



OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

MEMORANDUM

To: Sara Andrews, Director

From: Jo Ellen Cline, Criminal Justice Counsel

Date: March 18, 2016

RE: Summary of Costs, Fees, and Restitution Proposal

At its August 2015 meeting, the Ohio Criminal Sentencing Commission approved draft statutory changes to R.C. 2152.20 making changes regarding costs and fees in juvenile court. At its March 2016 meeting, the Commission made further revisions to R.C. 2152.20 regarding restitution in juvenile cases. This memorandum summarizes the proposed language and its genesis.

Background

One of the early priorities identified by the Ohio Criminal Sentencing Commission in 2015 was a review of financial sanctions in juvenile court, specifically court costs and fees in R.C. 2152.20. After working on those components, the Juvenile Justice committee determined that a review of restitution in juvenile court, which is contained in the same section of the Revised Code, was also necessary.

The committee's recommendations as to the costs and fees portions of R.C. 2152.20 were presented to the Ohio Criminal Sentencing Commission in August 2015. The Commission, after discussion, voted unanimously to accept the committee's recommended statutory changes and forward those to the Ohio General Assembly. Because the committee indicated that it would also consider the restitution language in the same Code section, it was decided to hold the costs and fees language until work was completed on restitution.

The committee made its final recommendation on restitution to the Commission in March 2016. The Commission approved the restitution language as presented by the committee with eleven members in favor and four opposed. (11 – 4). Concerns were expressed regarding the provisions of the proposed changes that allow for a restitution order to be converted to a civil judgment when the juvenile turns 21 or, if not satisfied by alternative means, upon order of the juvenile court.

Proposed Statutory Changes

Costs and Fees

The committee focused on clarification of the actions that a court can take in imposing and collecting financial sanctions against juveniles. The current statute regarding costs and fees is very broad as it allows many things to be charged as costs, including confinement costs, treatment costs and community implementation. The Ohio Department of Youth Services (DYS) was unaware of any juvenile that had been ordered to pay the costs of confinement in a DYS facility and, for that reason, those costs have been stricken in the proposed language. In addition, under current law, costs are assessed against the juvenile offender. The proposal also allows costs to be assessed against a juvenile's parent, guardian or custodian.

Most significantly, the proposed language requires the court, at disposition, to hold a hearing to determine the juvenile offenders', or the offender's parents', ability to pay and the costs ordered cannot exceed the ability to pay.

Restitution

The first change recommended was to make restitution its own section within the Ohio Revised Code and remove it from 2152.20. This change reflects the Commission's belief that restitution is different than costs and fees and should be treated differently. Other substantive changes include: directing courts to consider alternative restorative justice or alternative means to restitution if the offender is unable to make cash payments, including return of property; clarifying that restitution payments end when the amount is satisfied or at age twenty-one; and specifying that a restitution order can be reduced to a civil judgment when the offender turns 21 or, if not satisfied utilizing alternative means, upon order of the juvenile court. The latter change will allow a victim to enforce the judgment through civil means including garnishment of wages and other civil collection methods.

As mentioned above, this last provision regarding a civil judgment was subject to extensive debate. Proponents of the language advocate that victims need to be made whole and that the language allows the possibility of removing the juvenile from probation early if, as is often the case, restitution payment is the only reason they remain on probation. Opponents of the language argue that juvenile court is different, that the purpose of the juvenile justice system is to rehabilitate the offender, and that allowing a juvenile to enter adulthood with a civil judgment against them puts an already vulnerable young person at risk for further involvement with the justice system.

Conclusion

The Ohio Criminal Sentencing Commission unanimously approved the proposed language regarding costs and fees for presentation to the General Assembly at its August 2015 meeting. At its March 2016 meeting, the Commission approved the revisions regarding restitution by a vote of 11-4.

1 **2152.20 Authorized dispositions for delinquent child or juvenile traffic offender.**

2 (A) If a child is adjudicated a delinquent child or a juvenile traffic offender, the court
3 may order any of the following dispositions, in addition to any other disposition
4 authorized or required by this chapter:

5 (1) Impose a fine in accordance with the following schedule:

6 (a) For an act that would be a minor misdemeanor or an unclassified misdemeanor if
7 committed by an adult, a fine not to exceed fifty dollars;

8 (b) For an act that would be a misdemeanor of the fourth degree if committed by an
9 adult, a fine not to exceed one hundred dollars;

10 (c) For an act that would be a misdemeanor of the third degree if committed by an
11 adult, a fine not to exceed one hundred fifty dollars;

12 (d) For an act that would be a misdemeanor of the second degree if committed by an
13 adult, a fine not to exceed two hundred dollars;

14 (e) For an act that would be a misdemeanor of the first degree if committed by an adult,
15 a fine not to exceed two hundred fifty dollars;

16 (f) For an act that would be a felony of the fifth degree or an unclassified felony if
17 committed by an adult, a fine not to exceed three hundred dollars;

18 (g) For an act that would be a felony of the fourth degree if committed by an adult, a
19 fine not to exceed four hundred dollars;

20 (h) For an act that would be a felony of the third degree if committed by an adult, a fine
21 not to exceed seven hundred fifty dollars;

22 (i) For an act that would be a felony of the second degree if committed by an adult, a
23 fine not to exceed one thousand dollars;

24 (j) For an act that would be a felony of the first degree if committed by an adult, a fine
25 not to exceed one thousand five hundred dollars;

26 (k) For an act that would be aggravated murder or murder if committed by an adult, a
27 fine not to exceed two thousand dollars.

28 (2) Require the child or a parent or parents, guardian, or custodian of the child, or both,
29 to pay costs, including, but not limited to, costs described in section 2746.05 of the
30 Revised Code;

31 (3) Unless the child's delinquent act or juvenile traffic offense would be a minor
32 misdemeanor if committed by an adult or could be disposed of by the juvenile traffic
33 violations bureau serving the court under Traffic Rule 13.1 if the court has established a
34 juvenile traffic violations bureau, require the child to make restitution as provided under
35 Revised Code Section 2152.203. ~~to the victim of the child's delinquent act or juvenile~~
36 ~~traffic offense or, if the victim is deceased, to a survivor of the victim in an amount~~
37 ~~based upon the victim's economic loss caused by or related to the delinquent act or~~
38 ~~juvenile traffic offense. The court may not require a child to make restitution pursuant~~
39 ~~to this division if the child's delinquent act or juvenile traffic offense would be a minor~~
40 ~~misdemeanor if committed by an adult or could be disposed of by the juvenile traffic~~
41 ~~violations bureau serving the court under Traffic Rule 13.1 if the court has established a~~
42 ~~juvenile traffic violations bureau. If the court requires restitution under this division, the~~
43 ~~restitution shall be made directly to the victim in open court or to the probation~~
44 ~~department that serves the jurisdiction or the clerk of courts on behalf of the victim.~~

45 ~~If the court requires restitution under this division, the restitution may be in the form of~~
46 ~~a cash reimbursement paid in a lump sum or in installments, the performance of repair~~
47 ~~work to restore any damaged property to its original condition, the performance of a~~
48 ~~reasonable amount of labor for the victim or survivor of the victim, the performance of~~
49 ~~community service work, any other form of restitution devised by the court, or any~~
50 ~~combination of the previously described forms of restitution.~~

51 ~~If the court requires restitution under this division, the court may base the restitution~~
52 ~~order on an amount recommended by the victim or survivor of the victim, the~~
53 ~~delinquent child, the juvenile traffic offender, a presentence investigation report,~~
54 ~~estimates or receipts indicating the cost of repairing or replacing property, and any~~
55 ~~other information, provided that the amount the court orders as restitution shall not~~
56 ~~exceed the amount of the economic loss suffered by the victim as a direct and~~
57 ~~proximate result of the delinquent act or juvenile traffic offense. If the court decides to~~
58 ~~order restitution under this division and the amount of the restitution is disputed by the~~
59 ~~victim or survivor or by the delinquent child or juvenile traffic offender, the court shall~~
60 ~~hold a hearing on the restitution. If the court requires restitution under this division, the~~
61 ~~court shall determine, or order the determination of, the amount of restitution to be~~
62 ~~paid by the delinquent child or juvenile traffic offender. All restitution payments shall be~~
63 ~~credited against any recovery of economic loss in a civil action brought by or on behalf~~

64 ~~of the victim against the delinquent child or juvenile traffic offender or the delinquent~~
65 ~~child's or juvenile traffic offender's parent, guardian, or other custodian.~~

66 ~~If the court requires restitution under this division, the court may order that the~~
67 ~~delinquent child or juvenile traffic offender pay a surcharge, in an amount not exceeding~~
68 ~~five per cent of the amount of restitution otherwise ordered under this division, to the~~
69 ~~entity responsible for collecting and processing the restitution payments.~~

70 ~~The victim or the survivor of the victim may request that the prosecuting authority file a~~
71 ~~motion, or the delinquent child or juvenile traffic offender may file a motion, for~~
72 ~~modification of the payment terms of any restitution ordered under this division. If the~~
73 ~~court grants the motion, it may modify the payment terms as it determines appropriate.~~

74 (4) Require the child or a parent or parents, guardian, or custodian of the child, or both,
75 to reimburse any or all of the costs incurred for services or sanctions provided or
76 imposed, including, but not limited to, the following:

77 (a) All or part of the costs of implementing any community control imposed as a
78 disposition under section 2152.19 of the Revised Code, including a supervision fee;

79 (b) All or part of the costs of confinement in a residential facility described in section
80 2152.19 of the Revised Code ~~or in a department of youth services institution~~, including,
81 but not limited to, a per diem fee for room and board, the costs of medical and dental
82 treatment provided, and the costs of repairing property the delinquent child damaged
83 while so confined. ~~The amount of reimbursement ordered for a child under this division~~
84 ~~shall not exceed the total amount of reimbursement the child is able to pay as~~
85 ~~determined at a hearing and shall not exceed the actual cost of the confinement. The~~
86 ~~court may collect any reimbursement ordered under this division. If the court does not~~
87 ~~order reimbursement under this division, confinement costs may be assessed pursuant~~
88 ~~to a repayment policy adopted under section 2929.37 of the Revised Code and division~~
89 ~~(D) of section 307.93, division (A) of section 341.19, division (C) of section 341.23 or~~
90 ~~753.16, division (C) of section 2301.56, or division (B) of section 341.14, 753.02, 753.04,~~
91 ~~or 2947.19 of the Revised Code.~~

92 (B) Chapter 2981. of the Revised Code applies to a child who is adjudicated a delinquent
93 child for violating section 2923.32 or 2923.42 of the Revised Code or for committing an
94 act that, if committed by an adult, would be a felony drug abuse offense.

95 (C) The court ~~may shall, at disposition,~~ hold a hearing ~~if necessary~~ to determine whether
96 a child or a parent or parents, guardian, or custodian of the child, or both, is are able to
97 pay a sanction under this section. The amount ~~of reimbursement~~ ordered ~~for a child~~
98 ~~under this division~~ shall not exceed the total amount of reimbursement the child or
99 parent or parents is are able to pay ~~as determined at a hearing and shall not exceed the~~
100 ~~actual cost of the confinement.~~ The court may collect any reimbursement ordered
101 ~~under this division.~~

102 (D) If a child who is adjudicated a delinquent child is indigent, the court shall consider
103 imposing a term of community service under division (A) of section 2152.19 of the
104 Revised Code in lieu of imposing a financial sanction under this section. If a child who is
105 adjudicated a delinquent child is not indigent, the court may impose a term of
106 community service under that division in lieu of, or in addition to, imposing a financial
107 sanction under this section. The court may order community service for an act that if
108 committed by an adult would be a minor misdemeanor.

109 If a child fails to pay a financial sanction imposed under this section, the court may
110 impose a term of community service in lieu of the sanction.

111 (E) The clerk of the court, or another person authorized by law or by the court to collect
112 a financial sanction imposed under this section, may do any of the following:

113 (1) Enter into contracts with one or more public agencies ~~or private vendors~~ for the
114 collection of the amounts due under the financial sanction, which amounts may include
115 interest from the date of imposition of the financial sanction;

116 (2) Permit payment of all, or any portion of, the financial sanction in installments, by
117 credit or debit card, by another type of electronic transfer, or by any other reasonable
118 method, within any period of time, and on any terms that the court considers just,
119 except that the maximum time permitted for payment shall not exceed five years or the
120 child's twenty-first birthday, whichever occurs first. The clerk may pay any fee
121 associated with processing an electronic transfer out of public money and may charge
122 the fee to the delinquent child.

123 (3) To defray administrative costs, charge a reasonable fee ~~to a child who~~ to the obligor
124 if the obligor elects a payment plan rather than a lump sum payment of a financial
125 sanction.

126

127 2152.203 Restitution

128
129 (A) Unless the child's delinquent act or juvenile traffic offense would be a minor
130 misdemeanor if committed by an adult or could be disposed of by the juvenile traffic
131 violations bureau serving the court under Traffic Rule 13.1, if the court has established a
132 juvenile traffic violations bureau, if a child is adjudicated a delinquent child or a juvenile
133 traffic offender, the court may order the child to make restitution to the victim of the
134 child's delinquent act or juvenile traffic offense or, if the victim is deceased, to a survivor
135 of the victim in an amount based upon the victim's economic loss caused by or related
136 to the delinquent act or juvenile traffic offense. If the court requires restitution under
137 this division, the restitution shall be made directly to the victim in open court or to the
138 probation department that services the jurisdiction or the clerk of courts on behalf of
139 the victim.

140
141 (B) If the court requires restitution under this division, the court may order that the
142 restitution be in the form of a cash reimbursement paid in a lump sum or in
143 installments, the performance of repair work to restore any damaged property to its
144 original condition, the performance of a reasonable amount of labor for the victim or
145 survivor of the victim, the performance of community service work, any other form of
146 restitution devised by the court, including, but not limited to, alternative restorative
147 justice or alternative means to restitution, including returning personal property, or any
148 combination of the previously described forms of restitution.

149
150 (C) If the court requires restitution under this division, the court may base the
151 restitution order on an amount recommended by the victim or survivor of the victim,
152 the delinquent child, the juvenile traffic offender, a presentence investigation report,
153 estimates or receipts indicating the cost of repairing or replacing property, and any
154 other information, provided that the amount the court orders as restitution shall not
155 exceed the amount of the economic loss suffered by the victim as a direct and
156 proximate result of the delinquent act or juvenile traffic offense. If the court decides to
157 order restitution under this division and the amount of the restitution is disputed by the
158 victim or survivor or by the delinquent child or juvenile traffic offender, the court shall
159 hold a hearing on the restitution. If the court requires restitution under this division, the
160 court shall determine, or order the determination of, the amount of restitution to be
161 paid by the delinquent child or juvenile traffic offender. All restitution payments shall be
162 credited against any recovery of economic loss in a civil action brought by or on behalf

163 of the victim against the delinquent child or juvenile traffic offender or the delinquent
164 child's or juvenile traffic offender's parent, guardian, or other custodian.

165 (D) If the court requires restitution under this division, the court may order the payment
166 of a surcharge, in an amount not exceeding five percent of the amount of restitution
167 otherwise ordered under this division, as costs under section 2152.20 of the Revised
168 Code, to the entity responsible for collecting and processing the restitution payments.

169 (E) Any court order for restitution expires at the earlier of satisfaction of the restitution
170 order, either through payment, community service, or at the advice of the victim; upon
171 completion of the disposition; or when the delinquent child or juvenile traffic offender
172 against whom the order is made turns twenty-one.

173 (F) Following an order of restitution and in establishing a payment plan, the court shall
174 consider the child's present and future ability to pay in addition to any other factors the
175 court finds relevant in determining the number and amount of restitution payments.

176 (G) Except as otherwise provided in this division, an order for restitution imposed
177 pursuant to this section may be reduced to a judgment in favor of the victim upon the
178 termination of the court's jurisdiction at age 21 or, if restitution has not been satisfied
179 after exhausting the options in division (B) of this section, by order of the court,
180 whichever occurs first. Once the restitution order is reduced to a civil judgment under
181 this division, the victim may do any of the following:

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183 (1) Obtain from the clerk of the court in which the judgment was entered a certificate
184 of judgment that shall be in the same manner and form as a certificate of judgment
185 issued in a civil action;

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187 (2) Obtain execution of the judgment or order through any available procedure,
188 including:

189
190 (a) An execution against the property of the judgment debtor under Chapter 2329. of
191 the Revised Code;

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193 (b) An execution against the person of the judgment debtor under Chapter 2331. of the
194 Revised Code;

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196 (c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

197
198 (i) A proceeding for the examination of the judgment debtor under sections
199 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;
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201 (ii) A proceeding for attachment of the person of the judgment debtor under
202 section 2333.28 of the Revised Code;

203
204 (iii) A creditor's suit under section 2333.01 of the Revised Code.

205
206 (d) The attachment of the property of the judgment debtor under Chapter 2715. of the
207 Revised Code;

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209 (e) The garnishment of the property of the judgment debtor under Chapter 2716. of the
210 Revised Code.

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212 (3) Obtain an order for the assignment of wages of the judgment debtor under section
213 1321.33 of the Revised Code.

214