

ORIGINAL

IN THE SUPREME COURT OF OHIO

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

MOTION FOR RECONSIDERATION OF APPELLANT H.V.

DENNIS P. WILL #0038129
 Lorain County Prosecutor

The Office of the Ohio Public Defender

CHRIS A. PYANOWSKI #0084985
 Assistant Prosecuting Attorney
 (Counsel of Record)

SHERYL TRZASKA #0079915
 Assistant State Public Defender
 (Counsel of Record)

225 Court Street, 3rd Floor
 Elyria, Ohio 44035
 (440) 329-5389
 (440) 329-5430 (Fax)
 Chris.Pyanowski@LCProsecutor.org

250 East Broad Street, Suite 1400
 Columbus, Ohio 43215
 (614) 466-5394
 (614) 752-5167 (Fax)
 sheryl.trzaska@opd.ohio.gov

COUNSEL FOR THE STATE OF OHIO

COUNSEL FOR H.V.

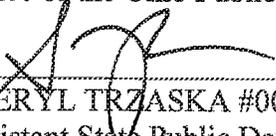
FILED
 MAR 24 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

MOTION FOR RECONSIDERATION

Pursuant to S.Ct.Prac.R. 18.02(B)(4), minor child-appellant H.V. respectfully requests that this Court reconsider its decision in this case. A motion for reconsideration should be granted when it "calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist. 1981). As set forth in the following memorandum, reconsideration is warranted in this case.

Respectfully submitted,

Office of the Ohio Public Defender



SHERYL TRZASKA #0079915
Assistant State Public Defender
(Counsel of Record)

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

COUNSEL FOR H.V.

MEMORANDUM IN SUPPORT OF RECONSIDERATION

First Proposition of Law

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

- A. Reconsideration is warranted because the majority decision unravels the juvenile sentencing scheme, and implicates an adjudicated child's right to fundamental fairness and due process of law.**

The decision in this case must be reconsidered because it gives juvenile courts carte blanche to return a child to the Department of Youth Services (DYS) for a minimum term of any length, in violation of R.C. 5139.52(F). *In re H.V.*, Slip Opinion No. 2014-Ohio-812, at ¶ 15-16. The unintended consequences of this case are significant, because the decision invites disparate and inconsistent sentencing for all Ohio youth. If this decision stands, youth may now be committed to DYS for vastly different periods of time for the same violations of supervised release, with no opportunity for release by DYS if the child is suitable for release, and no opportunity for judicial release by the court. *Id.* at ¶ 15; R.C. 5139.52(F).

The decision also permits juvenile courts to commit children for technical rule violations of supervised release for lengths of time that exceed the original commitment for the underlying felony offense. *H.V.* at ¶ 16. This is an illogical and unjust result, which should not be advanced by this Court.

Further, the decision may be interpreted to support the end of the minimum periods of commitment set forth in R.C. 2152.16. Specifically, through R.C. 2152.16, the General Assembly created a structure of indefinite periods of commitment for traditional juvenile sentencing, consisting of a prescribed minimum period of time until age twenty-one, with the release date to be determined by the Release Authority. The juvenile court must order the

prescribed minimum period which the statute sets forth,¹ and the Release Authority determines when the child is approved for release:

| Violation | DYS Commitment |
|---|---|
| Attempted aggravated murder, attempted murder | "minimum period of" 6 to 7 years as prescribed by the court. R.C. 2152.16(A)(1)(b) |
| Voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter, forcible rape | "minimum period of" 1 to 3 years, as prescribed by the court. R.C. 2152.16(A)(1)(c) |
| Felony 1 or Felony 2 | "minimum period of" 1 year. R.C. 2152.16(A)(1)(d) |
| Felony 3, Felony 4, or Felony 5 | "minimum period of" 6 months. R.C. 2152.16(A)(1)(e) |
| Violation of supervised release after completing minimum term | "minimum period of" 30 days. R.C. 5139.52(F) |

These are statutorily prescribed minimum periods of commitment, which apply equally to all of Ohio's juvenile courts. Yet, the majority's reasoning may now be applied to permit upward departure from any minimum period of commitment set forth in R.C. 2152.16. This is because the decision provides that, "there is no indication in this section [R.C. 5139.52(F)] that the juvenile court is limited in the amount of time that it may impose under this provision." *H.V.* at ¶ 12. Because this decision held that nothing in the code prohibits juvenile courts from exceeding the minimum 30-day period of commitment for a violation of supervised release, there is also nothing to prevent a court from imposing a commitment that exceeds the minimum six-month commitment for a lower-level felony, or minimum one-year commitment for a higher-level felony offense. R.C. 2152.16.

¹ With the exception of definite commitments until age twenty-one for murder or aggravated murder, or specifications imposed under R.C. 2152.17.

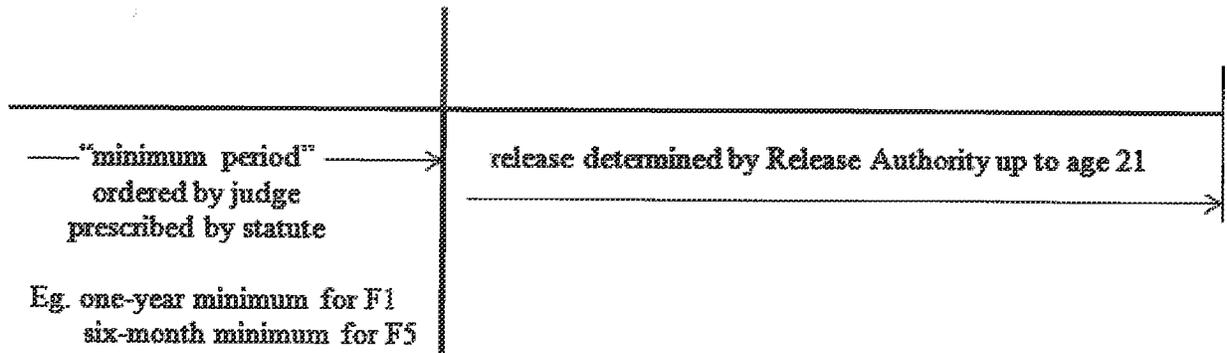
This Court must reconsider its decision in this case because it eviscerates the General Assembly's construction of the juvenile sentencing scheme. Eliminating the General Assembly's juvenile sentencing scheme renders the legislature meaningless, authorizes disorder, and violates a child's right to fundamental fairness in the juvenile justice system. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971); *see also In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 80.

B. Reconsideration is warranted because the majority decision does not fully appreciate the role of the DYS Release Authority to control the terms of the commitment, the child's treatment and programming, and determine the appropriate length of commitment and when the child should be released; facts which cannot be known to the juvenile court at the time of disposition.

Juvenile courts are legislatively created courts of limited jurisdiction, with jurisdiction set forth by the General Assembly. *Schwartz v. Haines*, 172 Ohio St. 572, 573, 179 N.E.2d 46 (1962); *In re Agler*, 19 Ohio St.2d 70, 72, 249 N.E.2d 808 (1969). This Court has reasoned that “the General Assembly—and the General Assembly alone—has the authority to provide by law the method” by which a court may exercise its jurisdiction. *In re M.M.*, 135 Ohio St.3d 375, 2013-Ohio-1495, ¶ 21. Through its traditional juvenile statutory scheme, the General Assembly has given juvenile courts the power to commit children to DYS for prescribed minimum periods of commitment under R.C. 2152.16 and 2152.17. When a juvenile court commits a child to DYS, the court relinquishes control of the child, with few enumerated exceptions. R.C. 2152.22(A). Because juvenile sentencing is indefinite, a child's disposition expires when the child attains age 21. R.C. 2152.16. Absent judicial release, children committed to DYS must be approved for release by the DYS Release Authority. R.C. 2152.22(B),(C),(D); 5139.50. The General Assembly has vested the DYS Release Authority the authority to determine when the child is appropriate for release. R.C. 5139.50.

This decision confuses R.C. 5139.52(F) by reasoning “it makes no sense” for the General Assembly to include the clause that judicial release is prohibited “during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period” if the juvenile court does not have authority to impose more than the thirty-day minimum. *In re H.V.*, Slip Opinion No. 2014-Ohio-812, ¶ 12, quoting R.C. 5139.52(F). But, the clause directly preceding that language states “the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period.” R.C. 5139.52(F). *That* period—the one extended by the Release Authority’s discretion—may not be reduced by judicial release. R.C. 5139.52(F). The statute specifies that the Release Authority, and only the release authority, may require the child to remain in DYS for an excess of “the minimum thirty-day period.” R.C. 5139.52(F). The language of the statute should not be interpreted to support any other conclusion.

The General Assembly has conferred the authority to the DYS Release Authority to determine when a child should be released from DYS. R.C. 5139.50. Absent judicial release, the Release Authority serves “as the final and sole authority for making decisions, in the interests of public safety and the children involved, regarding the release and discharge of all children committed to [DYS].” R.C. 5139.50(E)(1). The roles of the judge and Release Authority concerning a child committed to DYS for a minimum period, maximum to the child’s age of 21, can be outlined as follows:



The decision in this case removes the line (shown in red above) between the prescribed minimum periods of commitment and eligibility for release, to be determined by the Release Authority, which the General Assembly set forth in the Code. *See* R.C. 2152.16 and 5139.52(F). By removing that line, this decision creates a sentencing scheme that strips the Release Authority of one of its key functions—determining the treatment needs and length of incarceration needed before a child is released into the community. The General Assembly created a juvenile sentencing scheme consisting of indefinite sentences with prescribed minimums, but this decision allows courts full discretion to order any term it chooses.

The General Assembly has recognized that the Release Authority is best suited to determine when a child should be released from the Department of Youth Services. R.C. 5139.50(E)-(F). Indeed, the Release Authority must periodically review a committed child, and carefully consider his progress before approving the child for release. R.C. 5139.50(E); 5139.51(A). The Release Authority may order a child to remain in DYS beyond the statutorily prescribed minimum commitment to complete necessary programming or serve discipline time. The juvenile system recognizes the balance between the juvenile court judge, who is vested with the power to determine when a child should be committed to DYS, and the Release Authority, which is best suited to determine when the child should be released after the child serves the statutorily prescribed minimum period.

The decision in this case permits the juvenile court to choose any length of commitment for a parole revocation commitment, and abolishes the role of the juvenile court and the role of the DYS Release Authority. *H.V.* at ¶ 16. Now, with unfettered discretion, juvenile courts can commit a child for any length of time for a violation of supervised release—for six months, one year, or even until his twenty-first birthday. *Id.* Thus, the majority's decision gives juvenile courts the power to determine a length of commitment for a violation of supervised release that may seem appropriate at the time of disposition, but does not reflect the needs of the child. The General Assembly vested the Department of Youth Services and its Release Authority with the power to assess the child, provide treatment, review progress, and determine when the child is appropriate for release once the child has proceeded through his commitment. R.C. 5139.01(A)(3); 5139.50(E)-(F).

The juvenile system anticipates that the court cannot know what length of time is ultimately necessary and appropriate for rehabilitation to occur. The General Assembly provides the juvenile court only the power to revoke the child's supervision and return the child to the custody of DYS, but the Release Authority has the sole discretion to determine when the child is suitable for release after the prescribed thirty-day period. R.C. 5139.52(F). This makes sense and is in line with the structure of juvenile sentencing that exists in R.C. 2152.16. But this Court's decision usurps these provisions and gives unfettered discretion to juvenile judges to set the length of a commitment for a violation of supervised release, while stripping the Release Authority of the role conferred to it by the General Assembly. Accordingly, this Court should reconsider the first proposition of law in this case.

Second Proposition of Law

A juvenile court may not order a revocation of supervised release to be served consecutively to a new commitment to the Department of Youth Services.

Reconsideration is warranted because the majority misapplies this Court's decision in *In re Caldwell* and the statutory catch-all in R.C. 2152.19(A)(8).

The decision and concurring opinions in this case rely on *In re Caldwell*, 76 Ohio St.3d 156, 1996-Ohio-410, 666 N.E.2d 1367, which predates the statutory provision at issue here, which provides the specific circumstances in which a juvenile court may order DYS commitments to run consecutively to each other. R.C. 2152.17(E). In fact, the General Assembly set statutory limitations on consecutive DYS commitments several years after the *Caldwell* decision. R.C. 2152.17, S.B. 179, Section 3, effective January 1, 2002. This is a critical distinction, which the majority and concurring opinions ignore. If R.C. 2152.17(E) had not been enacted by the General Assembly, *Caldwell* would stand. But, through R.C. 2152.17, there are now direct and express terms that set forth the circumstances in which DYS commitments may run consecutively to each other, and commitments for supervised release are not included among them.

Further, the majority's reliance on the statutory catch-all in R.C. 2152.19(A)(8) is misplaced, and creates dangerous precedent. Courts throughout Ohio have recognized that a juvenile court's "authority to make 'any further disposition' is not without limit[; * * * specifically, t]he court's authority to make 'any further disposition' has been ruled to be confined to a choice of dispositions provided for in other statutes contained in the Juvenile Code." *In re Boss B.*, 6th Dist. Lucas No. L-07-1343, 2008-Ohio-2995, ¶ 14, citing *In re Richardson*, 7th Dist. Mahoning No. 01 CA 78, 2002-Ohio-3461, ¶ 14; *State v. Grady*, 3 Ohio App. 3d 174, 444 N.E.2d 51 (8th Dist.1981); *In re Cox*, 36 Ohio App. 2d 65, 68, 301 N.E.2d 907 (7th Dist.1973).

Here, the majority relied on that statutory catch-all to authorize a consecutive commitment that is *not* authorized by the statute which enumerates the authorized consecutive commitments. R.C. 2152.17(E).

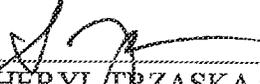
As it stands, the decision eradicates the doctrine of *expressio unius est exclusio alterius*, (“the expression of one thing suggests the exclusion of others”). By relying on the majority’s decision in this case, any of the General Assembly’s specific statutory provisions may be ignored in favor of a statutory catch-all. It is long-settled in Ohio that the express inclusion of certain enumerated alternatives implies the exclusion of other non-enumerated alternatives. *See Myers v. City of Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353 852 N.E.2d 1176, ¶ 24; *State ex rel. Rear Door Bookstore v. Tenth District Court of Appeals*, 63 Ohio St.3d 354, 361, 588 N.E.2d 116 (1992); *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 181, 546 N.E.2d 206 (1989). This Court should recognize that its decision nullifies carefully created legislation, and may permit courts to rely on a statutory catch-all to ignore specific, enumerated terms of the Revised Code.

CONCLUSION

This Court should recognize the damaging implications of its decision, which strips the DYS Release Authority of its statutory duties, and unravels long-settled canons of statutory interpretation. For the foregoing reasons, H.V. requests that this Court reconsider its decision in this case.

Respectfully submitted,

Office of the Ohio Public Defender



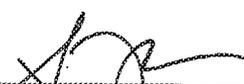
SHERYL TRZASKA #0079915
Assistant State Public Defender
(Counsel of Record)

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

COUNSEL FOR H.V.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Motion for Reconsideration**, was forwarded by regular U.S. Mail, postage prepaid, this 24th day of March, 2014 to Chris A. Pyanowski, Assistant Lorain County Prosecutor, 225 Court Street, 3rd Floor, Elyria, Ohio 44035 and by email to Chris.Pyanowski@LCProsecutor.org.



SHERYL TRZASKA #0079915
Assistant State Public Defender

COUNSEL FOR H.V.

#414544

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re H.V.*, Slip Opinion No. 2014-Ohio-812.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2014-OHIO-812

IN RE H.V.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re H.V.*, Slip Opinion No. 2014-Ohio-812.]

R.C. 5139.52(F)—Juvenile court has authority under R.C. 5139.52(F) to commit a juvenile to the custody of the Ohio Department of Youth Services for a period exceeding 30 days—Juvenile court may order a commitment term for a supervised-release violation to be served consecutively to a commitment term for a new crime.

(No. 2012-1688—Submitted August 20, 2013—Decided March 13, 2014.)

APPEAL from the Court of Appeals for Lorain County,
Nos. 11CA010139 and 11CA010140, 2012-Ohio-3742.

.....
O'NEILL, J.

{¶ 1} In this case we are asked to decide whether a juvenile court has the authority to commit a delinquent juvenile to the Ohio Department of Youth Services (“ODYS”) for a minimum period in excess of 30 days for violating his supervised release. We must then decide whether a juvenile court, when

committing a juvenile to the ODYS for a supervised-release violation, can order that the commitment period be served consecutively to the commitment period imposed for the crime that resulted in the violation of supervised release. We answer both questions in the affirmative.

Facts and Procedural History

{¶ 2} On December 8, 2010, a Lorain County Court of Common Pleas Juvenile Court judge found H.V. to be delinquent for having committed an act that if committed by an adult would have constituted attempted domestic violence, a felony of the fourth degree. At the time of the offense, H.V. was on supervised release for committing two earlier domestic-violence offenses. Thus, H.V. had also been charged with violating the terms of his supervised release, but that charge was merged with the attempted-domestic-violence charge. The court committed H.V. to the ODYS for a minimum term of six months.

{¶ 3} On March 17, 2011, roughly three months after his “minimum six-month commitment” to the ODYS, H.V. was placed on supervised release from the ODYS. H.V. had been involved in two fights with other juveniles before being released.

{¶ 4} Approximately six months after H.V.’s release, H.V., then age 16, was charged with second-degree felonious assault in violation of R.C. 2903.11(A)(1). He was also charged with violating the terms of his supervised release in the 2010 domestic-violence case.

{¶ 5} On November 23, 2011, the juvenile court judge conducted a dispositional hearing, revoked H.V.’s supervised release, and committed H.V. to the ODYS for a minimum period of 90 days for violating the conditions of his supervised release. Five days later, the judge found H.V. to be delinquent and committed him to the ODYS for a minimum term of one year for the felonious assault. The court order specified that the 90-day term imposed for the violation

of supervised release would run consecutively to the one-year term imposed for the felonious assault.

{¶ 6} On December 27, 2011, H.V. appealed to the Ninth District Court of Appeals asserting four assignments of error, two of which are relevant here. First, H.V. alleged that pursuant to R.C. 5139.52(F), the juvenile court erred in committing him to the ODYS for a minimum period in excess of 30 days for violating the terms of his supervised release. Second, he claimed that pursuant to R.C. 2152.17(F), the juvenile court erred when it ordered H.V. to serve his sentences consecutively. The Ninth District rejected both of H.V.'s claims and affirmed the order of the trial court.

{¶ 7} H.V. now seeks this court's review of the court of appeals' judgment. For the reasons that follow, we affirm the judgment of the Ninth District.

Analysis

{¶ 8} A juvenile court's disposition order will be upheld unless the court abused its discretion. *In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921. The term "abuse of discretion" implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} In reviewing a case that originated in the juvenile court, we keep in mind the overriding purposes for dispositions of juvenile offenders as set forth by the General Assembly in R.C. 2152.01: to provide for the care, protection, and mental and physical development of the juvenile offender; to protect the public interest and safety; to hold the juvenile offender accountable; to restore the victim; and to rehabilitate the juvenile offender. The statute further states that these purposes are to be achieved "by a system of graduated sanctions and services." R.C. 2152.01(A).

SUPREME COURT OF OHIO

{¶ 10} First, we are asked to determine whether a juvenile court has the authority under R.C. 5139.52(F) to commit a delinquent juvenile to the ODYS for a minimum period in excess of 30 days for a violation of supervised release. H.V. asserts that the juvenile court erred in committing him to the ODYS for a minimum period longer than 30 days. H.V. argues that the Revised Code does not authorize a juvenile court to commit a delinquent juvenile to the ODYS for a specific minimum period for a violation of supervised release. He argues that R.C. 5139.52(F) authorizes the juvenile court to return a delinquent juvenile to the ODYS but does not authorize the court to determine the length of the commitment. H.V. suggests that following a revocation of supervised release, only the ODYS has the authority to impose a new period of incarceration beyond 30 days. We disagree.

{¶ 11} R.C. 5139.52(F) clearly authorizes juvenile courts to return juveniles who have committed serious violations of the terms of their supervised release to the ODYS for a *minimum* period of 30 days. The statute provides:

(F) If a child who is on supervised release is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, and if a motion to revoke the child's supervised release is filed, the juvenile court of the county in which the child is placed promptly shall schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If a child is released on supervised release and the juvenile court of the county in which the child is placed otherwise has reason to believe that the child has not complied with the terms and conditions of the supervised release, the court of the county in which the child is placed, in its

discretion, may schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child did not violate any term or condition of the child's supervised release, the child shall be released from custody, if the child is in custody at that time, and shall continue on supervised release under the terms and conditions that were in effect at the time of the child's arrest, subject to subsequent revocation or modification. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of thirty days, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any

SUPREME COURT OF OHIO

period of institutionalization in excess of the minimum thirty-day period.

{¶ 12} This provision clearly means that the ODYS is *prohibited* from releasing a returning violator for 30 days. The statute speaks only to the minimum period of institutionalization. It clearly vests the ODYS with the authority to *increase* the judge’s original sentence—presumably for juveniles who simply cannot be rehabilitated within that time—but there is no indication in this section that the juvenile court is limited in the amount of time that it may impose under this provision. Nothing in the statute, or common sense, supports the proposition that the judge is limited to ordering a *maximum* 30-day commitment to the ODYS. Our reading of the statute is further supported by the final clause that specifically prohibits the granting of judicial release or early release “during the minimum thirty-day period of institutionalization *or any period of institutionalization in excess of the minimum thirty-day period.*” (Emphasis added.) R.C. 5139.52(F). It makes no sense to include this clause in the statute if the legislature intended to vest the release authority with the exclusive authority to determine whether the juvenile should be held for a period beyond the minimum 30 days. The statute is clear on its face, and the trial court and the court of appeals properly applied the law.

{¶ 13} Here we have a case in which a juvenile on supervised release following two prior offenses was committed in 2010 to the ODYS for attempted domestic violence, a felony of the fourth degree. The juvenile court merged the charge for that violation of supervised release with the charge for the attempted domestic violence. The juvenile was later placed on supervised release, and within six months, he committed yet another crime, this time a felonious assault, a felony of the second degree. The juvenile court properly revoked the juvenile’s supervised release and committed him to the ODYS for a minimum of 90 days for

the supervised-release violation and for one year for the felonious assault. We will not construe the statute to prevent the court from holding H.V. fully accountable for his behavior or to force the court to ignore the fact that H.V. was not only guilty of violating the conditions of his supervised release but had also committed another violent act. There is no rational reason to suggest that a juvenile court should be limited in the sanctions that it can apply in such a situation. The court's job, after all, is not only to attempt to correct the juvenile but to protect the public as well. R.C. 2152.01(A).

{¶ 14} Felonious assault, without question, is a serious offense and a serious violation of supervised release. H.V. appeared before the same juvenile court judge for each of the criminal offenses leading up to the felonious assault. We are wholly unpersuaded that this juvenile's latest violation of supervised release deserved the same sanction that was imposed as a result of his previous supervised-release violation or that the judge abused her discretion when she ordered a term of commitment beyond the statutory minimum of 30 days.

{¶ 15} We can find no provision in the Revised Code that gives the release authority of the ODYS the power to override a statutory minimum period of commitment or a minimum period of commitment ordered by a juvenile court. R.C. 5139.50 specifies the powers and duties of the ODYS release authority, and R.C. 5139.51 specifies the procedures that the ODYS release authority must follow when releasing a juvenile from the secure facility in which he was placed following a juvenile court's order of commitment. Both of these statutes include clear prohibitions against releasing a juvenile who was committed to the ODYS by a juvenile court order. R.C. 5139.50(E)(1)¹ and R.C. 5139.51.²

¹ The ODYS release authority is a five-member bureau within the ODYS whose members are appointed by the director of the ODYS. R.C. 5139.50(A). R.C. 5139.50 specifies the powers and duties of the release authority. The statute specifically prohibits the release authority from releasing juvenile offenders who have been committed to the legal custody of the ODYS and "who

SUPREME COURT OF OHIO

{¶ 16} Thus, we hold that a juvenile court is within its statutory authority under R.C. 5139.52(F) to commit a juvenile for a period exceeding the 30-day minimum set forth in the statute. In so doing, we affirm the judgment of the Ninth District Court of Appeals. If the ODYS release authority releases a juvenile prior to the statutorily prescribed minimum period of 30 days, that release is contrary to law. Likewise, if the ODYS release authority releases a juvenile prior to the expiration of the minimum time specified by a juvenile court's order, that release violates a court order and is contrary to law.

{¶ 17} Next, we are asked to determine whether a juvenile court may order a commitment term for a supervised-release violation to be served consecutively to a commitment term for a new crime. H.V. asserts that the juvenile court erred when it ordered that his commitment for his supervised-release violation pursuant to R.C. 5139.52(F) be served consecutively to his commitment for his new felonious-assault offense pursuant to R.C. 2152.16. H.V. argues that because R.C. 2152.17(F) authorizes a court to impose consecutive commitment periods when a juvenile commits multiple felony offenses and because that section does not specifically state that a court may order a commitment term for a new felony offense to be served consecutively to a term for a supervised-release violation, the juvenile court lacks the authority to require that these terms be served consecutively.

have not completed a prescribed minimum period of time or prescribed period of time in a secure facility." R.C. 5139.50(E)(1).

² R.C. 5139.51, the statute describing the procedures the ODYS release authority must follow when releasing a juvenile offender, specifically states that the release authority "shall not discharge the child or order the child's release on supervised visitation release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of twenty-one years of age, whichever is applicable under the order of commitment, other than as is provided in section 2152.22 of the Revised Code [the statute setting forth the procedures for judicial release]."

{¶ 18} We agree with H.V. that R.C. 2152.17 does not apply in this case; however we disagree with his assertion that because R.C. 2152.17 does not apply, the juvenile court lacks the statutory authority to order that the term it imposes for a supervised-release violation be served consecutively to the term it imposes for felonious assault. Authority to impose consecutive terms can be found in R.C. 2152.19(A)(8), which provides that “[i]f a child is adjudicated a delinquent child, the court may * * * [m]ake any further disposition that the court finds proper, * * *”

{¶ 19} H.V. argues that because the Revised Code enumerates circumstances under which a juvenile court may impose consecutive terms of commitment, juvenile courts are prohibited from imposing consecutive sentences under any other circumstances. This court rejected that argument in *In re Caldwell*, 76 Ohio St.3d 156, 158-159, 666 N.E.2d 1367 (1996), and we reject it in this case as well.

{¶ 20} Here, the juvenile court was presented with a repeat offender whose criminal conduct showed no signs of ebbing. In fact, it was escalating—from an earlier domestic-violence charge to the current felonious-assault charge. Under these circumstances, it would have been contrary to R.C. 2152.01(A), which requires juvenile courts to hold offenders accountable for their actions by imposing graduated sanctions, for the juvenile court to continue to order the same sanction despite the escalating and dangerous criminal behavior. R.C. 2152.19(A)(8) expressly grants juvenile courts the authority to make any disposition that the court finds proper. By ordering that the commitment period imposed for H.V.’s latest supervised-release violation be served consecutively to the commitment period imposed for the felonious assault, the juvenile court, pursuant to the authority in R.C. 2152.19(A)(8), imposed a more severe sanction than it had imposed for his previous violation, in accordance with R.C. 2152.01(A).

SUPREME COURT OF OHIO

{¶ 21} Thus, we hold that the juvenile court was within its statutory authority under R.C. 2152.19(A)(8), 5139.52(F), and 2152.01(A) to order H.V. to serve the imposed term of commitment for his supervised-release violation consecutively to the imposed term of commitment for his new crime. In so doing, we affirm the judgment of the Ninth District Court of Appeals.

Conclusion

{¶ 22} We hold that the juvenile court did not abuse its discretion when it ordered H.V. to serve a minimum 90-day term for a serious violation of supervised release. This order was made in accordance with the plain language of R.C. 5139.52(F). We also hold that it was not an abuse of discretion for the juvenile court to order the term of commitment imposed for the supervised-release violation to be served consecutively to the term of commitment imposed for the underlying offense and that this order was made in accordance with the plain language of R.C. 2152.19(A)(8) and 2152.01(A).

Judgment affirmed.

O'DONNELL, LANZINGER, and KENNEDY, JJ., concur.

FRENCH, J., concurs in part and dissents in part.

O'CONNOR, C.J., and PFEIFER, J., dissent.

.....
FRENCH, J., concurring in part and dissenting in part.

{¶ 23} I agree with the majority's conclusion that the juvenile court could order H.V.'s commitments to be served consecutively. Like the majority, I find *In re Caldwell*, 76 Ohio St.3d 156, 666 N.E.2d 1367 (1996), to be dispositive on this issue.

{¶ 24} *Caldwell* dealt with identical statutory language and identical arguments. There, we were asked to decide whether a juvenile court had authority to order consecutive terms of commitment under former R.C. 2151.355(A)(11), Am.Sub.H.B. No. 725, 144 Ohio Laws, Part IV, 6368, 6372,

effective April 16, 1993. Former R.C. 2151.355(A)(11) gave juvenile courts the ability to “[m]ake any further disposition that the court finds proper.” We held that this catchall language allows courts to impose consecutive commitment terms. *Id.* at 159.

{¶ 25} R.C. 2151.355(A)(11) was repealed in 2002, but the pertinent language from that section was reenacted in R.C. 2152.19(A), the statute at issue here. Am.Sub.S.B. No. 179, 148 Ohio Laws, Part IV, 9447, 9573, relevant sections effective January 1, 2002. The relevant language of both statutes is identical; like its predecessor, R.C. 2152.19(A)(8) gives a court the authority to “[m]ake any further disposition that the court finds proper.” Per *Caldwell*, this language clearly “includes the authority to order consecutive terms of commitment.” *Id.* at 159. Because *Caldwell* is dispositive and indistinguishable, I agree with the majority opinion that the juvenile court had the authority to order consecutive commitments.

{¶ 26} I respectfully disagree, however, with the majority’s determination that the juvenile court can commit a juvenile to a minimum term of commitment in excess of 30 days. If a juvenile violates parole, a court can, under R.C. 5139.52(F), revoke the parole and return the child to the Ohio Department of Youth Services (“ODYS”). R.C. 5139.52(F) does not grant the court any authority to determine the term of the juvenile’s commitment, minimum or maximum. The minimum 30-day term is imposed by statute, and the maximum term (or rather, the child’s release date) is left solely to the discretion of ODYS. The court simply has no authority to determine the length of the ODYS commitment at all. It may only revoke parole and return the child to ODYS. I join the Chief Justice’s well-reasoned dissent on this issue.

SUPREME COURT OF OHIO

O'CONNOR, C.J., dissenting.

{¶ 27} The majority's decision to affirm the Ninth District Court of Appeals is not supported by the language of the relevant statutes or by the General Assembly's rationale in enacting those laws.

{¶ 28} The juvenile court did not have the power to designate a mandatory minimum confinement term of 90 days when ordering H.V.'s return to the Ohio Department of Youth Services ("ODYS") to continue serving under his 2010 disposition, and that portion of the juvenile court's November 23, 2011 revocation disposition should be reversed as unlawful. And because the juvenile court did not have the power to order H.V. to serve the confinement term imposed for his supervised-release violation consecutively to the confinement term imposed for the new delinquency adjudication, that portion of the November 23, 2011 disposition also should be reversed as unlawful. I therefore dissent.

ANALYSIS

{¶ 29} Upon revocation of a child's supervised release, a juvenile court has no authority to increase the 30-day mandatory minimum period of confinement set forth in R.C. 5139.52(F). Additionally, in enacting R.C. 2152.17, the General Assembly chose to permit consecutive terms of confinement only for certain enumerated specifications or dispositions involving multiple offenses that would be felonies if committed by an adult, leaving juvenile courts without authority to impose consecutive terms outside of these specified circumstances. The juvenile court therefore acted in excess of its statutory authority when it increased H.V.'s mandatory minimum term of confinement under R.C. 5139.52(F) and imposed consecutive terms of confinement in a way that was not permitted by R.C. 2152.17.

**A juvenile court has no authority to increase the statutory
minimum term of institutionalization**

{¶ 30} The plain language of R.C. 5139.52(F) dictates that once a juvenile's supervised release is revoked and his original indefinite term of institutionalization is reinstated, a minimum 30-day term of institutionalization arises as a matter of law. By construing the 30-day term in R.C. 5139.52(F) as merely the baseline for the juvenile court's discretion to impose any minimum term of institutionalization, the majority fails to recognize the significance of minimum and indefinite sentencing provisions in the context of juvenile cases, as well as the significance of statutory limitations on the discretionary authority of both the juvenile court and the ODYS.

{¶ 31} The juvenile justice system exists as “‘an uneasy partnership of law and social work,’ ” *In re Agler*, 19 Ohio St.2d 70, 73, 249 N.E.2d 808 (1969), quoting Whitlatch, *The Juvenile Court*, 18 W.Res.L.Rev. 1239, 1246 (1967), which serves to both support and correct its wards in an “institutionalized and thus reliable manner,” *id.* Juvenile proceedings are neither criminal nor penal in nature, and the juvenile justice system must value, above all, the child's welfare and betterment. *See In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 66-67.

{¶ 32} The purposes underlying all juvenile dispositions are set forth in R.C. 2152.01(A): “to provide for the care, protection, and mental and physical development of children subject to this chapter [R.C. Chapter 2152], protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender.” And “[t]hese purposes shall be achieved by a system of graduated sanctions and services.” (Emphasis added.) *Id.* The various traditional juvenile dispositions available to a trial court are delineated in R.C. 2152.16, 2152.17, 2152.19, and 2152.20. R.C. 2152.02(Z). A child is eligible for harsher sanctions only upon reaching a certain age and for

SUPREME COURT OF OHIO

certain serious misconduct. *See, e.g.*, R.C. 2152.11 (serious-youthful-offender dispositions); R.C. 2152.12 (transfer of cases from juvenile to adult criminal proceedings).

{¶ 33} In this case, H.V. was adjudicated through the traditional juvenile process for committing a fourth-degree felony at the age of 15. In fashioning an appropriate disposition for H.V., the juvenile court had a choice among various traditional juvenile dispositions: placement into the legal custody of ODYS for secure confinement, R.C. 2152.16; placement in a detention facility, R.C. 2152.19(A)(3); placement under house arrest, R.C. 2152.19(A)(4)(j); the imposition of fines, R.C. 2152.20(A)(1); and additional options or combinations of options.

{¶ 34} But after the juvenile court chose to place H.V. in the legal custody of ODYS for secure confinement, the court's discretion regarding that confinement was limited by R.C. 2152.16 and 2152.18. Because H.V. was adjudicated delinquent for a fourth-degree felony, the juvenile court had no discretion to impose anything other than an indefinite term of institutionalization with a minimum period of six months and a maximum period up to H.V.'s 21st birthday. R.C. 2152.16(A)(1)(e). The juvenile court was also required to credit H.V. for the 83 days that H.V. spent in a detention home while awaiting the juvenile court's December 8, 2010 dispositional decision, causing H.V.'s minimum six-month term to expire on or about March 16, 2011. R.C. 2152.18(B).³

{¶ 35} Because the juvenile court committed H.V. to the permanent legal custody of ODYS, the court ceased to have jurisdiction over H.V. in relation to the 2010 adjudication, except under limited circumstances. R.C. 2152.22(A). The juvenile court's jurisdiction became limited to (1) granting judicial release

³ The majority implies in ¶ 3 that ODYS permitted H.V.'s release after he had served only three months toward his six-month mandatory minimum term. This implication is patently incorrect.

during H.V.'s minimum six-month institutionalization period under certain conditions provided in R.C. 2152.22(B) and (C), (2) granting judicial release at any time after the minimum period under R.C. 2152.22(D), (3) determining whether H.V. violated the terms of his judicial release and, if so, revoking judicial release pursuant to the conditions of R.C. 2152.22(E), and (4) under R.C. 2152.22(H), performing certain judicial functions related to a decision by ODYS to release H.V. and revocation of that release under R.C. 5139.51 and 5139.52. Conversely, upon being granted permanent legal custody of H.V. up to his 21st birthday, ODYS's authority to determine the trajectory of H.V.'s rehabilitation was plenary, subject to the above limitations provided by statute. R.C. 2152.22(A). Within the parameters of H.V.'s indefinite term of institutionalization, ODYS had the authority to release H.V. at any point that it determined that its rehabilitative efforts had reached a satisfactory end. Ohio Adm.Code 5139-68-03.

{¶ 36} A review of the authority granted to and the constraints placed upon both the juvenile court and ODYS by the legislature requires a conclusion that after the disposition in a traditional juvenile proceeding, the statutes are primarily focused on facilitating the release of the child from confinement. After a child serves a minimum period of confinement, the ODYS has the authority to release the child, even if the juvenile court does not believe that he or she should be released. And the juvenile court can order the child's release, even if ODYS does not believe that he or she should be released. R.C. 5139.51; 2152.22. Neither of these statutes allows either entity to compel a child's confinement past the minimum term if the other entity wants him or her to be released.

{¶ 37} This general standard of promoting release from institutionalization is subject to few exceptions, but the revocation-of-supervised-release rule of R.C. 5139.52(F) contains one of those exceptions. The statute provides that after a juvenile court determines that a child has committed a serious violation of the

SUPREME COURT OF OHIO

terms and conditions of the child's supervised release, the juvenile court may return the child to ODYS pursuant to the prior adjudication or it may craft any other disposition that is "authorized by law that the court considers proper." R.C. 5139.52(F).

{¶ 38} Although the juvenile court's discretionary authority under the language of R.C. 5139.52(F) seems practically limitless when read out of context, it must be remembered that the juvenile court's authority under R.C. 5139.52(F) arises only in circumstances in which the court's general authority has otherwise been extinguished. R.C. 2152.22(A). Because the juvenile court's authority over the child is restored only to the limited extent provided by R.C. 5139.52(F), the majority's generosity in construing the court's discretionary powers is not supported by the statutory scheme. Moreover, just as with H.V.'s original 2010 disposition, when the juvenile court revoked H.V.'s supervised release, the juvenile court had the discretion to choose among various lawful dispositional options, but its discretion became limited by the applicable terms of the option it selected. Thus, once the juvenile court opted to return H.V. to ODYS, the other terms of H.V.'s disposition were controlled by the remainder of the language in R.C. 5139.52(F):

[T]he child shall remain institutionalized for a minimum period of thirty days, [ODYS] shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to [ODYS], the [ODYS] release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of

institutionalization or any period of institutionalization in excess of the minimum thirty-day period.

{¶ 39} When construing this and any other statute, our paramount concern is the legislative intent in enacting the statute, and our interpretation of the specific words used is guided by their plain, customary meaning. *Yonkings v. Wilkinson*, 86 Ohio St.3d 225, 227, 714 N.E.2d 394 (1999). A plain reading of the terms and modifiers in the above statutory language reveals that the trial court no longer has any control over the length of a child's confinement after choosing to return the child to the custody of ODYS. It is only ODYS that is authorized to resume its role of carrying out the indefinite term of institutionalization imposed in the original disposition.

{¶ 40} Although the statute states that "the court * * * may * * * order the child to be returned" to ODYS, it does not authorize the court to prescribe a minimum term of institutionalization. R.C. 5139.52(F). Instead, the 30-day-minimum term arises from the statute, and all further references to the juvenile court serve only to vitiate the court's normal discretionary power to release the child from confinement. Thus the length of the child's confinement after revocation is not within the trial court's authority. This makes sense because the revocation is merely a reinstatement of the juvenile court's previous disposition for the child, and a court neither has the power to alter the terms of the original disposition nor the power to increase the child's minimum term of confinement.

{¶ 41} The General Assembly's reason for inserting a minimum-term-of-confinement rule in R.C. 5139.52(F) is clear. The child has necessarily already completed a minimum term of confinement, so both the court and ODYS would ordinarily have the authority to immediately release the child the moment after the child returns to secure confinement. The 30-day rule acts, in effect, as a temporary stay on the release powers that either entity might be able to exercise.

SUPREME COURT OF OHIO

The 30-day rule, as well as its provision that prevents ODYS from reducing that 30-day minimum period by crediting the child with the time he or she served, prevents an immediate release from occurring, and ensures that a child will be held accountable for the violation of supervised release.

{¶ 42} The majority gives a juvenile court discretion to impose a longer minimum confinement period than the 30 days allowed by statute when the juvenile court believes that 30 days is not sufficient to hold the juvenile accountable for the new offense. But the majority's concerns are addressed in provisions such as R.C. 2152.16(C) and 2152.19, which direct a juvenile court to consider any prior adjudications when fashioning a disposition for a new adjudication. Nothing in R.C. 5139.52(F) diminishes the juvenile court's authority to impose other terms of institutionalization for newly committed offenses, so the majority's concern that a juvenile will not be held accountable for additional offenses is mistaken.

{¶ 43} Thus, not only is the majority's expansion of judicial discretion unsupported by the plain language of the statutory scheme, it is redundant, as its purposes are already served by the 30-day "stay" of R.C. 5139.52(F) and statutory directives for new adjudications.

{¶ 44} The majority stresses that nothing in R.C. 5139.52(F) indicates that the child can be reinstitutionalized for a maximum of 30 days. The majority is certainly correct on that point: any child who was originally committed to secure confinement under R.C. 2152.16(A)(1) has a maximum, indefinite term that extends to the child's attainment of 21 years of age, and nothing in R.C. 5139.52(F) allows the trial court to decrease that maximum when the child is returned to commitment under his original disposition. By the same token, however, nothing in R.C. 5139.52(F) allows the trial court to take it upon itself to *increase* the mandatory minimum terms provided by R.C. 2152.16(A)(1).

{¶ 45} Discretion to upwardly depart from minimum periods of confinement should not be read into a juvenile dispositional statute, particularly where the General Assembly elsewhere has explicitly evidenced its intent for the court to have such discretion in other dispositional provisions. *See, e.g.*, R.C. 2152.16(A)(1)(b) (for attempted murder or attempted aggravated murder, the sentence prescribed is “a minimum period of *six or seven years as prescribed by the court* and a maximum not to exceed the child’s attainment of twenty-one years of age” [emphasis added]); R.C. 2152.16(A)(1)(c) (for certain enumerated felonies, “a minimum period of *one to three years, as prescribed by the court*, and a maximum period not to exceed the child’s attainment of twenty-one years of age” [emphasis added]).

{¶ 46} Although the majority finds authority for the juvenile court in the absence of an explicit prohibition from the General Assembly, doing so severely undermines other provisions within the juvenile justice system. For example, although R.C. 2152.16 provides instructions only for the institutionalization of children who have committed felony offenses, nothing in the statute prohibits the court from institutionalizing a child for a misdemeanor offense. But it is well settled that a juvenile court does not have the authority to institutionalize a misdemeanant child, regardless of its discretion to impose any disposition it deems proper. *In re J.W.*, 12th Dist. Butler Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139, ¶ 16-21; *Wright v. Bower*, 8th Dist. Cuyahoga No. 79794, 2001 WL 824472 (July 16, 2001); *In re T.N.*, 3d Dist. Union No. 14-12-13, 2013-Ohio-135, ¶ 21.

{¶ 47} In R.C. 5139.52(F), the only entity identified as having the discretion to determine the timing of a child’s release from an indefinite term of confinement after the 30-day minimum period is the ODYS release authority. The General Assembly easily could have stated that the juvenile court also had

SUPREME COURT OF OHIO

the authority to extend a child's term of institutionalization, but the General Assembly chose not to do so.

{¶ 48} When the juvenile court committed H.V. to the custody of ODYS in 2010, it had no authority to impose a definite term of institutionalization, and no authority to alter the minimum and maximum terms of the mandatory indefinite sentence provided in R.C. 2152.16(A)(1)(e). It is illogical to assume from a mere lack of explicit prohibition that the juvenile court would later have the discretion to impose a definite term of institutionalization for a supervised-release revocation, even up to the very maximum limits. There is nothing to indicate that the General Assembly intended such a result, particularly in light of the fact that a child institutionalized pursuant to R.C. 5139.52(F) as a result of a supervised-release revocation is not eligible for early release. A provision providing the court with the discretion to impose an irrevocable, definite term of institutionalization for a supervised-release revocation—in excess of any possible term of institutionalization that would have been lawful in the child's original disposition—would completely undermine the purpose of the laws that a juvenile judge is obligated to uphold.

{¶ 49} It would be antithetical to the rehabilitative goals of the traditional juvenile system to allow a permanent term of confinement to be imposed prior to the child's reintroduction to an ODYS institutional environment, because at that time, it is not known how the child is going to respond to rehabilitative efforts. Such a disposition would be even more restrictive and punitive than the use of stayed adult sentences in serious-youthful-offender dispositional proceedings, as it would leave a child no motivation to change his or her behavior and meet assigned rehabilitative goals in order to avoid a definite sentence.

{¶ 50} If the 30-day-minimum-institutionalization provision in R.C. 5139.52(F) truly allows a trial court to impose any definite term of institutionalization that it deems proper within the range of the child's previous

indefinite term, the revocation no longer has the quality of a juvenile disposition. Instead, it is a punitive sentence. The juvenile court has the authority to enforce its own judgment by returning the child to ODYS under the original disposition, and it has the authority to do anything else that might be lawful and proper. But lawful and proper dispositions do not include those in which the court exceeds the dispositional mandates and instructions of the legislature and imposes what is, in essence, a criminal sentence within traditional juvenile proceedings.

{¶ 51} I would therefore hold that the juvenile court did not have the power to impose a mandatory minimum institutionalization term of 90 days after ordering H.V.'s return to ODYS to continue serving under his 2010 disposition and would hold that the disposition must be reversed as unlawful.

The juvenile statutory scheme does not permit a juvenile court to impose an institutionalization term for a supervised-release revocation consecutively to a new term of institutionalization

{¶ 52} Just as the phrase “any other disposition * * * that the court considers proper” in R.C. 5139.52(F) is not carte blanche for juvenile courts to disregard other statutory limits, the general reference in R.C. 2152.19(A)(8) to the juvenile court’s authority to make any disposition that it finds proper does not expand what constitutes a lawful disposition under the juvenile statutory scheme. Looking at the more specific terms of R.C. 2152.17, it is clear that the General Assembly has delineated the circumstances under which a court may impose consecutive terms of institutionalization and that the circumstances of H.V.’s dispositions are not among those listed.

{¶ 53} Neither the dispositional provisions of R.C. 2152.16 nor the revocation provisions of R.C. 5139.52 provide the juvenile court with the authority to run institutionalization terms for revocation dispositions consecutively to institutionalization terms for new delinquency dispositions. Most certainly, the juvenile court does not have the “inherent power” to run the

SUPREME COURT OF OHIO

terms consecutively, as the Ninth District held in this case. *In re H.V.*, 9th Dist. Lorain Nos. 11CA010139 and 11CA010140, 2012-Ohio-3742, at ¶ 10.

{¶ 54} A court's inherent authority is a power that is neither created nor assailable by acts of the legislature. *Hale v. State*, 55 Ohio St. 210, 215, 45 N.E. 199 (1896). But a juvenile court is a creature of statute and therefore has only such powers as are conferred upon it by the legislature. *See In re Agler*, 19 Ohio St.2d at 72-74, 249 N.E.2d 808. Thus it has little, if any, inherent power.

{¶ 55} It is the legislature that has the authority to define offenses and fix penalties, and it is the legislature that authorizes the judiciary to pass a particular sentence upon an accused. *Ex parte Fleming*, 123 Ohio St. 16, 173 N.E. 441 (1930), at paragraph one of the syllabus; *Ex parte United States*, 242 U.S. 27, 42, 37 S.Ct. 72, 61 L.Ed. 129 (1916). *See also State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 22 ("Judges have no inherent power to create sentences").

{¶ 56} In the face of silence on the issue of consecutive terms of institutionalization, it should not be inferred that a juvenile court has the discretion to order multiple confinement terms to be served consecutively. Although this court made that inference in *In re Caldwell*, 76 Ohio St.3d 156, 666 N.E.2d 1367 (1996), the circumstances of *Caldwell*, both in law and in fact, are far different from the circumstances of the present case.

{¶ 57} In *Caldwell*, the child had been adjudicated delinquent in 1994 in two cases that were heard together. *In re Caldwell*, 10th Dist. Franklin Nos. 94APF07-996 and 94APF07-997, 1995 WL 46199 (Jan. 31, 1995). In the first case, the child was adjudicated delinquent on two fourth-degree felony counts of aggravated vehicular assault, and in the second case, the child was adjudicated delinquent on a third-degree felony count of receiving stolen property. The juvenile court imposed terms of institutionalization for each of the three counts and ordered that they be served consecutively. This court's approval of the

juvenile court's dispositional decision was based on the fact that (1) the applicable version of R.C. Chapter 2151 made no mention of consecutive dispositions, (2) the only guidance on the issue was found in the instructions that a court shall "[m]ake any further disposition that the court finds proper" under former R.C. 2151.355(A)(11), Am.Sub.H.B. No. 725, 144 Ohio Laws, Part IV, 6368, 6372, effective April 16, 1993, and (3) future cases would be governed by the then newly amended R.C. 2151.355(B)(2), Am.Sub.H.B. No. 1, 146 Ohio Laws, Part I, 31, 34, effective January 1, 1996, which expressly provided for consecutive terms of confinement in cases such as Caldwell's. *Caldwell*, 76 Ohio St.3d at 158-159, 666 N.E.2d 1367, fn. 1.

{¶ 58} *Caldwell* was decided at a time when R.C. Chapter 2151 governed children who were abused, neglected, or dependent, as well as juvenile delinquents. See *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258, ¶ 9. However, the juvenile statutory scheme was significantly altered in 2002 by the Juvenile Justice Reform Act, Am.Sub.S.B. No. 179, 148 Ohio Laws, Part IV, 9447. Both bodies of juvenile law were revised, and R.C. Chapter 2152 was enacted to exclusively address juvenile delinquency. *Cross* at ¶ 11.

{¶ 59} *Caldwell* was also decided at a time when Ohio's criminal sentencing code retained the common-law preference for consecutive sentences. *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E. 2d 768, ¶ 26 (stating that "the common law prefer[red] consecutive sentences over concurrent sentences"). Comprehensive changes were made to the sentencing code by 1995 Am.Sub.S.B. No. 2, 146 Ohio Laws, Part IV, 7136, effective July 1, 1996. For example, R.C. 2929.41(A) was amended to presume that sentences would be served concurrently unless a court stated otherwise. Although R.C. 2929.41(A) was excised by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the identical language of R.C. 2929.41(A) was reenacted in full by the legislature in 2011 Am.Sub.H.B. No. 86, effective September 30, 2011.

SUPREME COURT OF OHIO

Accordingly, a whole host of direct and analogous presumptions that existed at the time of *Caldwell* are no longer valid in the present day.

{¶ 60} Here, we are not facing the same lack of direction on the issue of consecutive terms of confinement in the juvenile statutes as we were in *Caldwell*, and we are also facing a very different juvenile statutory scheme from what existed at the time of *Caldwell*. The General Assembly has now addressed the issue of consecutive terms of confinement for a delinquent child by enacting R.C. 2152.17. Pursuant to R.C. 2152.17(E), if a child is adjudicated a delinquent for a felony and the child also committed one of several enumerated specifications, the child's term of confinement for the specification must be served consecutively to the term of confinement for the underlying delinquent act. And pursuant to R.C. 2152.17(G), the juvenile court may impose consecutive terms of confinement if it adjudicates a child delinquent for multiple felony offenses and commits the child to the legal custody of ODYS for each offense. Neither of those circumstances applies here.

The Ohio Legislature having dealt with the subject, and having made certain provisions and certain exceptions thereto, it will be presumed that the Legislature has exhausted the legislative intent, and that it has not intended the practice to be extended further than the plain import of the statutes already enacted. The well-known maxim, *expressio unius est exclusio alterius*, applies.

Madjorous v. State, 113 Ohio St. 427, 433, 149 N.E. 393 (1925).

{¶ 61} R.C. 2152.17 does not state that a juvenile court is permitted to order that a term of confinement imposed from a revocation disposition be served consecutively to a term of confinement from a new adjudication of delinquency. And this court has no power to create additional juvenile court authority. The

extension of authority to impose consecutive confinement terms is a policy matter within the purview of the legislature. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 28 (Lanzinger, J., concurring). Just as the General Assembly amended R.C. Chapter 2152 to allow for consecutive confinement terms in certain circumstances, it could do so for the circumstances in this case.

{¶ 62} We must remain mindful throughout this process that if the juvenile court has decided to utilize the traditional juvenile process rather than bind a juvenile over to adult criminal proceedings, we cannot allow criminal-sentencing notions to creep into our assumptions, and we certainly cannot allow them to creep into our explicit analysis. Instead, we must keep in mind the fundamental rehabilitative purpose of the juvenile justice system. *See In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 67.

{¶ 63} If a county prosecuting attorney thinks that a child's offenses are serious enough that the traditional juvenile process will not rehabilitate the child and protect the public and that harsher sanctions should apply, the prosecuting attorney may request serious-youthful-offender proceedings as provided in R.C. 2152.13 or move to bind the child over to adult criminal proceedings as provided in R.C. 2152.12, and the court will grant such requests under the appropriate circumstances. If the minimum confinement period of a possible disposition does not adequately address the concerns voiced by the majority regarding a child's serious, repeated, or escalating criminal conduct, the proper remedy is to use the alternative "graduated sanctions" that are available within the juvenile code. R.C. 2152.01(A). But the court cannot, and should not, change or expand the dispositions available in the juvenile code.

{¶ 64} I would therefore hold that the juvenile court did not have the authority to order that the confinement term imposed for the supervised-release revocation be served consecutively to the confinement term imposed for the new

delinquency disposition and that the offending portion of the November 23, 2011 disposition must be reversed as unlawful.

CONCLUSION

{¶ 65} In the end, it may have been a very good idea for H.V. to remain in secure confinement for the term imposed by the juvenile court. But the fact that H.V.'s case does not cry out for a shorter term of institutionalization is irrelevant to the determination whether the juvenile court had statutory authority to act as it did. Unsympathetic circumstances provide a perfect opportunity for bad law—law that will have an adverse impact on more sympathetic cases in the future. But my concern is not solely with the court's trampling on the important public policies behind the juvenile code, e.g., to rehabilitate young offenders. It offends the law and our constitutions when a judge legislates from the bench in order to increase the confinement period that may be imposed on a child merely because the judge believes that the confinement period allowed under the statute is too lenient in a particular situation. The statutes that govern dispositions in juvenile cases are for the General Assembly, and not judges, to create. Once created, courts must employ the statutes in order to fashion proper, just sanctions for delinquent youth.

{¶ 66} In cases in which we believe that punishment is paramount to rehabilitation, judges must rely on the juvenile statutes that allow for bindover, serious-youthful-offender hybrid sentencing, or any number of additional dispositions, to address cases in which the juvenile presents a risk that cannot be addressed in the juvenile system. Judges cannot, however, alter a statutory scheme in order to fashion a remedy in any given case. Because the majority ignores the proper role of the judicial branch, I dissent.

PFEIFER, J., concurs in the foregoing opinion.

January Term, 2014

Timothy Young, Ohio Public Defender, and Sheryl Trzaska, Assistant State Public Defender, for appellant.

Dennis P. Will, Lorain County Prosecuting Attorney, and Chris A. Pyanowski, Assistant Prosecuting Attorney, for appellee, the state of Ohio.
