the department shall release the child is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in a department facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in a department facility while the department finds the suitable placement.

(D) (1) Subject to division (D)(3) of this section, the court that commits a delinquent child to the department of youth services may grant judicial release of the child under this division at any time after the expiration of one of the following periods of time:

(a) Except as otherwise provided in division (D)(1)(b) of this section, if the child was committed to the department for a prescribed minimum period and a maximum period not to exceed the child's attainment of twenty-one years, the court may grant judicial release of the child at any time after the expiration of the prescribed minimum term for which the child was committed to the department.

(b) If the child was committed to the department for both one or more definite periods under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* and a period of the type described in division (D)(1)(a) of this section, all of the prescribed minimum periods of commitment imposed under division (A), (B), (C), or (D) of *section 2152.17 of the Revised Code* and the prescribed period of commitment of the type described in division (D)(1)(a) of this section shall be aggregated for purposes of this division, and the court may grant judicial release of the child at any time after the expiration of one year after the child begins serving the aggregate period of commitment.

(2) If a court grants a judicial release of a child under division (D)(1) of this section, the release shall be a judicial release to department of youth services supervision, if the release is granted during a period described in division (C)(1) of this section, and the second and third paragraphs of division (C)(3) of this section apply regarding the release. In all other cases, the release shall be a judicial release to court supervision, and the second paragraph of division (B)(3) of this section applies regarding the release.

(3) A court at the time of making the disposition of a child shall provide notice in the order of disposition that the judge is retaining jurisdiction over the child for the purpose of a possible grant of judicial release of the child under division (D)(1) of this section. The failure of a court to provide this notice does not affect the authority of the court to grant a judicial release under that division and does not constitute grounds for setting aside the child's delinquent child adjudication or disposition or for granting any post-adjudication relief to the child.

(4) The department of youth services, a child committed to the department, or the parents of the child, during a period specified in division (D)(1) of this section, may request the court that committed the child to grant a judicial release of the child under that division. Upon receipt of a request for judicial release of a child under this division from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following:

(a) Approve the request by journal entry;

(b) Schedule within thirty days after the request is received a time for a hearing on whether the child is to be released;

(c) Reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, division (C)(2) of this section applies regarding the making of additional requests.

If the court schedules a hearing under this division to consider the judicial release, the first paragraph of division (B)(3) of this section applies regarding the hearing.

(E) If a child is released under division (B), (C), or (D) of this section and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with the conditions of the child's judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under division (C) of this section or under division (D) of this section under department supervision, divisions (A) to (E) of *section 5139.52 of the Revised Code* apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was held in a secure department facility prior to the child's judicial release shall be considered as time served in fulfilling the prescribed period of institutionalization that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with which the department has contracted to provide a revocation program.

(F) The department of youth services, prior to the release of a child pursuant to division (C) of this section or pursuant to division (D) of this section on department supervision, shall do all of the following:

(1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release;

(2) Completely discuss the conditions of the plan prepared pursuant to division (F)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;

(3) Have the plan prepared pursuant to division (F)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) or (D) of this section;

(4) Prior to the child's release, file a copy of the treatment plan prepared pursuant to division (F)(1) of this section with the committing court and the juvenile court of the county in which the child is to be placed.

(G) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section or released pursuant to division (D) of this section on judicial release to department supervision at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions for altering the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(H) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in *section 5139.51 of the Revised Code* with respect to the granting of supervised release by the release authority and to perform the functions specified in *section 5139.52 of the Revised Code* with respect to violations of the conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

#### **HISTORY:**

148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 152 v S 10, § 1, eff. 1-1-08; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012.

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TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2901. GENERAL PROVISIONS  
IN GENERAL

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*ORC Ann. 2901.04 (2013)*

§ 2901.04. Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 148 v S 107. Eff 3-23-2000; 150 v S 146, § 1, eff. 9-23-04.

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TITLE 51. PUBLIC WELFARE  
 CHAPTER 5139. YOUTH SERVICES

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*ORC Ann. 5139.01 (2013)*

§ 5139.01. Definitions; department of youth services created

(A) As used in this chapter:

- (1) "Commitment" means the transfer of the physical custody of a child or youth from the court to the department of youth services.
- (2) "Permanent commitment" means a commitment that vests legal custody of a child in the department of youth services.
- (3) "Legal custody," insofar as it pertains to the status that is created when a child is permanently committed to the department of youth services, means a legal status in which the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control the child; the responsibility to provide the child with food, clothing, shelter, education, and medical care; and the right to determine where and with whom the child shall live, subject to the minimum periods of, or periods of, institutional care prescribed in *sections 2152.13 to 2152.18 of the Revised Code*; provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities.
- (4) Unless the context requires a different meaning, "institution" means a state facility that is created by the general assembly and that is under the management and control of the department of youth services or a private entity with which the department has contracted for the institutional care and custody of felony delinquents.
- (5) "Full-time care" means care for twenty-four hours a day for over a period of at least two consecutive weeks.
- (6) "Placement" means the conditional release of a child under the terms and conditions that are specified by the department of youth services. The department shall retain legal custody of a child released pursuant to division (C) of *section 2152.22 of the Revised Code* or division (C) of *section 5139.06 of the Revised Code* until the time that it discharges the child or until the legal custody is terminated as otherwise provided by law.
- (7) "Home placement" means the placement of a child in the home of the child's parent or parents or in the home of the guardian of the child's person.
- (8) "Discharge" means that the department of youth services' legal custody of a child is terminated.
- (9) "Release" means the termination of a child's stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.
- (10) "Delinquent child" has the same meaning as in *section 2152.02 of the Revised Code*.
- (11) "Felony delinquent" means any child who is at least ten years of age but less than eighteen years of age and who is adjudicated a delinquent child for having committed an act that if committed by an adult would be a felony.

"Felony delinquent" includes any adult who is between the ages of eighteen and twenty-one and who is in the legal custody of the department of youth services for having committed an act that if committed by an adult would be a felony.

(12) "Juvenile traffic offender" has the same meaning as in *section 2152.02 of the Revised Code*.

(13) "Public safety beds" means all of the following:

(a) Felony delinquents who have been committed to the department of youth services for the commission of an act, other than a violation of *section 2911.01 or 2911.11 of the Revised Code*, that is a category one offense or a category two offense and who are in the care and custody of an institution or have been diverted from care and custody in an institution and placed in a community corrections facility;

(b) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a misdemeanor or a felony;

(c) Children who satisfy all of the following:

(i) They are at least ten years of age but less than eighteen years of age.

(ii) They are adjudicated delinquent children for having committed acts that if committed by an adult would be a felony.

(iii) They are committed to the department of youth services by the juvenile court of a county that has had one-tenth of one per cent or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years.

(iv) They are in the care and custody of an institution or a community corrections facility.

(d) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution are serving disciplinary time for having committed an act described in division (A)(18)(a), (b), or (c) of this section, and who have been institutionalized or institutionalized in a secure facility for the minimum period of time specified in divisions (A)(1)(b) to (e) of *section 2152.16 of the Revised Code*.

(e) Felony delinquents who are subject to and serving a three-year period of commitment order imposed by a juvenile court pursuant to divisions (A) and (B) of *section 2152.17 of the Revised Code* for an act, other than a violation of *section 2911.11 of the Revised Code*, that would be a category one offense or category two offense if committed by an adult.

(f) Felony delinquents who are described in divisions (A)(13)(a) to (e) of this section, who have been granted a judicial release to court supervision under division (B) or (D) of *section 2152.22 of the Revised Code* or a judicial release to the department of youth services supervision under division (C) or (D) of that section from the commitment to the department of youth services for the act described in divisions (A)(13)(a) to (e) of this section, who have violated the terms and conditions of that release, and who, pursuant to an order of the court of the county in which the particular felony delinquent was placed on release that is issued pursuant to division (E) of *section 2152.22 of the Revised Code*, have been returned to the department for institutionalization or institutionalization in a secure facility.

(g) Felony delinquents who have been committed to the custody of the department of youth services, who have been granted supervised release from the commitment pursuant to *section 5139.51 of the Revised Code*, who have violated the terms and conditions of that supervised release, and who, pursuant to an order of the court of the county in which the particular child was placed on supervised release issued pursuant to division (F) of *section 5139.52 of the Revised Code*, have had the supervised release revoked and have been returned to the department for institutionalization. A felony delinquent described in this division shall be a public safety bed only for the time during which the felony delinquent is institutionalized as a result of the revocation subsequent to the initial thirty-day period of institutionalization required by division (F) of *section 5139.52 of the Revised Code*.

(14) Unless the context requires a different meaning, "community corrections facility" means a county or multi-county rehabilitation center for felony delinquents who have been committed to the department of youth services and diverted from care and custody in an institution and placed in the rehabilitation center pursuant to division (E) of *section 5139.36 of the Revised Code*.

(15) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are under the exclusive control of its staff and to ensure that, because of that exclusive control, no child who has been institutionalized in the facility may leave the facility without permission or supervision.

(16) "Community residential program" means a program that satisfies both of the following:

(a) It is housed in a building or other structure that has no associated major restraining construction, including, but not limited to, a security fence.

(b) It provides twenty-four-hour care, supervision, and programs for felony delinquents who are in residence.

(17) "Category one offense" and "category two offense" have the same meanings as in *section 2151.26 of the Revised Code*.

(18) "Disciplinary time" means additional time that the department of youth services requires a felony delinquent to serve in an institution, that delays the felony delinquent's planned release, and that the department imposes upon the felony delinquent following the conduct of an internal due process hearing for having committed any of the following acts while committed to the department and in the care and custody of an institution:

(a) An act that if committed by an adult would be a felony;

(b) An act that if committed by an adult would be a misdemeanor;

(c) An act that is not described in division (A)(18)(a) or (b) of this section and that violates an institutional rule of conduct of the department.

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

(20) "Revocation" means the act of revoking a child's supervised release for a violation of a term or condition of the child's supervised release in accordance with *section 5139.52 of the Revised Code*.

(21) "Release authority" means the release authority of the department of youth services that is established by *section 5139.50 of the Revised Code*.

(22) "Supervised release" means the event of the release of a child under this chapter from an institution and the period after that release during which the child is supervised and assisted by an employee of the department of youth services under specific terms and conditions for reintegration of the child into the community.

(23) "Victim" means the person identified in a police report, complaint, or information as the victim of an act that would have been a criminal offense if committed by an adult and that provided the basis for adjudication proceedings resulting in a child's commitment to the legal custody of the department of youth services.

(24) "Victim's representative" means a member of the victim's family or another person whom the victim or another authorized person designates in writing, pursuant to *section 5139.56 of the Revised Code*, to represent the victim with respect to proceedings of the release authority of the department of youth services and with respect to other matters specified in that section.

(25) "Member of the victim's family" means a spouse, child, stepchild, sibling, parent, stepparent, grandparent, other relative, or legal guardian of a child but does not include a person charged with, convicted of, or adjudicated a delinquent child for committing a criminal or delinquent act against the victim or another criminal or delinquent act arising out of the same conduct, criminal or delinquent episode, or plan as the criminal or delinquent act committed against the victim.

(26) "Judicial release to court supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to division (B) of *section 2152.22 of the Revised Code* during the period specified in that division or that is granted by a court to court supervision pursuant to division (D) of that section during the period specified in that division.

(27) "Judicial release to department of youth services supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to division (C) of *section 2152.22 of the Revised Code* during the period specified in that division or that is granted to department supervision by a court pursuant to division (D) of that section during the period specified in that division.

(28) "Juvenile justice system" includes all of the functions of the juvenile courts, the department of youth services, any public or private agency whose purposes include the prevention of delinquency or the diversion, adjudication, detention, or rehabilitation of delinquent children, and any of the functions of the criminal justice system that are applicable to children.

(29) "Metropolitan county criminal justice services agency" means an agency that is established pursuant to division (A) of *section 5502.64 of the Revised Code*.

(30) "Administrative planning district" means a district that is established pursuant to division (A) or (B) of *section 5502.66 of the Revised Code*.

(31) "Criminal justice coordinating council" means a criminal justice services agency that is established pursuant to division (D) of *section 5502.66 of the Revised Code*.

(32) "Comprehensive plan" means a document that coordinates, evaluates, and otherwise assists, on an annual or multi-year basis, all of the functions of the juvenile justice systems of the state or a specified area of the state, that conforms to the priorities of the state with respect to juvenile justice systems, and that conforms with the requirements of all federal criminal justice acts. These functions include, but are not limited to, all of the following:

- (a) Delinquency;
- (b) Identification, detection, apprehension, and detention of persons charged with delinquent acts;
- (c) Assistance to crime victims or witnesses, except that the comprehensive plan does not include the functions of the attorney general pursuant to *sections 109.91 and 109.92 of the Revised Code*;
- (d) Adjudication or diversion of persons charged with delinquent acts;
- (e) Custodial treatment of delinquent children;
- (f) Institutional and noninstitutional rehabilitation of delinquent children.

(B) There is hereby created the department of youth services. The governor shall appoint the director of the department with the advice and consent of the senate. The director shall hold office during the term of the appointing governor but subject to removal at the pleasure of the governor. Except as otherwise authorized in *section 108.05 of the Revised Code*, the director shall devote the director's entire time to the duties of the director's office and shall hold no other office or position of trust or profit during the director's term of office.

The director is the chief executive and administrative officer of the department and has all the powers of a department head set forth in Chapter 121. of the Revised Code. The director may adopt rules for the government of the department, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the department's records, papers, books, documents, and property. The director shall be an appointing authority within the meaning of Chapter 124. of the Revised Code. Whenever this or any other chapter or section of the Revised Code imposes a duty on or requires an action of the department, the duty or action shall be performed by the director or, upon the director's order, in the name of the department.

#### **HISTORY:**

130 v 1211 (Eff 10-7-63); 130 v 1211 (Eff 3-10-64); 130 v PtII, § 8 (Eff 12-16-64); 131 v 239 (Eff 7-22-65); 132 v S 277 (Eff 11-7-67); 132 v S 235 (Eff 11-14-67); 137 v H 1 (Eff 8-26-77); 139 v H 440 (Eff 11-23-81); 139 v S 550 (Eff 11-26-82); 140 v H 291 (Eff 7-1-83); 144 v S 331 (Eff 11-13-92); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 145 v H 335 (Eff 12-9-94); 146 v H 117 (Eff 6-30-95); 147 v H 215 (Eff 6-30-97, Eff 9-29-97)\*; 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 149 v H 94, § 1 (Eff 9-5-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 94, § 6. Eff 1-1-2002; 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 6-30-05; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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Current through Legislation passed by the 130th Ohio General Assembly  
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\*\*\* Annotations current through November 9, 2012 \*\*\*

TITLE 51. PUBLIC WELFARE  
CHAPTER 5139. YOUTH SERVICES  
RELEASE OR DISCHARGE

**Go to the Ohio Code Archive Directory**

*ORC Ann. 5139.51 (2013)*

§ 5139.51. Supervised release or discharge; requirements for release

(A) The release authority of the department of youth services shall not release a child who is in the custody of the department of youth services from institutional care or institutional care in a secure facility and shall not discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of twenty-one years of age, whichever is applicable under the order of commitment, other than as is provided in *section 2152.22 of the Revised Code*. The release authority may conduct periodic reviews of the case of each child who is in the custody of the department and who is eligible for supervised release or discharge after completing the minimum period of time or period of time in an institution prescribed by the committing court. At least thirty days prior to conducting a periodic review of the case of a child who was committed to the department regarding the possibility of supervised release or discharge and at least thirty days prior to conducting a release review, a release hearing, or a discharge review under division (E) of this section, the release authority shall give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. If a child is on supervised release and has had the child's parole revoked, and if, upon release, there is insufficient time to provide the notices otherwise required by this division, the release authority, at least ten days prior to the child's release, shall provide reasonable notice of the child's release to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. The court or prosecuting attorney may submit to the release authority written comments regarding, or written objections to, the supervised release or discharge of that child. Additionally, if the child was committed for an act that is a category one or category two offense, the court or prosecuting attorney orally may communicate to a representative of the release authority comments regarding, or objections to, the supervised release or discharge of the child or, if a hearing is held regarding the possible release or discharge of the child, may communicate those comments at the hearing. In conducting the review of the child's case regarding the possibility of supervised release or discharge, the release authority shall consider any comments and objections so submitted or communicated by the court or prosecutor and any statements or comments submitted or communicated under *section 5139.56 of the Revised Code* by a victim of an act for which the child was committed to the legal custody of the department or by the victim's representative of a victim of an act of that type.

The release authority shall determine the date on which a child may be placed on supervised release or discharged. If the release authority believes that a child should be placed on supervised release, it shall comply with division (B) of this section. If the release authority believes that a child should be discharged, it shall comply with division (C) or (E) of this section. If the release authority denies the supervised release or discharge of a child, it shall provide the child with a written record of the reasons for the decision.

(B) (1) When the release authority decides to place a child on supervised release, consistent with division (D) of this section, the department shall prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released from an institution on supervised release and, at least thirty days prior to the release of the child on the supervised release, shall send to the committing court and the juvenile court of the county in which the child will be placed a copy of the supervised release plan and the terms and conditions of release. The juvenile court of the county in which the child will be placed, within fifteen days after its receipt of the copy of the supervised release plan, may add to the supervised release plan any additional consistent terms and conditions it considers appropriate, provided that the court may not add any term or condition that decreases the level or degree of supervision specified by the release authority in the plan, that substantially increases the financial burden of supervision that will be experienced by the department of youth services, or that alters the placement specified by the plan.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed does not add to the supervised release plan any additional terms and conditions, the court shall enter the supervised release plan in its journal within that fifteen-day period and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan. The journalized plan shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed adds to the supervised release plan any additional terms and conditions, the court shall enter the supervised release plan and the additional terms and conditions in its journal and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan and additional terms and conditions. The journalized supervised release plan and additional terms and conditions added by the court that satisfy the criteria described in this division shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed neither enters in its journal the supervised release plan nor enters in its journal the supervised release plan plus additional terms and conditions added by the court, the court and the department of youth services may attempt to resolve any differences regarding the plan within three days. If a resolution is not reached within that three-day period, thereafter, the supervised release plan shall be enforceable to the same extent as if the court actually had entered the supervised release plan in its journal.

(2) When the release authority receives from the court a copy of the journalized supervised release plan and, if applicable, a copy of the journalized additional terms and conditions added by the court, the release authority shall keep the original copy or copies in the child's file and shall provide a copy of each document to the child, the employee of the department who is assigned to supervise and assist the child while on release, and the committing court.

(C) If a child who is in the custody of the department of youth services was committed pursuant to division (A)(1)(b), (c), (d), or (e) of *section 2152.16 of the Revised Code* and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under those divisions and if the release authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the release authority, without approval of the court that committed the child, may discharge the child from the department's custody and control without placing the child on supervised release. Additionally, the release authority may discharge a child in the department's custody without the child being placed on supervised release if the child is removed from the jurisdiction of this state by a court order of a court of this state, another state, or the United States, or by any agency of this state, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law. At least fifteen days before the scheduled date of discharge of the child without the child being placed on supervised release, the department shall notify the committing court, in writing, that it is going to discharge the child and of the reason for the discharge. Upon discharge of the child without the child being placed on supervised release, the department immediately shall certify the discharge in writing and shall transmit the certificate of discharge to the committing court.

(D) In addition to requirements that are reasonably related to the child's prior pattern of criminal or delinquent behavior and the prevention of further criminal or delinquent behavior, the release authority shall specify the following requirements for each child whom it releases:

- (1) The child shall observe the law.
- (2) The child shall maintain appropriate contact, as specified in the written supervised release plan for that child.

(3) The child shall not change residence unless the child seeks prior approval for the change from the employee of the department assigned to supervise and assist the child, provides that employee, at the time the child seeks the prior approval for the change, with appropriate information regarding the new residence address at which the child wishes to reside, and obtains the prior approval of that employee for the change.

(E) The period of a child's supervised release may extend from the date of release from an institution until the child attains twenty-one years of age. If the period of supervised release extends beyond one year after the date of release, the child may request in writing that the release authority conduct a discharge review after the expiration of the one-year period or the minimum period or period. If the child so requests, the release authority shall conduct a discharge review and give the child its decision in writing. The release authority shall not grant a discharge prior to the discharge date if it finds good cause for retaining the child in the custody of the department until the discharge date. A child may request an additional discharge review six months after the date of a previous discharge review decision, but not more than once during any six-month period after the date of a previous discharge review decision.

(F) At least two weeks before the release authority places on supervised release or discharge a child who was committed to the legal custody of the department, the release authority shall provide notice of the release or discharge as follows:

(1) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing an act that is a category one or category two offense, the release authority shall notify, by the specified deadline, all of the following of the release or discharge:

(a) The prosecuting attorney of the county in which the child was adjudicated a delinquent child and committed to the custody of the department;

(b) Whichever of the following is applicable:

(i) If upon the supervised release or discharge the child will reside in a municipal corporation, the chief of police or other chief law enforcement officer of that municipal corporation;

(ii) If upon the supervised release or discharge the child will reside in an unincorporated area of a county, the sheriff of that county.

(2) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing any act, the release authority shall notify, by the specified deadline, each victim of the act for which the child was committed to the legal custody of the department who, pursuant to *section 5139.56 of the Revised Code*, has requested to be notified of the placement of the child on supervised release or the discharge of the child, provided that, if any victim has designated a person pursuant to that section to act on the victim's behalf as a victim's representative, the notification required by this division shall be provided to that victim's representative.

**HISTORY:**

147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3. Eff 1-1-2002.

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 \*\*\* Annotations current through November 9, 2012 \*\*\*

TITLE 51. PUBLIC WELFARE  
 CHAPTER 5139. YOUTH SERVICES  
 RELEASE OR DISCHARGE

Go to the Ohio Code Archive Directory

*ORC Ann. 5139.52 (2013)*

§ 5139.52. Hearing on alleged violation; apprehension of violators

(A) At any time during a child's supervised release or during the period of a child's judicial release to department of youth services supervision, if the regional administrator or the employee of the department assigned to supervise and assist the child has reasonable grounds to believe that the child has violated a term or condition of the supervised release or judicial release, the administrator or employee may request a court to issue a summons that requires the child to appear for a hearing to answer charges of the alleged violation. The summons shall contain a brief statement of the alleged violation, including the date and place of the violation, and shall require the child to appear for a hearing before the court at a specific date, time, and place.

(B) (1) At any time while a child is on supervised release or during the period of a child's judicial release to department of youth services supervision, a regional administrator or a designee of a regional administrator, upon application of the employee of the department assigned to supervise and assist the child as described in this division, may issue, or cause to be issued, an order of apprehension for the arrest of the child for the alleged violation of a term or condition of the child's supervised release or judicial release. An application requesting an order of apprehension shall set forth that, in the good faith judgment of the employee of the department assigned to supervise and assist the child making the application, there is reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the child's supervised release or judicial release, shall state the basis for that belief, and shall request that the child be taken to an appropriate place of secure detention pending a probable cause determination. As an alternative to an order of apprehension for the child, a regional administrator or the employee of the department assigned to supervise and assist the child may request a court to issue a warrant for the arrest of the child.

Subject to the provision of prior notice required by division (D)(1) of this section, if a regional administrator or a designee of a regional administrator issues, in writing, an order of apprehension for the arrest of a child, a staff member of the department of youth services who has been designated pursuant to division (A)(1) of *section 5139.53 of the Revised Code* as being authorized to arrest and who has received the training described in division (B)(1) of that section, or a peace officer, as defined in *section 2935.01 of the Revised Code*, may arrest the child, without a warrant, and place the child in secure detention in accordance with this section.

If a child is on supervised release or judicial release to department of youth services supervision, any peace officer, as defined in *section 2935.01 of the Revised Code*, may arrest the child without a warrant or order of apprehension if the peace officer has reasonable grounds to believe that the child has violated or is violating any of the following that has been prescribed by the release authority or department of youth services relative to the child:

(a) A condition that prohibits the child's ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance, all as defined in *section 2923.11 of the Revised Code*;

- (b) A condition that prohibits the child from being within a specified structure or geographic area;
- (c) A condition that confines the child to a residence, facility, or other structure;
- (d) A condition that prohibits the child from contacting or communicating with any specified individual;
- (e) A condition that prohibits the child from associating with a specified individual;
- (f) Any other rule, term, or condition governing the conduct of the child that has been prescribed by the release authority.

(2) Subject to the provision of prior notice required by division (D)(1) of this section, a staff member of the department of youth services who is designated by the director pursuant to division (A)(1) of *section 5139.53 of the Revised Code* and who has received the training described in division (B)(1) of that section, a peace officer, as defined in *section 2935.01 of the Revised Code*, or any other officer with the power to arrest may execute a warrant or order of apprehension issued under division (B)(1) of this section and take the child into secure custody.

(C) A staff member of the department of youth services who is designated by the director of youth services pursuant to division (A)(1) of *section 5139.53 of the Revised Code* and who has received the training described in division (B)(1) of that section, a peace officer, as defined in *section 2935.01 of the Revised Code*, or any other officer with the power to arrest may arrest without a warrant or order of apprehension and take into secure custody a child in the legal custody of the department, if the staff member, peace officer, or other officer has reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the supervised release or judicial release in any of the following manners:

- (1) The child committed or is committing an offense or delinquent act in the presence of the staff member, peace officer, or other officer.
- (2) There is probable cause to believe that the child violated a term or condition of supervised release or judicial release and that the child is leaving or is about to leave the state.
- (3) The child failed to appear before the release authority pursuant to a summons for a modification or failed to appear for a scheduled court hearing.
- (4) The arrest of the child is necessary to prevent physical harm to another person or to the child.

(D) (1) Except as otherwise provided in this division, prior to arresting a child under this section, either in relation to an order of apprehension or a warrant for arrest or in any other manner authorized by this section, a staff member or employee of the department of youth services shall provide notice of the anticipated arrest to each county, municipal, or township law enforcement agency with jurisdiction over the place at which the staff member or employee anticipates making the arrest. A staff member or employee is not required to provide the notice described in this division prior to making an arrest in any emergency situation or circumstance described under division (C) of this section.

(2) If a child is arrested under this section and if it is known that the child is on supervised release or judicial release to department of youth services supervision, a juvenile court, local juvenile detention facility, or jail shall notify the appropriate department of youth services regional office that the child has been arrested and shall provide to the regional office or to an employee of the department of youth services a copy of the arrest information pertaining to the arrest.

(3) Nothing in this section limits the power to make an arrest that is granted to specified peace officers under *section 2935.03 of the Revised Code*, to any person under *section 2935.04 of the Revised Code*, or to any other specified category of persons by any other provision of the Revised Code, or the power to take a child into custody that is granted pursuant to *section 2151.31 of the Revised Code*.

(E) If a child who is on supervised release or who is under a period of judicial release to department of youth services supervision is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, all of the following apply:

- (1) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody, the juvenile court, in making its determinations at a detention hearing as to whether to hold the child in secure custody up to seventy-two hours so that a motion to revoke the child's supervised release or judicial release may be filed, may consider, in addition to all other evidence and information consid-

ered, the circumstances of the child's arrest and, if the arrest was pursuant to an order of apprehension, the order and the application for the order.

(2) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody and if the child has not otherwise been released prior to the expiration of that seventy-two-hour period, the child shall be released upon the expiration of that seventy-two-hour period.

(3) If the person is eighteen, nineteen, or twenty years of age, the person may be confined in secure detention in the jail of the county in which the person is taken into custody. If the person is under eighteen years of age, the person may be confined in secure detention in the nearest juvenile detention facility.

(4) If a motion to revoke the child's supervised release or judicial release is filed after the child has been taken into secure custody and the court decides at the detention hearing to release the child from secure custody, the court may release the child on the same terms and conditions that are currently in effect regarding the child's supervised release or judicial release, pending revocation or subsequent modification.

(F) If a child who is on supervised release is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, and if a motion to revoke the child's supervised release is filed, the juvenile court of the county in which the child is placed promptly shall schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If a child is released on supervised release and the juvenile court of the county in which the child is placed otherwise has reason to believe that the child has not complied with the terms and conditions of the supervised release, the court of the county in which the child is placed, in its discretion, may schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child did not violate any term or condition of the child's supervised release, the child shall be released from custody, if the child is in custody at that time, and shall continue on supervised release under the terms and conditions that were in effect at the time of the child's arrest, subject to subsequent revocation or modification. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of thirty days, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period.

This division does not apply regarding a child who is under a period of judicial release to department of youth services supervision. Division (E) of *section 2152.22 of the Revised Code* applies in relation to a child who is under a period of judicial release to department of youth services supervision.

#### **HISTORY:**

147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3. Eff 1-1-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.

1 of 1 DOCUMENT

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5120:1 Division of Parole and Community Services  
 Chapter 5120:1-1 Release

*OAC Ann. 5120:1-1-21 (2013)*

**5120:1-1-21. Revocation of release if releasee recommitted for new offense.**

(A) The adult parole authority shall revoke the release of any releasee who is recommitted to the department of rehabilitation and correction to serve a prison term for a felony sentence imposed upon him by any court in Ohio for an offense he committed while on any release granted by the adult parole authority or while serving a period of intermediate transitional detention pursuant to rule 5120-11-12 of the *Administrative Code* or serving a period of parole supervision pursuant to rule 5120-11-19 of the *Administrative Code*.

(B) This revocation shall be accomplished by the issuance of minutes by the adult parole authority after it has verified that the sentence was imposed for an offense that occurred while the prisoner was under release status.

(C) If the prisoner was on release from a definite sentence only, is recommitted to serve a definite sentence or sentences, and is not serving any indefinite sentence, there shall be no further release consideration and the offender shall serve the balance of the aggregate definite sentence, diminished pursuant to rules 5120-2-04 to 5120-2-08 of the *Administrative Code*, unless the prisoner becomes eligible for release on transitional control.

(D) If the prisoner was on release from an indefinite sentence or one or more sentences for which he is recommitted is an indefinite sentence, he shall be scheduled for a parole release hearing when eligible pursuant to rules 5120-2-03 to 5120-2-08 and rule 5120:1-1-13 of the *Administrative Code*.

(E) The foregoing procedures do not apply to the class identified in the consent decree appended to the reported decision of Kellogg v. Shoemaker No. 2-90-CV-606 (S.D. Ohio). The procedures for this class are set forth in that consent decree.

**History:**R.C. 119.032 review dates: 01/07/2010 and 01/07/2015.

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