

ORIGINAL

IN THE SUPREME COURT OF OHIO

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| In re: I.A., a minor child | : | Case No. 2012-2122 |
| | : | |
| | : | On Appeal from the Montgomery |
| | : | County Court of Appeals |
| | : | Second Appellate District |
| | : | Case No. 25078 |

MERIT BRIEF OF APPELLANT I. A.

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STATEMENT OF THE CASE AND THE FACTS

On December 12, 2011, then fourteen year-old I.A. ("Ian") admitted to one count of rape in the Clark County Juvenile Court, in violation of R.C. 2907.02(A)(1)(b), a first-degree felony if committed by an adult. (December 12, 2011 Judgment Entry, Clark County Juvenile Court Case No. 2011-1057 (A-33-A-34)). The court adjudicated Ian delinquent of the offense, and transferred the case to Montgomery County, Ian's home county, for disposition. (December 12, 2011 Judgment Entry, Montgomery County Juvenile Court Case No. A 2011-9975 01 (A-35-A-37)). The Montgomery County Juvenile Court committed Ian to the Department of Youth Services for a minimum period of twelve months, maximum of his twenty-first birthday. (A-35-A-37). At disposition, the juvenile court also classified Ian as a Tier III juvenile sex offender registrant, with a duty to register as a sex offender every ninety days for the rest of his life. (A-35-A-37); (February 1, 2012, Explanation of Duties to Register (A-38-A-39)). Ian timely appealed, asserting that pursuant to R.C. 2152.83(B)(1), the juvenile court was without authority to classify him as a juvenile sex offender registrant at disposition, when the court also committed him to a secure facility at disposition. *In re I.A.*, 2d Dist. No. 25078, 2012-Ohio-4973 (A-8-A-19).

In its decision, the Second District held that under R.C. 2152.83(B)(1), a juvenile court has discretion to hold a classification hearing at disposition, upon release from a secure facility, if committed to a secure facility, or both at disposition and upon release. *Id.* at ¶ 15. Accordingly, the court affirmed Ian's classification

order. *Id.* at ¶ 18. Ian moved to certify a conflict with *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898 (A-20–A-31). The court of appeals sustained the request. (December 13, 2012 Decision and Entry, (A-6)). On February 11, 2013, this Court determined that a conflict exists and ordered the parties to brief the certified conflict issue (A-32):

If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?

Ian A.'s brief timely follows.

ARGUMENT

Certified-Conflict Question: If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?

- I. **The plain meaning of R.C. 2152.83(B)(1) reflects that “may” refers to whether, not to when.**

“In statutory construction, the word ‘may’ shall be construed as permissive and the word ‘shall’ shall be construed as mandatory * * *.” *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), syllabus. In the context of juvenile sex offender classification, there should be nothing confusing about what the words “shall” and “may” mean in R.C. 2152.83(A)(1) and (B)(1).

The plain words in R.C. 2152.83(A)(1) provide that the court shall issue an order that classifies a child who was 16 or 17 at the time of the offense, as a registrant. The phrases connected by “or, if” provide that the court shall issue the order as part of the dispositional order “or, if” the court commits the child to a secure facility, shall issue the order upon the child’s release from the facility. The

“shall” means that the court must issue a classification order and that there is no discretion in that regard:

(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child’s release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if all of the following apply: * * *

R.C. 2152.83(A)(1).

The plain words in R.C. 2152.83(B)(1) provide that the court may conduct a classification hearing to determine whether a child who was 14 or 15 at the time of the offense, should be a juvenile sex offender registrant. The phrases connected by “or, if” in this section, provide that the court may conduct a hearing at the time of disposition “or, if” the court commits the child to a secure facility, may conduct a hearing upon the child’s release from the secure facility. The “may” means that the court has discretion whether or not to hold a hearing:

(B)(1) The court that adjudicates a child a delinquent child, on the judge’s own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child’s release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

* * *

Read together, R.C. 2152.83(A)(1) and 2152.83(B)(1) mean that children who are 16 or 17 at the time of the offense are mandatory registrants and children who

are 14 or 15 at the time of the offense are discretionary registrants.¹

Courts are required to give full effect to every word in a statute. *State ex rel. Cassels v. Dayton City Sch. Dist. Bd. of Educ.*, 69 Ohio St.3d 217, 1994-Ohio-92, 631 N.E.2d 150, citing *State v. Arnold*, 61 Ohio St.3d 175, 178, 573 N.E.2d 1079 (1991) (“it is a cardinal rule of statutory construction that a statute shall be construed, if practicable, [so] as to give some effect to every part of it”). The other parts of R.C. 2152.83(B) must be given full effect, because they provide that the timing provision 2152.83(B)(1) is substantive.

Specifically, for a discretionary registrant under R.C. 2152.83(B)(1) who is committed to a secure facility, R.C. 2152.83(B)(2) provides that, at a classification hearing, the court shall review the effectiveness of the disposition and the treatment provided in the secure facility:

(B)(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge’s own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge’s discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

* * *

¹ Children under 14 at the time of the offense are non-registrants and children who were previously adjudicated delinquent for a prior sex offense, if over 14 at the time of their subsequent adjudication for a sex offense are mandatory registrants. See R.C. 2152.82; 2152.83; 2152.191.

Then, if the court conducts a hearing, R.C. 2152.83(B)(2)(a) & (b) provide that the court shall either decline to issue a classification order, or issue a classification order:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and that states the determination that the judge makes at the hearing held pursuant to section 2152.831 of the Revised Code as to whether the child is a tier I sex offender/childvictim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/childvictim offender.

The timing provision in R.C. 2152.83(B)(1) is substantive, because whether the court commits the child to a secure facility or not dictates whether the court considers the child's results after treatment in a secure facility, before it determines whether a classification hearing or order is warranted.

This Court has held, "As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure." *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶ 41, (O'Donnell, J. dissenting) citing *State ex rel. Ragozine v. Shaker*, 96 Ohio St.3d 201, 2002-Ohio-3992, 772 N.E.2d 1192, ¶ 13, quoting *State ex rel. Jones v. Farrar*, 146 Ohio St. 467, 66 N.E.2d 531 (1946), paragraph three of the syllabus; and *State ex rel Madsen v. Jones*, 106 Ohio St.3d 178, 2005-Ohio-4381, 833 N.E.2d 291, ¶ 8. But, as set forth above, the plain

language of the statute indicates that the timing provision in R.C. 2152.83(B)(1) is not simply for convenience or orderly procedure.

“An unambiguous statute is to be applied, not interpreted.” *Meeks v. Papadopulos*, 62 Ohio St.2d 187, 190, 404 N.E.2d 159 (1980). Further, “[w]here 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.” *Id.*² There is no ambiguous language in R.C. 2152.83(B)(1) as to when a court can classify a juvenile as a juvenile offender registrant; for a child committed to a secure facility, the classification hearing, if the court chooses to conduct one at all, can only occur upon the child’s release from a secure facility. R.C. 2152.83(B)(1).

II. If the language in R.C. 2152.83(B)(1) is ambiguous, then the meaning is made clear by the expression of the legislative intent.

If this Court finds that the language in R.C. 2152.83(B)(1) is ambiguous, then it should find that the legislative intent, as expressed in R.C. 2152.83(B)(2) and R.C. 2152.83(D)(6) supports one conclusion: that for a child committed to a secure facility, the only time the court may conduct a classification hearing pursuant to R.C. 2152.83(B)(1) is upon the child’s release from a secure facility. This is because statutes concerning the same issue or procedure should be read together to

² See also *State v. Merriweather*, 64 Ohio St.2d 57, 59, 413 N.E.2d 790 (1980) (sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused); *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.”).

determine the legislative intent. *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph two of the syllabus (“Statutes relating to the same matter or subject, * * * are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent.”).

Ian asserts that the language in R.C. 2152.83(B)(1) is plain and unambiguous; however, no court has yet agreed with that assertion. Instead, in the conflict case, the Fifth District held that the legislative intent in R.C. 2152.83(B) indicates that the juvenile court is permitted to classify the child at disposition, “unless the child is sent to a secure facility, in which case it may classify the child upon release.” *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898, ¶ 32; see also *In re C.L.M.*, 8th Dist. No. 97980, 2012-Ohio-5175, ¶ 8-10; *In re D.B.*, 8th Dist. No. 98698, 2013-Ohio-496, ¶ 5. The Fifth District noted that the word “may refers to discretion as to whether, not to when to classify the child.” *B.G.* at ¶ 32.

Further, the Fifth District reasoned that its interpretation is supported by R.C. 2152.83(B)(2), which requires the judge to “review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting * * *.” *Id.* at ¶ 33, quoting R.C. 2152.83(B)(2). The court also reasoned, that because R.C. 2152.83(A)(1) requires the court to wait to issue a classification order for 16- or 17-year-old children, it makes sense to construe R.C. 2152.83(B)(1) as also requiring the court to wait until the child’s release, lest the younger children would not be given the same benefit of treatment afforded to older children. *B.G.* at ¶ 38-39.

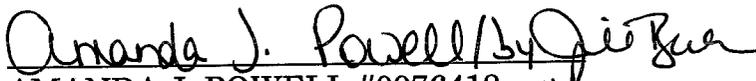
Finally, the court noted that its interpretation reflects the goals and purpose of the juvenile system and that “a court should give a child all possible benefit of rehabilitation and treatment before deciding to order [the child] to comply with the registration and community notification similar to that required of adult offenders.” *Id.* at ¶ 40-41, citing *In re W.Z.*, 194 Ohio App. 3d 610, 2011-Ohio-3238, 957 N.E.2d 367, ¶ 23-24 (6th Dist.); *see also C.L.M.* at ¶ 12. The Eighth District also noted that “there is no public harm in requiring the trial court to wait until the juvenile is released from the secured facility [because * * *]if the registration requirement is designed to protect the public from a potentially dangerous juvenile, it serves no purpose to require a juvenile to register while he is sequestered from the public.” *Id.* at ¶ 13.

CONCLUSION

For all the forgoing reasons, Ian A. asks this Court to answer the certified question in the negative, vacate the juvenile sex offender classification issued in his case, and remand the matter to the juvenile court to determine whether a classification hearing pursuant to R.C. 2152.83(B)(1) is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Merit Brief of Appellant I.A.** was served by ordinary U.S. Mail, postage-prepaid, this 22nd day of April, 2013, to the office of Michele D. Phipps, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, 301 West Third Street, P.O. Box 972, Dayton, Ohio 45422.

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IN THE SUPREME COURT OF OHIO

In re: I.A.,
a minor child

: Case No. 2012-2122
:
: On Appeal from the Montgomery
: County Court of Appeals
: Second Appellate District
: Case No. 25078

APPENDIX TO
MERIT BRIEF OF APPELLANT I. A.



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MONTGOMERY COUNTY
OHIO

In re: I.A.,
a minor child

Case No. 12-2122
On Appeal from the Montgomery
County Court of Appeals
Second Appellate District
Case No. 25078

NOTICE OF CERTIFIED CONFLICT

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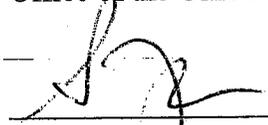
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NOTICE OF CERTIFIED CONFLICT

Minor-child I.A. hereby gives notice that the Second District Court of Appeals issued an order certifying that its October 26, 2012 judgment in this case, *In re I.A.*, 2d Dist. No. 25078, 2012-Ohio-4973, conflicts with the Fifth District's judgment in *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898, and certified to this Court the following question of law: If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition? (December 13, 2012 Decision and Entry, attached). S.Ct. Prac.R. 4.1.

Respectfully submitted,

Office of the Ohio Public Defender



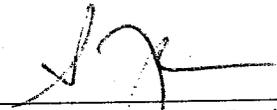
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CERTIFICATE OF SERVICE

A copy of the foregoing **Notice of Certified Conflict** was served by ordinary U.S. Mail, postage-prepaid, this 19th day of December, 2012, to the office of Michele Phipps, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, P.O. Box 972, Dayton, Ohio 45422.



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MONTGOMERY CO. OHIO
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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE:

I. A.

Appellate Case No. 25078

Trial Court Case No. 2011-9975

(Juvenile Appeal from
Common Pleas Court)

.....
DECISION AND ENTRY

Rendered on the 13th day of December, 2012

PER CURIAM:

This matter comes before the Court on the motion to certify a conflict to the Ohio Supreme Court filed under App.R. 25 by the appellant, I.A. I.A. argues that our October 26, 2012 judgment in this case, *In re I.A.*, 2d Dist. Montgomery No. 25078, 2012-Ohio-4973, conflicts with the Fifth District's judgment in *In re B.G.*, 5th Dist. Ashland No. 2011-COA-012, 2011-Ohio-5898. We agree.

"[A]t least three conditions must be met before and during the certification of a case ***." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993). One, the asserted conflict between the certifying court's judgment and the judgment of an appellate

court in another district “*must* be ‘upon the same question.’” (Emphasis sic.) *Id.* Two, the conflict must be on a rule of law. *Id.* And three, the certifying court’s journal entry or opinion must clearly set forth the conflicting rule of law. *Id.* These conditions are satisfied in this case.

The present case and *In re B.G.* both involved the application of R.C. 2152.83, “[t]he statute that controls the procedure for juvenile sex-offender classification,” *State ex rel. Jean-Baptiste v. Kirsch*, --- Ohio St.3d ---, 2012-Ohio-5697, --- N.E.2d ---, ¶ 25. Division (B)(1) of the statute provides that, if certain conditions are met, which they are in this case, “[t]he court that adjudicates a child a delinquent child * * * may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child’s release from the secure facility a hearing for the purposes described in division (B)(2) of this section * * *”. R.C. 2152.83(B)(1).

The question on which I.A. asserts there is a conflict concerns when a court that commits a child to a secure facility may hold a division (B)(2) hearing. The Fifth District held in *In re B.G.* that the hearing may be held only when the child is released from the secure facility: “The statute should be construed as permitting the court to classify the child at disposition unless the child is sent to a secure facility, in which case it may classify the child upon release. The use of the word ‘may’ indicates the court has discretion to decide whether, not when, to classify the child.” *In re B.G.* at ¶ 32. In our opinion in the present case, we rejected the Fifth District’s *In re B.G.* interpretation. We said that division (B)(1) is clear that a court may hold the hearing either at disposition or when the child is released: “Under division (B), in the case of a committed juvenile, a court has the (limited) discretion to, in effect, choose the time at which to classify a juvenile as a juvenile-offender registrant.” *In re I.A.* at ¶ 16.

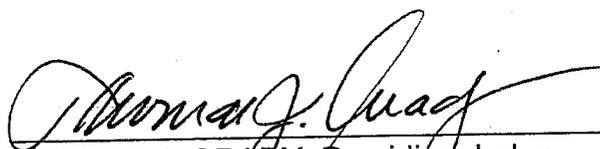
The state agrees that both cases involve the application of R.C. 2152.83(B)(1). But it contends that there is no conflict. It points out that *In re B.G.* bases its conclusion on the legislature's intent with respect to division (B)(1). In our decision in this case, we concluded that division (B)(1) is not ambiguous and simply applied its plain meaning. In sum, *In re B.G.* does not consider ambiguity; we did not consider the legislature's intent. While the state correctly identifies the differing bases of the two judgments, the reasons that support a judgment are not relevant to the conflict analysis. A conflict exists between two judgments when they are, at least in part, the product of differing conclusions on the same question of law. Thus a conflict may exist even if neither court gave any reason to support its conclusion.

Our judgment in this case conflicts with the judgment in *In re B.G.* We certify to the Ohio Supreme Court the following question of law:

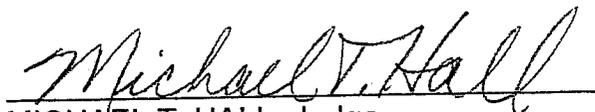
If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?

The motion to certify a conflict is sustained.

IT IS SO ORDERED.


 THOMAS J. GRADY, Presiding Judge


 MARY E. DONOVAN, Judge


 MICHAEL T. HALL, Judge

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:df

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE:

I. A.

Appellate Case No. 25078

Juvenile Court No. 2011-9975

(Juvenile Appeal from
Common Pleas Court)

.....
OPINION

Rendered on the 26th day of October, 2012.

.....
MATHIAS H. HECK, JR., by MICHELE D. PHIPPS, Atty. Reg. #0069829, Montgomery
County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O.
Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Appellee

SHERYLA. TRZASKA, Atty. Reg. #0079915, Office of the Ohio Public Defender, 250 East
Broad Street, Suite 1400, Columbus, Ohio 43215
Attorney for Appellant

.....
HALL, J.

{¶ 1} "John"¹ was adjudicated a delinquent juvenile for committing rape in 2011 when he was 14 years old.² At the disposition hearing,³ the juvenile court committed John to the Department of Youth Services's legal custody for at least one year and potentially until he turns 21 years old. The court ordered that he be placed in a secure facility. Also at the hearing, the court classified John as a juvenile-offender registrant and ordered him to comply with the sex-offender registration and notification requirements in R.C. Chapter 2950. The court did not impose the chapter's victim- or community-notification provisions. Finally, the court determined that John is a Tier III sex offender/child-victim offender.

{¶ 2} John appeals the juvenile court's application of R.C. Chapter 2950 to him. In the first of two assignments of error, John contends that the application violates R.C. 2151.01 and 2152.01 and the Due Process Clauses of the Ohio and United States Constitutions. In the second assignment of error, he contends that classifying him as a juvenile-offender registrant before his release from the secure facility violates R.C. 2152.83.

I. Applying R.C. Chapter 2950 to Juveniles

{¶ 3} John contends that applying R.C. Chapter 2950 to juveniles violates R.C. 2151.01(B), 2152.01(A) and (B), and due process. The state does not argue the merits of this contention. Instead, it contends that John waived appellate review of this issue

¹To enhance readability, we refer to the appellant, I.A., by this pseudonym.

²The complaint alleges that John's act violated R.C. 2907.02(A)(1)(b), engaging in sexual conduct with a person less than 13 years of age. The act would be a first-degree felony if committed by an adult. John admitted to the complaint's allegations.

³The complaint was filed in Clark County Juvenile Court, and that court adjudicated him delinquent. The case was then transferred to Montgomery County Juvenile Court for disposition because Montgomery was John's home county.

because he did not raise it in the juvenile court. Although John, in his reply brief, tacitly admits that he did not raise this issue, he urges us to exercise our discretion and consider the issue nevertheless.

{¶ 4} “Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue.” *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus. However, “[t]he waiver doctrine * * * is discretionary.” *In re M.D.*, 38 Ohio St. 3d 149, 527 N.E.2d 286 (1988), syllabus. Even in a case of clear waiver, an appellate court may “consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it.” *Id.*; see *In re J.F.*, 178 Ohio App.3d 702, 2008-Ohio-4325, 900 N.E.2d 204, ¶ 84 (2d Dist.) (saying that “parties may raise plain error on appeal, even where objections were not filed in juvenile court”). Courts will consider unraised issues when doing so “best serve[s]” “the interests of justice.” *In re A.R.R.*, 4th Dist. Ross No. 09CA3105, 2009-Ohio-7067, ¶ 4. Since John is a juvenile, and because this issue is applicable throughout juvenile sex offenses, we think that the interests of justice are best served by considering whether R.C. Chapter 2950 may be applied to him.

{¶ 5} John argues that R.C. Chapter 2950 may not be applied to a juvenile because the law is punitive⁴ and a juvenile may not be criminally punished. The statutes that John cites concern the purposes and goals of Ohio’s juvenile system. R.C. 2151.01(B)

⁴The Ohio Supreme Court in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16, considered whether R.C. Chapter 2950 is remedial or punitive for purposes of determining whether the law is retroactive. The Court concluded that “[f]ollowing the enactment of S.B. 10 * * * R.C. Chapter 2950 is punitive.”

pertinently provides that the section should be "liberally interpreted and construed so as to *** provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced." And R.C. 2152.01 pertinently provides:

(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 *** conduct.

(Emphasis added.) Punishment, John points out, is not one of the statutory purposes or goals, but this does not mean that sex offender registration requirements may not be imposed. The Ohio Supreme Court has said that "[p]unishment is not the goal of the juvenile system, except as necessary to direct the child toward the goal of rehabilitation." *In re Caldwell*, 76 Ohio St.3d 156, 157, 666 N.E.2d 1367 (1996). Placing a juvenile in a secure facility for several years is undoubtedly punishment. But courts may order juvenile detention to achieve the goals of public protection and juvenile rehabilitation. Similarly, while imposing R.C. Chapter 2950's registration and notification requirements may be punishment, doing so may help achieve these same goals, as the juvenile court in this case

explained:

[I]t gives the youth motivation to understand that if they've been classified * * * if you do better through your treatment, you can have it reduced or I can declassify you.

Many psychologists have determined that that motivation is a good motivation to give a youth that can successfully help that youth complete sex offender treatment.

(Disposition Tr. 15).

{¶ 6} It is not clear from John's argument how or why applying R.C. Chapter 2950 to juveniles violates due process. Nor does the argument clearly say whether the due-process violation is procedural or substantive. Since the argument does not mention the way in which the juvenile court here went about applying R.C. Chapter 2950, we understand the alleged violation to be one of substantive due process. The Eleventh District has rejected such an argument and held that applying R.C. Chapter 2950 to juveniles is constitutional. *In re Goodman*, 161 Ohio App. 3d 192, 2005-Ohio-2364, 829 N.E.2d 1219, ¶ 20 (11th Dist.). The court said that juveniles are not a suspect class and that R.C. Chapter 2950 implicates no fundamental constitutional right. *Id.* at ¶ 19, citing *In re R.L.*, 8th Dist. Cuyahoga Nos. 84543, 84545, 84546, 2005-Ohio-26, ¶ 16 (saying that "juveniles have never been treated as a suspect class and legislation aimed at juveniles has never been subjected to the test of strict scrutiny," quoting *In re Vaughn*, 12th Dist. Butler No. CA89-11-162, 1990 WL 116936, *5 (Aug. 13, 1990)). Scrutinizing the law using the rational-basis test, the Eleventh District concluded that "the General Assembly's legitimate interest of protecting the public from sexual offenders, regardless of age, bears

a rational relationship to the registration requirements of R.C. Chapter 2950 as it applies to juveniles.” *Id.* at ¶ 20. We agree with the Eleventh District’s reasoning and conclusion.⁵

{¶ 7} The first assignment of error is overruled.

II. The Timing of Juvenile-Offender-Registrant Classification

{¶ 8} John contends that under the division of R.C. 2152.83 that applies to him the juvenile court is permitted to impose the juvenile-offender-registrant classification only on his release from the secure facility to which the court sent him. The state contends that the division gave the court the choice to classify John either at the time of his disposition or at the time of his release.

{¶ 9} The juvenile-offender-registrant classification procedure that a court must follow depends on the juvenile’s age. Division (A) of section 2152.83 applies to a juvenile who was 16 or 17 years old at the time he committed the offense. See R.C. 2152.83(A)(1)(b). When division (A) applies the juvenile court “shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody

⁵The Ohio Supreme Court held in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, that R.C. 2152.86 violates procedural due process because it automatically imposes lifelong registration and notification requirements on a certain class of juvenile sex offenders called public-registry-qualified juvenile-offender registrants. *In re C.P.* at ¶ 86. The Court found that “PRQJORS are subject to more stringent registration and notification requirements than other juvenile-offender registrants.” *Id.* at ¶ 12. And “[s]uch requirements are imposed upon [these] juveniles without the participation of a juvenile judge.” *Id.* at ¶ 86. In particular, the automatic Tier III sex offender classification “fails to meet the due process requirement of fundamental fairness.” *Id.* at ¶ 85.

But the Court contrasted the procedure used for PRQJORS with that used for traditional juvenile-offender registrants. The Court noted that the imposition of R.C. Chapter 2950’s requirements on the latter juveniles “rests within the juvenile court’s discretion,” *id.* at ¶ 20, because it is the court that determines these juveniles’ tier classification. John is a traditional juvenile-offender registrant, and it was the juvenile court that classified him as a Tier III sex offender. Therefore the due-process holding in *In re C.P.* does not apply here.

of a secure facility, *shall* issue at the time of the child’s release from the secure facility an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06.” (Emphasis added.) R.C. 2152.83(A)(1). Division (B) applies when the juvenile was 14 or 15 at the time he committed the offense. See R.C. 2152.83(B)(1)(b). Under division (B) the court is not required to classify the juvenile as a juvenile-offender registrant. Instead, the court, “on the judge’s own motion, *may* conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, *may* conduct at the time of the child’s release from the secure facility a hearing” to determine whether the juvenile should be classified. (Emphasis added.) R.C. 2152.83(B)(1) and (B)(2). Here the juvenile court correctly applied division (B),⁶ because John was 14 years old when he committed the offense for which he was adjudicated delinquent.

{¶ 10} If John had been 16 or 17 years old when he committed the offense, the juvenile court would be required to wait. Division (A) uses the word “shall,” a word typically interpreted as imposing a duty or requirement. And Ohio courts appear to agree that if a court commits a juvenile to a secure facility, division (A) not only requires the court to classify the juvenile as a juvenile-offender registrant but also requires the court to do so when the juvenile is released. See, e.g., *In re B.G.*, 5th Dist. Ashland No. 2011-COA-012, 2011-Ohio-5898, ¶ 32; *In re H.P.*, 9th Dist. Summit No. 24239, 2008-Ohio-5848, ¶ 14; *In re P.B.*, 4th Dist. Scioto No. 07CA3140, 2007-Ohio-3937, ¶ 7; *In re Thomas*, 8th Dist. Cuyahoga Nos. 83579, 83580, 2004-Ohio-6415, ¶ 13. As one court has reasoned, “[t]he

⁶At the hearing, the juvenile court referred to division (A), (Tr. 10), as did defense counsel, (Tr. 13). The references appear simply to be mistakes.

plain language of R.C. 2152.83(A)(1) indicates that a juvenile court must classify a juvenile at disposition unless it commits the juvenile to a secure facility. In the case where a juvenile is committed to a secure facility, it must wait to classify the juvenile upon his release from the secure facility." *In re H.P.* at ¶ 14. But the language used in division (A) differs from that used in division (B), in particular, division (B) uses the permissive word "may," and courts do not agree on what this division means. Thus the issue here concerns not *whether* the juvenile court should have classified John as a juvenile-offender registrant but *when* it did so. This issue is one of statutory interpretation.

{¶ 11} "The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it." *State v. Hairston*, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph one of the syllabus. The first place to look for intent is the statute's language, *id.* at ¶ 12, reading the "[w]ords and phrases * * * in context and constru[ing] [them] according to the rules of grammar and common usage." R.C. 1.42. If the language unambiguously reveals its meaning, "there is no occasion to resort to other means of interpretation." *Id.*, quoting *Slingluff* at paragraph two of the syllabus. It is important to remember that "[t]he question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *Id.*, quoting *Slingluff* at paragraph two of the syllabus. Therefore "a court may engage in statutory interpretation when the statute under review is ambiguous." *Id.*; accord R.C. 1.49. The question here, then, is whether division (B) of section 2152.83 is ambiguous. If it is, division (B) must be interpreted to determine the legislature's intent. But if it isn't ambiguous, no interpretation is necessary. The language must simply be applied. *Id.* at

¶ 13.

{¶ 12} The Fifth District has recently interpreted “may” as referring to *whether* not *when* a court imposes the juvenile-offender-registrant classification: “[T]he use of the word ‘may’ does not indicate the court has discretion regarding when to classify the child. Instead, the word ‘may’ indicates the court has discretion to determine whether the child should be classified.” *In re B.G.*, 2011-Ohio-5898, at ¶ 37. The court reasoned that construing “may” as referring to when “is not what the Legislature intended.” *Id.* at ¶ 32. Rather, “the Legislature intended for the court to classify the child only after determining whether the disposition and treatment provided for the child in a secure setting was effective.” *Id.* at ¶ 37. “To hold otherwise,” said the court, “would mean that children sixteen or seventeen years of age will not be classified until they have completed whatever programs DYS [Department of Youth Services] considers appropriate while they are in the secure facility, but a younger child could be determined to be a juvenile offender prior to receiving the benefit of whatever programs are available and appropriate in the secure setting.” *Id.* at ¶ 39. Its interpretation, said the court, is “more in accord with the purpose and goals of the juvenile justice system.” *Id.* at ¶ 40. With respect to the timing of classification, then, the Fifth District interprets division (B) much as it (and most other courts) interpret division (A).

{¶ 13} But the Fifth District has not always interpreted division (B) this way. In at least three previous cases, the court concluded that the division’s plain language places the timing issue within a juvenile court’s discretion. See *In re Carr*, 5th Dist. Licking No. 08 CA 19, 2008-Ohio-5689; *In re McAllister*, Stark App. No.2006CA00073, 2006-Ohio-5554;

In re Callahan, Ashland App. No. 04COA064, 2005-Ohio-735.⁷ In these cases (unacknowledged in the recent decision discussed above) the court said that “the General Assembly’s use of the word ‘may’ and the use of the conjunction ‘or’ triggers the trial court’s discretion regarding *when* to make a sexual predator determination.” (Emphasis added.) *In re Callahan* at ¶ 11. “The use of the word ‘may’ in the statute,” said the court, “provides a trial court with *discretion* on whether to classify a juvenile and at *what times* to classify the juvenile.” (Emphasis added.) *In re McAllister* at ¶ 10; see *In re Carr* at ¶ 21 (concluding that “the classification times set out in R.C. 2152.83[(B)(1)] [are] directory and not mandatory”). “Therefore,” the court concluded, “the trial court has two times when it may consider classification under R.C. 2152.83(B)(1): 1) at the time of disposition, or 2) at the time of release from a secure facility.” (Emphasis added.) *Id.* at ¶ 9.

{¶ 14} The Fourth District applies division (B) to reach the same conclusion. Citing the reasoning in the earlier Fifth District decisions, the Fourth District has concluded that “when an offender is fourteen years of age at the time of the offense, a court possesses discretion to make the sexual offender determination *either* at the time of disposition or at the child’s release.” (Emphasis sic.) *In re P.B.*, 2007-Ohio-3937, at ¶ 9.⁸ The practical effect of the differing language, said the court, is that if division (A) applies courts have no discretion when to classify a juvenile but if division (B) applies they do. *Id.* at ¶ 8. The

⁷The Fifth District’s decision in *In re Kristopher W.*, 5th Dist. Tuscarawas No. 2008 AP 03 0022, 2008-Ohio-6075, while not directly resolving the issue, suggests that, in this case too, the court would have concluded that timing is discretionary. See *In re Kristopher W.* at ¶ 16-17.

⁸“As our Fifth District colleagues have noted, the Ohio General Assembly’s use of the word ‘may’ and the conjunction ‘or’ in subsection (B)(1) triggers a court’s discretion as to when to make the sexual predator classification.” *In re P.B.* at ¶ 8.

Fourth District relied on a plain-meaning rule of statutory interpretation: "We recognize that courts must follow a statute's plain language, regardless of the wisdom of the particular statutory provision." *Id.*

{¶ 15} We agree that the meaning of what the legislature did enact in division (B) is not ambiguous, so we must reject any effort to determine what the legislature intended to enact. The difference in language between division (B) and division (A) is more than merely one word. Under division (B) classification as a juvenile-offender registrant is not automatic; a hearing must first be held after which the court must decide whether classification is appropriate. The hearing may be conducted at disposition or it may be conducted on a committed-juvenile's release, or the hearing need not be conducted at all. Division (B) states only that a court "may" conduct a hearing at either time—a court "may" choose not to conduct a hearing at either time, or perhaps a court "may" choose to conduct a hearing at both times. Of course, this choice exists only in a case in which the juvenile is committed to a secure facility.⁹

{¶ 16} Under division (B), in the case of a committed juvenile, a court has the (limited) discretion to, in effect, choose the time at which to classify a juvenile as a juvenile-offender registrant. Therefore the juvenile court here had the discretion to classify John as

⁹Appellant argues that division (B)(1) should be read as two independent sentences connected by the conjunction "or." In such a reading, the first conjunct would provide: "The court * * * may conduct at the time of disposition of the [juvenile] * * * a hearing" to determine when the juvenile could be classified. And the second conjunct would provide: "[I]f the court commits the [juvenile] * * * to the custody of a secure facility, [the court] may conduct at the time of the [juvenile]'s release from the secure facility a hearing" to determine when the juvenile could be classified. We believe that would be a strained reading of the statute.

a juvenile-offender registrant at disposition.¹⁰

{¶ 17} The second assignment of error is overruled.

{¶ 18} The judgment of the juvenile court is affirmed.

.....

GRADY, P.J., and DONOVAN, J., concur.

Copies mailed to:

- Mathias H. Heck
- Michele D. Phipps
- Sheryl A. Trzaska
- Hon. Anthony Capizzi

¹⁰John does not contend that the juvenile court abused its discretion by classifying him at this time.

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: B.G.,
A MINOR CHILD.

JUDGES:

: Hon. W. Scott Gwin, P.J.
: Hon. Julie A. Edwards, J.
: Hon. Patricia A. Delaney, J.

:
: Case No. 2011-COA-012
:

: OPINION

CHARACTER OF PROCEEDING:

Civil appeal from the Ashland County Court
of Common Pleas, Juvenile Division, Case
No. 20102163

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

November 10, 2011

APPEARANCES:

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For Appellant

AMANDA J. POWELL
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Gwin, P.J.

{¶ 1} Appellant B.G., a minor child, appeals a judgment of the Court of Common Pleas, Juvenile Division, of Ashland County, Ohio, which found he is a delinquent child by reason of having committed two acts of rape, which would be felonies if committed by an adult. The court classified B.G. as a juvenile offender registrant with a duty to comply with RC. 2905.04, 2905.041, 2950.05, and 2950.06. The court also classified appellant a Tier III sex offender subject to community notification. Appellant assigns four errors to the trial court:

{¶ 2} "I. THE JUVENILE COURT VIOLATED B.G.'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION WHEN IT CLASSIFIED HIM AS A JUVENILE SEX OFFENDER REGISTRANT WITHOUT PROVIDING HIM THE OPPORTUNITY FOR ALLOCUTION, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, ARTICLE I, SECTIONS 2 AND 16 OF THE OHIO CONSTITUTION, CRIM. R. 32, JUV. R. 29, AND JUV. R. 34.

{¶ 3} "II. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO APPOINT A GUARDIAN AD LITEM FOR B.G. IN VIOLATION OF OHIO REVISED CODE SECTION 2151.281 (A) AND JUVENILE RULE 4 (B).

{¶ 4} "III. THE TRIAL COURT ERRED WHEN IT CLASSIFIED B.G. AS A JUVENILE OFFENDER REGISTRANT BECAUSE IT DID NOT MAKE THAT DETERMINATION UPON HIS RELEASE FROM A SECURE FACILITY, IN VIOLATION OF R.C. 2152.83 (B)(1).

{¶ 5} "IV. THE TRIAL COURT ERRED WHEN IT ORDERED B.G. TO BE SUBJECT TO COMMUNITY NOTIFICATION."

{¶ 6} The record indicates B.G. was fourteen years old at the time of the offenses. The original complaint alleged he was a delinquent child for three counts of rape, but on October 5, 2010, the court accepted his admission of true to two of the charges, and dismissed the third. The victims in the case were B.G.'s eight year old sister and two cousins, aged six and two.

{¶ 7} As early as the shelter care hearing, the court addressed appellant's grandparents and ordered them to have no contact between appellant or with any of the victims. The court indicated they were to have no children residing in their home and if the court found out there were children in the home, the Department of Job and Family Services would immediately take action.

{¶ 8} At the detention hearing on July 2, 2010, the State advised the court appellant had been in the custody of his grandparents, who had been aware of the abuse, but did very little to prevent it. The State argued the grandparents facilitated the abuse by telling the victim not to tell anyone what had happened. The court directed B.G. to have no contact either directly or indirectly with any of the alleged victims in the case. The court also directed he was not to have any contact with the grandparents.

{¶ 9} Subsequently, at the disposition hearing, the State elaborated on appellant's family background. The State alleged B.G.'s father, uncle, and possibly another family member had been charged with sex offenses. The prosecutor indicated appellant's father had been accused of sexual offenses committed against B.G.'s two older sisters, and it would not be a surprise to learn appellant had also been victimized.

{¶ 10} Officer Kim Mager of the Ashland County Police Department testified the grandparents had caught appellant in the act repeatedly, and failed to contact Children's

Protective Services, the police, or any other party. The officer indicated the grandparents had scolded appellant and threatened that he would end up in jail like his father. However, they permitted appellant to continue to be around the victims.

II.

{¶ 11} In appellant's second assignment of error, he argues the trial court should have appointed a guardian ad litem for him. We agree.

{¶ 12} Our standard of reviewing the court's decision whether to appoint a guardian ad litem is the abuse of discretion standard. *In Re: Sappington* (1997), 123 Ohio App. 3d 448, 454, 704 N.E.2d 339. The Supreme Court has repeatedly defined the term "abuse of discretion" as implying the court's attitude is unreasonable, arbitrary, or unconscionable. See, e.g., *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219, 450 N.E.2d 1140.

{¶ 13} R.C. 2151.281 and Juv. R. 4 both deal with the appointment of a guardian ad litem. R.C. 2151.281 (A) provides the court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child when the court finds that there is a conflict between the child and the child's parent, guardian or legal custodian.

{¶ 14} Juv. R. 4 (B) provides: "the court shall appoint a guardian ad litem to protect the interest of the child or incompetent adult in the juvenile court proceeding when: *** (2) the interest of the child and the interest of the parent may conflict****"

{¶ 15} Juv. R. 4 therefore requires the appointment of a guardian ad litem where there is a possibility of conflict, while the statute requires appointment only if the court finds there is an actual conflict of interest. *Sappington*, supra, at 453. The relevant

question on appeal is whether the record reveals an actual or potential conflict of interest which required the appointment of a guardian ad litem. *Id.*

{¶ 16} In *Sappington*, *supra*, the seventeen year old child was accused of domestic violence against his mother, and his father accompanied him to the hearing. When the child expressed an interest in speaking with an attorney, the father, in open court, persuaded him it was unnecessary. The court of appeals found although the magistrate had not made a finding there was a potential or actual conflict of interest, it was implicit in the facts and circumstances of the case. In the case at bar, the court did not find a potential or actual conflict, but found it necessary to enter a no-contact order with appellant's legal custodians. The evidence before the court was that the grandparents had not taken action to prevent the abuse and had not attempted to get assistance to deal with the situation.

{¶ 17} The State cites us to *In Re: Becera*, Eighth App. No. 79715, 2002-Ohio-678, where the parent was a victim in a domestic violence case. The court there found the pertinent question was whether the parent was acting in a parental role sufficient to protect the juvenile's rights. The court found it was significant that the child was represented by counsel. The court noted a guardian ad litem would not necessarily have made the recommendations the child wanted, if the guardian found those recommendations were not in the child's best interest. The court concluded no guardian ad litem was required to protect the child's interests.

{¶ 18} R.C. 2151.281 (H), and Juv. R. 4 (C) permit an attorney to serve both as counsel and as guardian ad litem for a child in a juvenile court proceeding, provided the

court makes an explicit dual appointment and no conflicts arise in the dual representation. Here, the court did not order dual representation.

{¶ 19} The Supreme Court has recognized the roles of guardian ad litem and of attorney are not always compatible, because they serve different functions. The role of a guardian ad litem is to investigate the juvenile's situation and to ask the court to do what the guardian determines to be in the child's best interest. The role of the attorney is to zealously represent the client within the bounds of law. *In re: Baby Girl Baxter* (1985), 17 Ohio St. 3d 229, 479 N.E.2d 257.

{¶ 20} Here, the court felt the custodial grandparents were so unsuitable that it entered a no-contact order, which in effect prevented them from taking any steps to protect the rights of appellant and of all three victims. The court clearly found they had nothing positive to offer any of the children. The record does not show any other adult coming forward to fill the role of parent or guardian ad litem. This fourteen year old boy pled true to very serious charges with only his counsel to advise him.

{¶ 21} We find the trial court erred in not appointing a guardian ad litem for appellant. The second assignment of error is sustained.

III. & IV.

{¶ 22} In his third assignment of error, appellant argues the court erred in classifying him as a juvenile offender registrant because it could only do so upon his release from a secure facility. In his fourth assignment, he argues the court erred in finding him to be subject to community notification.

{¶ 23} R.C. 2152.83 controls the classification of a child as a juvenile offender registrant. Section (A) applies to children sixteen or seventeen years of age at the time

of the offense. It provides "the court that adjudicates a child as a delinquent child *shall* issue as part of the dispositional order or, if the court commits the child *** to the custody of a secure facility, *shall* issue at the time of the child's release from a secure facility in order that classifies the child a juvenile offender registrant.****" (emphasis added.)

{¶ 24} This language has been construed to mean if the court commits the child to the Ohio Department of Youth Services, it must wait until the child is released to make the classification. See, e.g., *In Re: J.B.*, Morrow App. No. 2011-CA-0002, 2011-Ohio-4530; *In the Matter of: P.B.*, Scioto App. No. 07-CA-3140, 2007-Ohio-3937.

{¶ 25} However, the statute treats a fourteen or fifteen year old child differently. Under those circumstances, the statute provides:

{¶ 26} "(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, *may* conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, *may* conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

{¶ 27} "(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

{¶ 28} "(b) The child was fourteen or fifteen years of age at the time of committing the offense.

{¶ 29} "(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender

registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.” (emphasis added).

{¶ 30} R.C. 2152.82 deals with juvenile offenders with prior sexual offenses and R.C. 2152.86 refers to children found to be serious youthful offenders. Neither section applies to appellant.

{¶ 31} R.C. 2152.83 (B) has been construed as permitting the court to choose when to classify the child, that is, either at the time of disposition or the time of the child’s release. *In the Matter of P.B.*, supra.

{¶ 32} We find this is not what the Legislature intended. The statute should be construed as permitting the court to classify the child at disposition unless the child is sent to a secure facility, in which case it may classify the child upon release. The use of the word “may” indicates the court has discretion to decide whether, not when, to classify the child. The court may determine no hearing is necessary, or may hold a hearing but decline to classify the child, based upon the individual circumstances of the case.

{¶ 33} This interpretation of the statute is supported by the subsequent section. Subsection (B)(2) provides:

{¶ 34} “(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge’s own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the

court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

{¶ 35} “(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code;

{¶ 36} “(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and that states the determination that the judge makes at the hearing held pursuant to section 2152.831 of the Revised Code as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.”

{¶ 37} This language supports the interpretation that the Legislature intended for the court to classify the child only after determining whether the disposition and treatment provided for the child in a secure setting was effective. The statute does not require the court to classify the child as any type of juvenile offender registrant. Thus, we find the use of the word “may” does not indicate the court has discretion regarding when to classify the child. Instead, the word “may” indicates the court has discretion to determine whether the child should be classified.

{¶ 38} The timing of the classification is the same for either sixteen and seventeen years old pursuant to R.C. 2152.83 (A) and for fourteen and fifteen years old under (B): at disposition, unless the child is referred to a secure facility, in which case

the court must wait until the child has completed his or her stay in the secure facility to determine whether treatment received there was effective.

{¶ 39} To hold otherwise would mean that children sixteen or seventeen years of age will not be classified until they have completed whatever programs DYS considers appropriate while they are in the secure facility, but a younger child could be determined to be a juvenile offender prior to receiving the benefit of whatever programs are available and appropriate in the secure setting.

{¶ 40} Our reading of the statute is also more in accord with the purpose and goals of the juvenile justice system. In the case of *In the matter of W.Z.*, Sandusky App. No. S-09-036, 2011-Ohio-3238, the Court of Appeals for the Sixth District succinctly summarized:

{¶ 41} **** [J]uvenile proceedings are 'civil' rather than criminal and, in theory, the priority of the juvenile system has been rehabilitation, rather than punishment. Society generally refuses to penalize youth offenders as harshly or to hold them to the same level of culpability as adults, who are older and, presumably, wiser and more mature. *** In addition, an essential tenet of the juvenile system has been to maintain the privacy of the youthful offender. Although juveniles may be denied certain procedural rights afforded to adult criminal defendants, such as public indictment or trial by jury, they are protected from the publicity and stigma of criminal prosecution." *Id.* at paragraphs 23-24, citations deleted. We find a court should give a child all possible benefit of rehabilitation and treatment before deciding to order him or her to comply with the registration and community notification similar to that required of adult offenders.

{¶ 42} We find the trial court's classification of appellant as a juvenile offender registrant subject to community notification was premature, and it should make the determination, if at all, after appellant is released from DYS custody.

{¶ 43} The third and fourth assignments of error are sustained.

I.

{¶ 44} In his first assignment of error, appellant urges the court failed to provide him with the opportunity for allocution at the classification hearing. The statute does not address this issue.

{¶ 45} Because we find the court should have delayed the classification hearing until after appellant's release from DYS custody, we find the issue is premature.

{¶ 46} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, of Ashland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

Edwards, and Delaney, JJ., concur.

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: B.G.

JUDGMENT ENTRY

CASE NO. 2011-COA-012

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, of Ashland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

FILED
IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION
JUVENILE SECTION 2 PM 1:13

IN THE MATTER OF

COMMON PLEAS : MONTGOMERY COUNTY CASE NO. 2011-1057B

I. A

RECEIVED

DEC 12 2011 :

MONTGOMERY COUNTY
INTERVENTION CENTER JUVENILE COURT

AC/TC
JUDGMENT ENTRY

2011-9975

This matter came before the court for an adjudicatory hearing on the 9th day of December, 2011, after notice was provided to the parties as required by the rule.

THE COURT FURTHER FINDS that the State of Ohio was present and represented by counsel. The youth was present with his mother, his caseworker, and counsel.

THE COURT FURTHER FINDS that the adjudicatory hearing was underway when the youth knowingly and voluntarily chose to withdraw his denial and admit to an amended charge of rape.

THE COURT FURTHER FINDS that the State of Ohio amended the delinquent act of rape, as alleged in the B complaint, to a violation of O.R.C. Sec. 2907.02(A)(1)(B). To the amended complaint the youth knowingly and voluntarily admitted the facts alleged in the complaint and further acknowledged that he was guilty of the offense.

THE COURT FURTHER FINDS the child to be delinquent for committing the delinquent act of rape, as alleged in the amended complaint in violation of 2907.02(A)(1)(B).

THE COURT FURTHER FINDS that the youth is a resident of Montgomery County, Ohio.

THE COURT FURTHER FINDS that pursuant to Juvenile Rule 11, that it is in the best interest of the youth that that this action is transferred to the county of the residence of the youth for disposition.

THE COURT FURTHER FINDS that it is just and appropriate to transfer this action and this youth to the Montgomery County Juvenile Court where the child is a resident.

THE COURT FURTHER FINDS that the youth was neither classified nor ordered to register as a juvenile sex offender. A determination in that regard shall be done by the court disposing of this youth and this matter.



IT IS THEREFORE ORDERED that the youth and this action are transferred, pursuant to Juvenile Rule 11, to the Montgomery County Juvenile Court for appropriate disposition.

IT IS FURTHER ORDERED that a certified copy of the record of this action shall accompany this transfer entry.

IT IS FURTHER ORDERED that this judgment entry shall be entered by the clerk in the journal on this date, and further served within three days upon all parties not in default for failure to appear.



JOSEPH N. MONNIN, JUDGE

Cc: Prosecutor
Custodian
Attorney Swift
Montgomery County Juvenile Court

JOSEPH N. MONNIN
JUDGE

2011 DEC 12 PM 10: 21

MONMOUTH COUNTY CLERK
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

FILED
JUVENILE DIVISION

12 FEB -2 AM 8:59

COMMON PLEAS
MONTGOMERY COUNTY

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
JUVENILE DIVISION

IN RE: I A

SSN XXX-XX-9141

DOB 1/21/97

JC NO. A 2011-9975 01

Judge Anthony Capizzi

DELINQUENCY

JUDGE'S ORDER OF DISPOSITION AND
NOTICE OF DUTIES TO REGISTER AS A
TIER III JUVENILE SEX OFFENDER/CHILD
VICTIM .OFFENDER

This case came before Judge Anthony Capizzi on February 1, 2012, regarding determination of disposition; and the Court, being fully advised in the premises, finds that I A is properly before the Court; and that an order was entered herein on December 9, 2011 in Clark County Juvenile Court, whereby the child was adjudged delinquent for an act of Rape, in that on or about June 20, 2011 through July 31, 2011, in the State of Ohio, County of Clark, the child did engage in sexual conduct with another and the offender purposely compelled the other person to submit by force or threat of force, contrary to Section 2907.02 (A)(1)(b) of the Ohio Revised Code, a felony of the first degree; and said matter was set for determination of disposition.

Present at the hearing were: I A Child; C M , Mother; S B , Guardian; Ben Swift, Private Attorney; Keith Bryson, Probation Officer; Erik Kanthak, Montgomery County Job and Family Services - Children's Services Division; Kathy Bishop and Julie Bruns, Assistant Prosecuting Attorneys.

All interested parties or persons have appeared or have been served due legal notice of this proceeding. This Court fully explained the child's legal rights, including the right to counsel, and the possible consequences of this hearing, and the child has acknowledged to the Court that he understood the same.

The Court finding further that the child is delinquent by reason of having committed an act which if committed by an adult would constitute a felony of the first degree; and further that the child could benefit from being committed to the legal custody of the Department of Youth Services for care and rehabilitation and that said commitment is the least restrictive form of treatment which is appropriate.

It appearing to be in the child's best interests, and it appearing further that the child is a suitable person to be so committed, it is therefore ordered that the child be and hereby is committed to the legal custody of the Department of Youth Services for institutionalization (in a secure facility) for a minimum period of twelve (12) months and a maximum period not to exceed the child's attainment of the age of twenty-one (21) years. This Court further finds that as of February 1, 2012, the above referenced child has been held in both the Clark County and Montgomery County Juvenile Detention facilities for 183 days.

The Huber Heights City School District is ordered to be responsible for the cost of educating said child, including but not limited to, any summer courses or tutoring sessions.

It is further ordered that the child is to submit to a DNA sample pursuant to the Ohio Revised Code Section 2152.74.

It is further ordered that the child is to register as a **TIER III JUVENILE SEX OFFENDER/CHILD VICTIM OFFENDER REGISTRANT** (not a Public Registry Qualified Juvenile Offender Registrant, not subject to community notification provisions). Further, the Court finds that pursuant to Chapters 2152 and 2950 of the Ohio Revised Code, the delinquent child committed a sexually oriented offense as defined by the Ohio Revised Code Chapter 2950, has been classified pursuant to the Ohio Revised Code Section 2152.83 (A)(1)(a)(b), and has committed the delinquent child to a term in a Department of Youth Services (DYS) facility or another secure facility, and therefore, at this time, has gathered residence information on the delinquent child.

The Court, upon inquiry of the delinquent child and the delinquent child's parent(s), Guardian and/or custodian, finds that the delinquent child expects to reside at the following address:

The Court finds that the delinquent child's expected residence as stated above is located in Montgomery, Ohio. Pursuant to Ohio Revised Code Section 2950.04, the delinquent child shall register in person no later than three (3) days after his release with said county sheriff's office during business hours in accordance with the sheriff's registration schedule.

The Court finds pursuant to the Ohio Revised Code Section 2950.04, that the delinquent child is required to register in person as a **TIER III JUVENILE SEX OFFENDER/CHILD VICTIM OFFENDER REGISTRANT** with the sheriff of the county in which the delinquent child establishes residence within three (3) days of coming into the county, and the Court has explained this requirement to the delinquent child and his parent(s), guardian and/or custodian.

The Court finds that after the delinquent child's date of initial registration, the delinquent child is required, pursuant to the Ohio Revised Code Section 2950.06, to periodically verify his residence address in person at the county sheriff's office, every 90 days for life.

The Court hereby advises the delinquent child and his parent(s), guardian and/or custodian of the delinquent child's duty to provide notice of any change of residence address to the sheriff with whom the delinquent child most recently registered at least 20 days prior to any change of said address. In addition to notifying the sheriff with whom the delinquent child most recently registered, the delinquent child is also required to register his new address with the appropriate official in the new county or state at least 20 days prior to moving.

The Court hereby notifies the delinquent child and his parent(s), guardian and/or custodian that failure of the delinquent child to register, verify residence address at the specified times, or failure to provide notice of a change in residence address as described above carries the following sanctions, pursuant to the Ohio Revised Code Section 5152.

Failure to register, failure to verify residence at the specified times or failure to provide notice of a change in residence address or other required information, as described above, will result in criminal prosecution. If failure occurs while the child is under 18 years of age, the child will be subject to proceedings under ORC 2152 and the juvenile's parent(s), guardian(s), or custodian(s) may be subject to prosecution for a violation of Ohio Revised Code Section 2919.24. As a Juvenile Offender Registrant, the attainment of 18 or 21 years of age does not affect or terminate this order.

ENTRY
J.C. No. A 2011-9975 01

PAGE 3

The delinquent child and his parent(s), guardian and/or custodian are further notified that the above listed sanctions are in addition to any possible sanctions that may be imposed pursuant to the Court's order in this case.

This Court further finds the child to be indigent and therefore waives all Court costs in this matter.

The Court did fully explain to the delinquent child his appellate rights and the delinquent child acknowledged to the Court that he understood said rights.

JUDGE ANTHONY CAPIZZI

Judge Anthony Capizzi

ENDORSEMENT: The Clerk of Courts is hereby directed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

NOTICE OF FINAL APPEALABLE ORDER

Copies of the foregoing Entry and Order, which may be a Final Appealable Order, were entered upon the journal and mailed to the parties indicated below, via regular mail, on or within three (3) days of the time stamped date on this Order.

JUDGE NICK KUNTZ, By: J. Petrella, (Chief Deputy Clerk), Juvenile Division

I A , c/o DYS, 1133 S. Edwin C. Moses Blvd., Suite 400, Dayton, Ohio 45408

DYS, 1133 S. Edwin C. Moses Blvd., Suite 400, Dayton, Ohio 45408

C M

Ben Swift, Atty., P.O. Box 49637, Dayton, Ohio 45449

Kathy Bishop, Assistant Prosecuting Attorney

Julie Bruns, Assistant Prosecuting Attorney

Keith Bryson, Probation Department

/tls

Jcc36 Sex Class Dispo 10/2010

DYS # _____ e-SORN # _____ SSN _____ Court Case Number JC 11-9975(01)
 County of Adjudication Montgomery Adjudication O.R.C.#(s) 2907.02(A)(1)(b) MontCo.
 Name A (Last) I (First) _____ (Middle) _____
 Expected Residence Address _____ (Street) _____ (City/State) _____ (Zip) Phone _____

FILED
 DIVISION
 JUVENILE
 FEB - 1 PM 1:25
 MONTGOMERY COUNTY
 COMMON PLEAS
 CLERK'S OFFICE

- You have been adjudicated delinquent for committing a sexually oriented offense or child-victim offense as defined in ORC 2950.01 and you are one of the following (CHECK BOX, CIRCLE EITHER SEX OFFENDER OR CHILD VICTIM OFFENDER):

 - TIER I Sex Offender/Child Victim Offender Registrant
 - TIER II Sex Offender/Child Victim Offender Registrant
 - Subject to Community Notification (applies to registrants previously subject to requirements)
 - TIER III Sex Offender/ Child Victim Offender Registrant,
 - not a Public Registry Qualified Juvenile Offender Registrant, not subject to community notification provisions
 - not a Public Registry Qualified Juvenile Offender Registrant, but subject to community notification provisions
 - Public Registry Qualified Juvenile Offender Registrant, subject to community notification provisions
- You are required to register, in person, with the sheriff of the county in which you establish residency within 3 days of coming into that county or if temporarily domiciled for more than 3 days. If you change residence address, you shall provide written notice of that residence change to the sheriff with whom you most recently registered, and to the sheriff in the county in which you intend to reside at least 20 days prior to any change of residence address. If the residence address change is not to a fixed address, you shall include a detailed description of the place or places you intend to stay and no later than the end of the first business immediately following the day you obtain a fixed address, you must register with the sheriff that fixed address.
- You are required to provide to the sheriff temporary lodging information, including address and length of stay, if your absence will be for 7 days or more.
- If you are a Public Registry Qualified Juvenile Offender Registrant, you are also required to register in person, with the sheriff of the county in which you establish a place of education immediately upon coming into that county. If you establish a place of education in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state immediately upon coming into that state. You are also required to register, in person, with the sheriff of the county in which you establish a place of employment if you have been employed for more than 3 days or for an aggregate of 14 days in a calendar year. If you establish a place of employment in another state but maintain a residence or temporary domicile here, you are also required to register, in person, with the sheriff or other appropriate official in that other state if you have been employed for more than 3 days or for an aggregate of 14 days in a calendar year. Employment includes volunteer services. As a Public Registry Qualified Juvenile Offender Registrant, you also shall provide written notice of a change of address for your place of employment and/or place of education at least 20 days prior to any change and no later than 3 days after the change in employment. If you are a Public Registry Qualified Juvenile Offender Registrant, you shall provide written notice, within 3 days, of any change in vehicle information, email addresses, internet identifiers or telephone numbers registered to or used by you, to the sheriff with whom you have most recently registered.
- After the date of initial registration, you are required to periodically verify, in person, your residence address, and if you are a Public Registry Qualified Juvenile Offender Registrant, your place of employment and/or place of education, at the county sheriff's office no earlier than 10 days prior to your verification date.
- DEPENDING UPON YOUR DESIGNATION, YOU ARE REQUIRED TO COMPLY WITH ALL OF THE ABOVE-DESCRIBED REQUIREMENTS FOR THE FOLLOWING PERIOD OF TIME AND FREQUENCY (CHECK ONE):

 - TIER I- requirements for a period of 10 years with in-person verification annually.
 - TIER II- for a period of 20 years with in-person verification every 180 days.
 - TIER III -for your lifetime with in-person verification every 90 days.
- Since your expected residence address as stated above is located in Montgomery County you shall register in person no later than 2/4/12 (Date) (3 days after release) with that County Sheriff's Office located at:
330 W. Second St (Street Address) Dayton OH (City/State) 45402 (Zip)
- Failure to register, failure to verify residence at the specified times or failure to provide notice of a change in residence address or other required information, as described above, will result in criminal prosecution. If the failure occurs while you are under 18 years of age, you will be subject to proceedings under Ohio Revised Code Chapter 2152 and your parent(s), guardian(s), or custodian(s) may be subject to prosecution for a violation of Ohio Revised Code section 2919.24. Your attainment of 18 or 21 years of age does not affect or terminate this order.

d a
Juvenile's Signature

2-1-12
Date

[Signature]
Parent/Guardian/Custodian's Signature

2-1-12
Date

10. I certify that I specifically informed the juvenile and the juvenile's parent, guardian and custodian of their duties as set forth above and they indicated to me an understanding of those duties.

[Signature]
Signature of Official

JUDGE MULLA
Title & Agency

2-1-12
Date

Hon. Anthony Capizzi
Print Official's Name

Judge, Montgomery Co. Juvenile Court
Print Title & Agency

December 20, 2007

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

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

ORC Ann. 2152.191 (2013)

§ 2152.191. Children subject to sex offender registration and notification law

If a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, both of the following apply:

(A) Sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code apply to the child and the adjudication.

(B) In addition to any order of disposition it makes of the child under this chapter, the court may make any determination, adjudication, or order authorized under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code and shall make any determination, adjudication, or order required under those sections and that chapter.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

ORC Ann. 2152.82 (2013)

§ 2152.82. Classification of child as juvenile offender registrant; compliance with sex offender registration and notification law; determination of tier classification

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.

(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(B) An order required under division (A) of this section shall be issued at the time the judge makes the order of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct a hearing under *section 2152.83 of the Revised Code* to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections*

2950.10 and 2950.11 of the Revised Code. When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted, and the order and any determinations included in the order are subject to modification or termination pursuant to *sections 2152.84 and 2152.85 of the Revised Code*.

(2) The judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of *section 2950.03 of the Revised Code* and shall provide as part of that notice a copy of the order.

(3) The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A) of this section was made pursuant to this section.

(4) If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender, if the child is not a public registry-qualified juvenile offender registrant, and if the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(5) The court shall include in the order its determination made at the hearing held under *section 2151.831 of the Revised Code* as to whether the delinquent child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C) Except as provided in division (D) of this section, an order issued under division (A) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 or 2152.85 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(D) If a court issues an order under division (A) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2907.02 of the Revised Code*, division (B) of *section 2907.05 of the Revised Code*, or *section 2907.03 of the Revised Code* if the victim of the violation was less than twelve years of age;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
 JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

ORC Ann. 2152.83 (2013)

§ 2152.83. Classification at time of disposition or release from secure facility; determination of tier classification

(A) (1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under *section 2152.831 of the Revised Code*, except as otherwise provided in that section, to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B)(5) of *section 2152.82 of the Revised Code*.

(B) (1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure

facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under *section 2152.82 of the Revised Code* or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under *section 2152.86 of the Revised Code*.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code* and that states the determination that the judge makes at the hearing held pursuant to *section 2152.831 of the Revised Code* as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C) (1) Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under *section 2152.831 of the Revised Code* to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

(2) If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of *sections 2950.10 and 2950.11 of the Revised Code*, the judge shall include the requirement in the order.

(3) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to *section 2152.84 of the Revised Code*.

(D) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;

(2) Whether the child has shown any genuine remorse or compunction for the offense;

(3) The public interest and safety;

(4) The factors set forth in division (K) of *section 2950.11 of the Revised Code*, provided that references in the factors as set forth in that division to "the offender" shall be construed for purposes of this division to be references to "the delinquent child;"

(5) The factors set forth in divisions (B) and (C) of *section 2929.12 of the Revised Code* as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.84 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(F) If a court issues an order under division (A) or (B) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code* if the court imposed on the child a serious youthful offender dispositional sentence under *section 2152.13 of the Revised Code* and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2907.02 of the Revised Code*, division (B) of *section 2907.05 of the Revised Code*, or *section 2907.03 of the Revised Code* if the victim of the violation was less than twelve years of age;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of *section 2903.01, 2903.02, or 2905.01 of the Revised Code* that was committed with a purpose to gratify the sexual needs or desires of the child.

(G) As used in this section, "secure facility" has the same meaning as in *section 2950.01 of the Revised Code*.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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

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 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 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 29. CRIMES -- PROCEDURE
 CHAPTER 2907. SEX OFFENSES
 SEXUAL ASSAULTS

ORC Ann. 2907.02 (2013)

§ 2907.02. Rape

(A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in *section 3719.41 of the Revised Code* to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in *section 2929.14 of the Revised Code* that is not less than five years. Except as otherwise provided in this division, notwithstanding *sections 2929.11 to 2929.14 of the Revised Code*, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*. If an offender is convicted of or pleads guilty to a vi-

olation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to *section 2971.03 of the Revised Code*, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of *section 2971.03 of the Revised Code* applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under *section 2945.59 of the Revised Code*, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

HISTORY:

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.