

THE SUPREME COURT *of* OHIO

JUVENILE JUSTICE BENCH CARDS



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OFFICE OF COURT SERVICES

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DIRECTOR OF COURT SERVICES

DAVID EDELBLUTE

MANAGER, CHILDREN & FAMILIES SECTION

ANNE MURRAY

POLICY COUNSEL

KYANA PIERSON

POLICY COUNSEL

DEBRA COPELAND

COURT IMPROVEMENT PROGRAM ANALYST

RENEE BELLAMY

PROGRAM ASSISTANT

Ohio's Juvenile Justice Bench Cards were developed to support judicial officers in their duty to provide comprehensive and timely action in juvenile delinquency and unruly cases, and to encourage best practices for courts working with youth involved in the juvenile justice system.

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Any comments or questions about these bench cards should be direct to:

The Supreme Court of Ohio
Office of Court Services
Children and Families Section
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9385



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COLLECTION OF FINES AND FEES IN JUVENILE COURTS



Court practices to enforce appropriately assessed fines, costs, and other financial sanctions are an important part of enforcing the consequences of misconduct. The responsibility of the courts in general, and individual judges in particular, is to ensure that any fines, costs, and other financial sanctions arising out of a case are reasonable and take into account a child's ability to pay.

IMPOSING FINES, COSTS, AND OTHER FINANCIAL SANCTIONS

Court Costs

- Court costs and fees are civil, not criminal, obligations and may be collected only by the methods provided for the collection of civil judgments.¹
- Court may waive all fees and costs.²
- Court cannot assess costs against a child whose delinquency case is dismissed.³
- Court cannot impose costs on juvenile cases transferred from another court if disposition has already taken place.⁴
- Court cannot sanction a child to detention for failure to pay costs.⁵

Fines

- Non-payment of a financial sanction is a violation of a court order so all attendant dispositions under [R.C. 2152.19](#) apply, except detention.
- The court should consult the following statutes for maximum fines allowable:
 - [R.C. 2151.87](#)
 - [R.C. 2152.20](#)
 - [R.C. 2152.21](#)
 - [R.C. 4513.99](#)

Dispositional orders are temporary and continue only for the period that is designated by the court or until the child attains 21 years of age, whichever

is sooner.⁶ Orders to enforce the payment of fines, costs, license suspensions, community service requirements, and vehicle registration blocks expire upon the child turning 21.

DETERMINING THE ABILITY TO PAY



The juvenile court should presume that young people are unable to pay fines and fees and only impose them after an affirmative showing of ability to pay.⁷

Before the juvenile court punishes youth for failing to pay fines, costs, or other financial sanctions, it must first determine ability to pay, considering factors particularly applicable to youth.⁸

- Hearing on ability to pay is discretionary when imposing fines or costs, but hearing to determine ability to pay after failure to pay is mandatory.⁹
- An ability-to-pay inquiry that recognizes the unique characteristics of children will help to ensure that juvenile courts and other juvenile justice agencies do not punish children for their poverty in violation of the Constitution and also may prevent the kind of disparate racial impact that may violate Title VI, the Safe Streets Act, and other related statutes.¹⁰
- Consideration of ability to pay should focus on unique circumstances that inhibit the child's ability to pay, including:¹¹
 - Requiring a child to work to pay fines and fees may have negative consequences like missing school in order to work;
 - Children often lack their own means of transportation; and
 - Children under probation or in a diversion program may find it difficult to simultaneously fulfill obligations related to their probation, program, school, and job.

COSTS RELATED TO CONFINEMENT AND LEGAL SERVICES

1. The “cost of confinement” includes costs for medical and dental care provided to the child during his confinement, and the cost of any property damaged while so confined. These amounts cannot be determined in advance of the child’s release. A hearing at or near the time of release must be held to ensure that all costs allowed by the statute are properly calculated, and that those

costs shall not “exceed the total amount of reimbursement the child is able to pay as determined at the hearing and shall not exceed the actual cost of the confinement.”¹²

2. A court must make an affirmative determination on the record that a child has, or can reasonably be expected to have the ability to pay the cost of legal services.¹³ The court must determine the child’s ability to pay before imposing court-appointed attorney fees.¹⁴

PERMITTED METHODS OF COLLECTING COURT COSTS AND FINES (Any Method Not Permitted is Prohibited)

PERMITTED COLLECTION METHODS	COSTS	FINES
Voluntary Payment	X	X
Payment Plan ¹⁵	X	X
Collection Agency or Attorney General ¹⁶	X	X
Community Service ¹⁷	X	X
Civil Judgment ¹⁸	X	
Registration Block ¹⁹	X	X
Detention ²⁰ (<i>see Fines front</i>)		
Driver’s License Suspension ²¹	X	X
Cancellation of Uncollected Debt ²²	X	X

NOT RECOMMENDED: CONTEMPT PROCEEDINGS



The use of contempt proceedings for failure to pay is not recommended. If contempt is used, the court shall conduct a hearing. At the hearing, the court shall investigate the charge and hear any answer or testimony that the accused makes or offers and shall determine whether the accused is guilty of the contempt charge. The Constitution requires that before punishing someone for failing to pay a fine or fee, a court must inquire into the individual’s ability to pay.

- Contempt for failure to pay requires a hearing under [R.C. 2705.05](#).
- Contempt should be used as a last resort.
- Consider alternatives to financial sanctions in [R.C. 2152.20\(D\)](#).

RESTITUTION

Amount

- Court must find a definite amount of restitution and must determine the amount is reasonable. An evidentiary hearing must be held before a court can order an offender to pay restitution if the amount is disputed.²³
- The amount is limited to the actual economic loss that criminal conduct caused.²⁴
- Court record must contain competent, credible evidence to show amount.²⁵
- Court may apportion a restitution among co-defendants.²⁶

RESTITUTION - *cont.*

Victims

- Court may establish a victim-offender mediation program in which victims and offenders meet to discuss the offense and suggest possible restitution.²⁷
- A delinquent child, a victim, or a survivor of a victim (through the prosecutor) may file a motion for modification of the payment terms.²⁸
- Restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.²⁹

Parents

- Court cannot order parent to pay restitution in a delinquency proceeding.³⁰
- Parents may be held liable for restitution through a separate civil suit filed in a municipal, county court, or the general division of a common pleas court.
- Liability of parents for destructive acts or theft by children = \$10,000 maximum.³¹
- Liability of parents for assaults by children = \$10,000 maximum.³²
- Damages recoverable for vandalism, desecration, or ethnic intimidation = \$15,000 maximum.³³

DIVERSION PROGRAMS OR OTHER ALTERNATIVES TO ADJUDICATION



The juvenile court should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth's family is unable to pay the fee.³⁴

Due process and equal protection plainly prohibit juvenile courts and other juvenile justice agencies from treating two similarly situated children differently based solely on their economic status or economic status of their parents.³⁵

COMMUNITY SERVICE

A term of community service **in lieu of financial sanctions**:

- Must be considered if the child is indigent.
- May be considered if:
 - o The child is not indigent;
 - o Fails to pay.³⁶

See References, p. 4.

REFERENCES

Click on a statute or case citation for a link to the text.

- 1 [*Strattman v. Studt*, 20 Ohio St.2d 95](#) (1969).
- 2 [R.C. 2151.54](#). (Must make a specific finding of indigency and waive all other costs before waiving costs required under [R.C. 2743.70](#) or [R.C. 2949.091](#).)
- 3 [*In re Graham*](#), 7th Dist., Case No. 02 CA 67, 2002-Ohio-6615.
- 4 [R.C. 2152.20](#).
- 5 [*In re Rinehart*, 10 Ohio App.3d 318](#), (4th Dist. 1983).
- 6 [R.C. 2152.22\(A\)](#).
- 7 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 8 Id.
- 9 [*In re McClanahan*](#), 5th Dist., Case No. 2004AP010004, 2004-Ohio-4113 (Hearing on ability to pay upon the imposition of fines or costs is discretionary (Also [*In re Carter*](#), 4th Dist., Case Nos. 04CA15 and 04CA16, 2004-Ohio-7285), but hearing to determine ability to pay after failure to pay is mandatory.
- 10 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 11 Id.
- 12 [R.C. 2152.20\(A\)\(4\)\(b\)](#).
- 13 [*In re J.W.*](#), 12th Dist., Case Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139; [Juv.R. 4](#); [OAC 120-1-05](#).
- 14 [*In re J.W.*](#), 12th Dist., Case Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139; [Juv.R. 4](#); [OAC 120-1-05](#).
- 15 [R.C. 2152.20\(E\)](#).
- 16 [R.C. 2152.20\(E\)](#).
- 17 [R.C. 2152.20\(D\)](#).
- 18 [R.C. 2335.19](#).
- 19 [R.C. 2947.09](#).
- 20 [*In re Rinehart*, 10 Ohio App.3d 318](#), (4th Dist. 1983).
- 21 [*In re R.K.*](#), , [R.C. 2152.19\(A\)\(4\)\(I\)](#); 8th Dist., Case No. 84948, 2004-Ohio-6918.
- 22 [R.C. 2151.542](#).
- 23 [*In re Holmes*, 70 Ohio App.2d 75, 76-77](#) (1st Dist. 1980); [*In re Clemens*](#), 11th Dist., Case No. 2001-L-004, 2002-Ohio-3370.
- 24 [*State v. Brumbeck*, 109 Ohio App.3d 65](#) (9th Dist. 1996).
- 25 [*In re Hatfield*](#), 4th Dist., Case No. 03CA14, 2003-Ohio-5404.
- 26 [*In re Daudt*](#), 1987 WL 13715, 1987 Ohio App. LEXIS 7717 (12th Dist. 1987).
- 27 [R.C. 2152.19\(C\)](#).
- 28 [R.C. 2152.20\(A\)\(3\)](#).
- 29 [R.C. 2152.20\(A\)\(3\) - \(4\)](#).
- 30 [*In re Daudt*](#), 1986 WL 9630, 1986 Ohio App. LEXIS 8105 (12th Dist. 1986).
- 31 [R.C. 3109.09](#).
- 32 [R.C. 3109.10](#).
- 33 [R.C. 2307.70](#).
- 34 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 35 Id.
- 36 [R.C. 2152.20\(D\)](#); [R.C. 2152.19](#).

DETAINED YOUTH



Research Context: Research has shown that placing a youth in detention for any amount of time can cause negative impacts, including increased recidivism,¹ substance abuse, and decreased educational attainment, and employability.²

NOTE

Given the negative impacts of detention, national leaders recommend holding youth in detention only if they are a flight risk or the youth is a danger to others.

DETENTION STANDARD

Detention or shelter care is required as follows: [\[R.C. 2151.31\(C\)\]](#); [\[Juv.R. 7\]](#)

Non-Delinquency Offense

- To protect the child from immediate or threatened physical or emotional harm. (Detention required under [Juv.R. 7\(A\)](#))
- Because the child is a danger or threat to one or more other persons **AND** is charged with violating a section of the Revised Code that may be violated by an adult.
- Because the child may abscond or be removed from the jurisdiction of the court.
- Because the child has no parents, guardian, custodian, or other person able to provide supervision and care for the child and return the child to the court when required.
- Because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

Delinquency Offense

- May be held up to 90 days. [\[R.C. 2151.31\(C\)\(2\)\]](#); [\[R.C. 2152.04\]](#)

SYO Offense

- No specific standard; use delinquency standard. If confined, the child may be held in detention if not released on bond. [\[R.C. 2151.31\(C\)\(2\)\]](#)

Bindover Offense

- No specific standard; use delinquency standard. If confined, the child must be held in detention until after amenability hearing (discretionary

bindover) or probable cause hearing (mandatory bindover). After these hearings, a youth must be held in juvenile detention until a guilty plea or conviction in adult court, unless the juvenile court transfers the youth to an adult jail using the process described in the chart on page 4.

DETENTION PROCESS

- The detention process involves several distinct steps, including:
 1. Taking a child into custody and immediate detention;
 2. An initial detention review; and
 3. A detention hearing.

STEP 1 – Custody and Immediate Pre-Hearing Detention

- A child only can be taken into custody:
 - If the child has run away from parents/guardian/custodian.
 - If a complaint has been filed **AND** there are reasonable grounds to believe the child may abscond or be removed from the court jurisdiction.
 - Pursuant to an order of the court.
 - Pursuant to the law of arrest.
 - If the child's removal is necessary to prevent immediate or threatened physical or emotional harm due to the child's surroundings, abuse, or neglect.
 - If the child's conduct, conditions, or surroundings are endangering the child's health, welfare, or safety. [\[R.C. 2151.31\(A\)\]](#); [\[Juv.R. 6\]](#)

¹ Uberto Gatti, et al., Latrogenic Effect of Juvenile Justice, 50 J. Child Psychol. & Psychiatry 991, 994 (2009).

² Two Decades of JDAI from Demonstration Project to National Standard, the Annie E. Casey Foundation (2009).

- Once a youth is in custody, the person taking the youth into custody shall: hold a probable cause hearing no later than 72 hours after custody; and with all reasonable speed, either:
 - Release the child to the child’s parents, guardians, or custodian **OR**
 - If detention is warranted or required, take the child to court or detention and give the admissions officer a signed report stating why the child was taken into custody and why the child was not released and assisting the admissions officer, if necessary, in notifying the parent, guardian, or custodian. [\[R.C. 2151.311\(A\)\]](#); [\[Juv.R. 6 - 7\]](#)

STEP 2 - Initial Detention Review

- Immediately; prior to detention hearing
- If a youth is taken into custody and taken to detention, the intake or other authorized court officer shall immediately investigate and release or detain the child using the standard in [R.C. 2151.31\(C\)](#) listed above (detention standard – pre-adjudication). [\[R.C. 2151.314\]](#); [\[Juv.R. 7\(D\)\]](#)
- After admission, the admissions officers shall do all of the following:
 - Prepare a report with the time and reasons for admitting the child to detention.
 - Advise the child of the time, place, and purpose of the detention hearing and his/her right to phone parents and counsel immediately and at reasonable times thereafter.
 - Use reasonable diligence to contact the child’s parent, guardian, or custodian to advise them about the place and reasons for detention and visitation, as well as the time, place, purpose of the detention hearing, and the right to counsel and appointed counsel in the case of indigency. [\[Juv.R. 7\(E\)\]](#)

STEP 3: Detention Hearing

- 72 hours or the next day, whichever is earlier.
- If the youth is not released, a complaint must be filed and the court must hold an informal detention hearing the following business day, or

no later than 72 hours, to determine whether detention is required using the standard in [R.C. 2151.31\(C\)](#).



The court may consider diversion at this time.
See Diversion Bench Card.

Before the Hearing

- The youth and his/her parent/guardian/custodian (if found) must have reasonable oral or written notice of the time, place, and purpose of the hearing, right to counsel, right to remain silent, and contact information of a court employee to arrange for counsel. The court also shall inform the parties of their right to counsel if indigent. [\[R.C. 2151.314\(A\)\]](#); [\[Juv.R. 7\(F\)\]](#) Each court must have one court employee to assist people who are indigent in obtaining counsel. [\[R.C. 2151.314\(D\)\]](#)

Right to Counsel

- If child is facing the potential loss of liberty, the child shall be informed on the record of the child’s right to counsel and the disadvantages of self-representation. If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child’s right to counsel and the disadvantages of self-representation. [\[Juv.R. 3\(B\) - \(C\)\]](#)
- Any waiver of counsel must be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances, including, but not limited to:
 - The child’s age;
 - Intelligence;
 - Education;
 - Background and experience generally and in the court system specifically;
 - The child’s emotional stability;
 - The complexity of the proceedings.

- The court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem (GAL), before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child’s right to counsel. [\[Juv.R. 3\(D\)\]](#)

Evidence

- During the hearing, the court may consider any evidence, including reports filed by the person who took the youth into custody and the admissions officer, without regard to formal evidence rules. [\[Juv.R. 7\(F\)\(3\)\]](#)

Rehearing Required

- The court must hold a rehearing promptly if the parent, guardian, or custodian did not receive notice and did not appear or waive appearance at the hearing. After a child is placed in detention care, any party and the child’s GAL may file a motion requesting the child’s release and a hearing must be held within 72 hours. [\[Juv.R. 7\(G\)\]](#)

STEP 4 - Adjudicatory Hearing

- Scheduled in 72 hours; held within 15 days.
- The court must schedule an adjudicatory hearing within 72 hours of the complaint being filed. [\[R.C. 2151.28\(A\)\]](#) If a youth is being held in detention, the hearing must be scheduled for no later than 15 days after the complaint filing, but may be extended for a showing of good cause. [\[R.C. 2151.28\(A\)\(3\)\]](#); [\[Juv.R. 29\]](#)

DETENTION CONDITIONS

- Each detention center should have policies in place that do all of the following:
 - Establishes an **admittance policy** that includes an intake record. [\[Ohio Adm.Code 5139-37-09 & -17\]](#); [\[Juv.R. 7\(I\) - \(J\)\]](#)
 - Limits the use of **physical force and aerosol sprays**, including evaluations and reports when used. [\[Ohio Adm.Code 5139-37-11\(A\) & \(F\)\]](#)

- Outlines when youth can be searched utilizing the least intrusive **search** possible, including frisk, hygiene, and body-cavity searches. [\[Ohio Adm.Code 5139-37-11\(B\)\]](#)
- Provides **medical and health care services**, including the use of psychotropic drugs. [\[Ohio Adm.Code 5139-37-14\]](#)
- Ensures that youth have access to **basic rights**, such as privacy, due process, adequate education, programming, and access to the courts. [\[Ohio Adm.Code 5139-37-15\]](#)
- Relies on appropriate **discipline and behavior management**. [\[Ohio Adm.Code 5139-37-15 & 5139-37--16\(A\)-\(D\)\]](#)
- Minimizes the use of **isolation**, including room confinement, medical isolation, and self-confinement. [\[Ohio Adm.Code 5139-37-16\(E\)\]](#)
- Provides adequate and appropriate **programming** for youth, such as education, recreation, and religious programs. [\[Ohio Adm.Code 5139-37-18\]](#)
- Allows access to **visitation and communication**, including with the youth’s attorney, family, and other supports, in person, through mail, and phone calls. Youth should be notified of visitors before meeting with them. [\[Ohio Adm.Code 5139-37-19\]](#); [\[Juv.R. 7\(I\) - \(J\)\]](#)
- Provides for the **hiring and training of staff and youth-to-staff ratios**. [\[Ohio Adm.Code 5139-37-05, -06, and -11\(D\)\]](#)

WHERE AND WHEN CAN CHILDREN BE HELD

These are maximums, which are not recommended for best practice.

	Prior to Adjudication Hearing (Alleged)	Post-Adjudication Hearing (Adjudicated)
Delinquent (under age 18)	Can be held in: <ul style="list-style-type: none"> Detention up to 90 days [R.C. 2152.26(B)] and under the factors established above in the “Detention Standard” section. If alleged chronic or repeat habitual truant, detention only if the youth has violated a valid court order. [R.C. 2152.26(B)] 	Can be held in detention for up to 90 days. [R.C. 2152.19(A)(3)] Credit for time detained prior to disposition may be applied.
Delinquent (18 and over)	The above parameters apply. However, the youth also can be transferred to an adult facility if the court finds the transfer is in the best interest of the child. <i>See Youth in Adult Court Bench Card – housing section.</i>	The above parameters apply. However, the youth also can be transferred to an adult facility if the court finds the transfer is in the best interest of the child. <i>See Youth in Adult Court Bench Card – housing section.</i>
Traffic Offender	Can be held in: <ul style="list-style-type: none"> Detention for less than 24 hours [R.C. 2152.26(C)(2)] An adult facility⁺ for under 3 hours for processing.* [R.C. 2151.31(C)(1)(b)] 	Can be held in detention: <ul style="list-style-type: none"> If adjudicated delinquent of an OVI, for 5 days. [R.C. 2152.21(A)(5)(a)(i)], but must be kept separate and apart from alleged delinquent children. [R.C. 2152.41(B)] If a youth is adjudicated delinquent of a traffic offense and the court subsequently finds the child failed to comply with the court’s orders and the child’s operation of the motor vehicle makes the child a danger to self/others, for 24 hours. [R.C. 2152.21(A)(6)]
SYO	<i>See Youth in Adult Court Bench Card</i>	<i>See Youth in Adult Court Bench Card</i>
Bindover	<i>See Youth in Adult Court Bench Card</i>	<i>See Youth in Adult Court Bench Card</i>
Unruly	Best practice indicates that youth charged with unruly or status offenses should not be detained. Therefore, the circumstances listed below should be exceptions to standard practice. Can be held in: <ul style="list-style-type: none"> Detention for up to 24 hours. [R.C. 2151.312(B)(2)] Detention for more than 24 hours if taken into custody on a Saturday, Sunday, or legal holiday. [R.C. 2151.312(B)(3)] An adult facility⁺ for under 3 hours for processing* [R.C. 2151.331(C)(1)(b)] <p>(Note: Federal law does not permit unruly youth to be held in an adult jail, putting it in conflict with Ohio law.)</p>	Cannot be held in detention. [R.C. 2151.354]

+ If a youth is held in a facility that holds adults, the youth must be sight-and-sound separated from adult inmates, visually supervised, and not handcuffed or physically secured to a stationary object. (**Note:** Ohio law requires “beyond-the-range-of-touch” separation from adults, while federal law requires “sight-and-sound” separation.)

* Processing, as defined in the Revised Code includes fingerprinting and photographing the youth in a secure area or interrogation, contacting the child’s parent/guardian, arranging placement, and arranging for transfer of child in a nonsecure area. [\[R.C. 2151.311\(D\)\]](#)

Relevant Detention Statutes

- [R.C. 2151.28](#) - Adjudicatory hearing - determining shelter care placement.
- [R.C. 2151.31](#) - Taking child into custody.
- [R.C. 2151.311](#) - Procedure upon taking child into custody.
- [R.C. 2151.312](#) - Facilities for holding unruly, neglected, abused or dependent child.
- [R.C. 2151.314](#) - Hearing on detention or shelter care.
- [R.C. 2151.331](#) - Options for placement of alleged or adjudicated abused, neglected, dependent or unruly child.
- [R.C. 2151.353](#) - Orders of disposition of abused, neglected or dependent child.
- [R.C. 2151.354](#) - Orders of disposition of unruly child.
- [R.C. 2152.04](#) - Confining delinquent child for purposes of preparing social history.
- [R.C. 2152.13](#) - Serious youthful dispositional sentence and serious youthful offender dispositional sentence.
- [R.C. 2152.19](#) - Disposition orders.
- [R.C. 2152.21](#) - Dispositions for child adjudicated juvenile traffic offender.
- [R.C. 2152.26](#) - Places of detention for delinquent child or juvenile traffic offender.
- [R.C. 2152.41](#) - Detention facilities.



DIVERSION



DIVERSION BENCH CARD

Juvenile Diversion is the redirection of youth from the formal processing of the juvenile court.

- Formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court. [Juv. R. 9(A)] Growing research shows that diversion is the most effective method of disposing of juvenile cases.¹
- Diversion occurs prior to an initial hearing or formal appearance of a youth before the court.
- Any child may be eligible for diversion.

MINIMUM CHARACTERISTICS OF EFFECTIVE DIVERSION

- Youth attends an informal meeting with diversion staff;
- A risk or mental health screen is conducted;
- An individualized diversion plan is created with youth and parent/guardian input;
- No standard routine meetings with diversion staff;
- Participation does not typically exceed 90 days; and
- Intervention strategy does not include extensive standard rules/conditions.

DIVERSION INTERVENTION STRATEGIES

- Diversion is not a “program” with a specific beginning or ending, a completion or failure, or just a one-time opportunity.
- Intervention strategies should be community-based services ranging from light-touch contact to high-risk interventions.
- The least-restrictive option is always the one to consider first.

NOTE

For more information regarding creating a menu of diversion intervention strategies, see the [Juvenile Diversion Toolkit](#).

- Sample Intervention Strategies
 - School diversion
 - Police warnings
 - Screening referral
 - Community based partner
 - School attendance mediation [R.C. 2710.01 – 2710.10]; [Sup.R 16]; [School Attendance Toolkit].

NOTE

Hearings relating to a juvenile charged with domestic violence, [R.C. 2919.25](#), shall not be referred to mediation. [Sup.R. 16.21]

WHEN THE MATTER IS REFERRED TO DIVERSION

- Employ diversion intervention strategies that promote positive youth development and allow individualized intervention addressing the underlying cause of the delinquent behavior.
- Design intervention plan using a lens of race, equity, and inclusion.
- When possible, the youth does not have a formal complaint filed against them.
- Youth should not have a formal record after completion.
- The matter should be dismissed before formal court action is taken. [Juv.R. 9(A)]

NOTE

For more information, see [Models for Change Juvenile Diversion Guidebook - modelsforchange.net/publications/301](#).

¹ ncjrs.gov/html/ojjdp/9909-3/div.html



JUVENILE DELINQUENCY



JUVENILE DELINQUENCY

[Juv.R. 4; R.C. 2151.352; R.C. 2152.281; Juv.R. 3; Juv. R. 29]

RIGHT TO COUNSEL

Notice [Juv.R. 4]; [Juv.R. 29]

- If a party appears without counsel, the court shall ascertain whether the party knows of its right to counsel and the right to appointed counsel if indigent.
- If a child faces the potential loss of liberty, the child must be informed, on the record, of the right to counsel and the disadvantages of self-representation.

WAIVER [Juv.R. 3]



If a child is charged with a felony offense, the child may not waive counsel unless the child has met privately with an attorney to discuss the right to counsel and the disadvantages of self-representation.

- A child's waiver of the right to counsel must be made in open court, recorded, and in writing.
- In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court must look to the totality of the circumstances, which includes, but is not limited to, consideration of the following characteristics of the child:
 - Age
 - Intelligence
 - Education
 - Background and experience generally and in the court system specifically
 - Emotional stability
 - Complexity of the proceedings
- The court must ensure that the child consults with a parent, custodian, or guardian ad litem before waiving the right to counsel.
- No parent, guardian, custodian, or other person may waive the child's right to counsel.¹

¹ See also *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4949, 874 N.E.2d 1177.

Waiver Prohibited [Juv.R. 3]

- A child may not waive counsel in the following circumstances:
 - At a transfer hearing, pursuant to [Juv.R. 30](#).
 - When an SYO-dispositional sentence has been requested.
 - When there is a conflict or disagreement between the child and the parent, guardian, or custodian or if the parent, guardian, or custodian requests that the child be removed from the home.

APPOINTMENT OF GUARDIAN AD LITEM

[R.C. 2151.281]; [Juv.R. 4]

- The court must appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent or unruly child when:
 - The child has no parent, guardian, or legal custodian; the interests of the child and parent may conflict;
 - The parent is under 18 and appears to be mentally incompetent;
 - The court believes that the parent is not capable of representing the best interests of the child; or
 - Appointment is otherwise necessary to meet the requirements of a fair hearing.

CUSTODY, DETENTION, SHACKLING, AND TRANSFER TO ANOTHER COUNTY

[Juv. R. 6]; [Juv.R. 7]; [Sup.R. 5.01]; [Juv.R. 11]

NOTE

A subject child is a party to the action, but that child's appearance may be excused.

TAKING A CHILD INTO CUSTODY [\[Juv.R. 6\]](#)

Findings

- A child subject to a delinquency complaint may be taken into custody by court order, pursuant to lawful arrest, or by law enforcement or duly authorized officer of the court when:
 - There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that a parent, guardian, custodian, or other household member has abused or neglected another child in the house and that removal is necessary to prevent immediate or threatened physical or emotional harm.
 - There are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian.
 - There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.
 - While the proceedings are pending, there are reasonable grounds to believe that the child may abscond or be removed from the court's jurisdiction or will not be brought to the court.

Hearing Required

- When a child is taken into custody pursuant to an ex parte order, a probable cause hearing must be held before the end of the next business day after the day on which the order is issued, but no later than 72 hours after the issuance of the order.

DETAINING A CHILD FOR A DELINQUENCY PROCEEDING [\[Juv.R. 7\]](#)

Standard

- A child may not be placed in detention prior to final disposition unless:
- Detention or shelter care is required to protect the child or other persons or property from immediate or threatened physical or emotional harm;
- The child may abscond or be removed from the jurisdiction of the court;
- The child has no parent, guardian, custodian, or other person able to provide supervision and care for the child and return the child to court when required; or
- An order for placement in detention has been made; or confinement is authorized by statute.

Hearing

- When a child has been admitted to detention, a hearing to determine whether detention is appropriate shall be held no later than 72 hours after admission, or the next court date, whichever is earlier.

Shackling (Local Juvenile Restraint Rule) [\[Sup.R. 5.01\]](#)

- Each court must adopt a local rule governing the use of physical restraints for juveniles appearing in court proceedings which creates a presumption that physical restraints shall not be used unless a judge finds both of the following:
 - The use of physical restraints is necessary because the juvenile's behavior represents a current threat to the safety of the juvenile or others in the courtroom; or, there is a significant and imminent risk of the juvenile will flee the courtroom; and
 - There are no less restrictive alternatives to the use of physical restraint.
- If physical restraint is found to be necessary pursuant to [Sup.R. 5.01](#), the type of restraint must be the least restrictive necessary to meet the level of risk posed by the child, and must not unnecessarily restrict the movement of the child's hands.



Use of video conferencing may reduce risk of safety concerns in the courtroom.

TRANSFER TO ANOTHER COUNTY [\[Juv.R. 11\]](#)

When Required

- Other than a removal action, proceedings shall be transferred if other proceedings involving the child are pending in a juvenile court of the county of the child’s residence.

When Permitted

- If a child resides in a county other than the county where a proceeding is commenced, the court may, sua sponte or upon the motion of a party, transfer the proceeding to the county of the child’s residence; the court shall proceed as if the original complaint had been filed in that county.
- Transfer may be made if the child’s residence changes.
- Where either the transferring court or the receiving court determines that the interests of justice and convenience of the parties so require, the adjudicatory hearing shall be held in the county where the complaint is filed; thereafter, the proceeding may be transferred to the county of child’s residence for disposition.
- Where a case is transferred, certified copies of all legal and social records pertaining to the proceeding shall accompany the transfer.

COMPETENCY [\[R.C. 2152.52 – R.C. 2152.59\]](#)

Presumption

- Any child who is 14 or older who is not found to be mentally ill, intellectually disabled, or developmentally disabled is presumed competent. [\[R.C. 2152\(A\)\(2\)\]](#)

Competency Evaluator

- If there is reasonable basis for a competency evaluation (or by agreement of the parties), the court must order an evaluation and appoint

an evaluator. The type of evaluator depends on whether the child appears to be at least moderately intellectually disabled.

- If the child appears to be at least moderately intellectually disabled, the evaluation must be made by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disabilities. [\[R.C. 2152.54\(B\)\]](#) (See criteria in [R.C. 5122.01\(O\)\(1\)](#).)²
- If the child does not appear to be at least moderately intellectually disabled, the evaluation must be made by either a professional who is employed by a psychiatric facility or other center certified by the department of mental health to provide forensic services, and is appointed by the director of the facility or center to conduct the evaluation; or a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents. [\[R.C. 2152.54\(B\)\]](#) (See criteria in [R.C. 5122.01\(O\)\(1\)](#).)

Competency Hearing

- The hearing to determine competency must be held within 15 - 30 business days after receipt of the competency evaluation.
- The competency determination must be made within 15 business days of the completion of the hearing. [\[R.C. 2152.58\(A\); R.C. 2152.58\(D\)\(1\)\]](#)

Proceedings on Determination

- No statement the child makes during the competency hearing may be used against him on the issue of culpability in any juvenile or adult proceeding. [\[R.C. 2152.59\(A\)\]](#)
- If the child is found competent, the court shall proceed with the delinquent-child proceedings as provided by law.

² If the initial evaluator determines that the child is at least moderately intellectually disabled, the court must order a new evaluation by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disabilities. [\[R.C. 2152.54\(C\)\]](#)

- If the child is found not competent and cannot attain competency within the maximum period of participation, the charge(s) must be dismissed without prejudice. The court may delay dismissal for up to 90 days to either:
- Refer the matter to a public services agency to determine when to file an action alleging the child is a dependent, neglected, or abused child; or
- Assign court staff to refer the child or child’s family to the local family-and-children-first

council, an agency funded by the department of mental health, developmental disabilities, or otherwise secure services. [\[R.C. 2152.59\(B\)\]](#)

- If the child is found not competent, but likely to attain competency within the maximum period of time by participating in services specifically designed to help the child develop competency, the court may order the child to participate at county expense. The court shall name the provider. [\[R.C. 2152.59\(C\)\]](#)

Competency Attainment

- Services shall be provided in the least-restrictive setting and the child shall only be required to participate for as long as is required for the child to attain competency. Services are subject to the following time periods:

	Non-residential setting	Residential setting operated for purpose of competency attainment	Residential detention, or other secure setting for purposes other than competency attainment	Partial residential setting/Partial non-residential setting
Misdemeanors	3 months	45 days	3 months	45 days
F3; F4; F5	6 months	3 months	6 months	3 months
F1; F2	1 year	6 months	1 year	6 months
Murder; Attempted Murder; Aggravated Murder; Attempted Aggravated Murder	1 year	1 year	1 year	1 year

RELINQUISHMENT OF JURISDICTION TO CRIMINAL COURT [\[Juv.R. 30\]](#); [\[Juv.R. 32\]](#); [\[R.C. 2152.10\]](#); [\[R.C. 2152.12\]](#)

See Youth in Adult Court Bench Card

PROCEDURES IN ADJUDICATORY HEARINGS (IN ADJUDICATORY HEARINGS FOLDER) [\[Juv.R. 29\]](#)

NOTE Consider alternatives to formal adjudication. See Diversion bench card.

Hearings, Generally [\[Juv.R. 27\]](#); [\[Juv.R. 37\]](#); [\[Sup.R. 45\(E\)\]](#)

- Serious-youthful-offender (“SYO”) proceedings

are open to the public; but, in all other proceedings, the court may exclude the general public, unless they are a person with direct interest in the case or demonstrate at a hearing, a countervailing right to be present.

- Cases involving alleged delinquent children must be heard separate and apart from the trial of cases against adults; and, with the exception of SYO proceedings, heard and determined without a jury.
- Juvenile court records are not subject to public use by any person or party, except in the course of an appeal or otherwise authorized by law.

Procedure upon Entry of Admission [\[Juv.R. 29\(D\)\]](#)

- A court shall not accept an admission from an alleged delinquent child without addressing the child personally and determining the following:
 - That the child is making the admission voluntarily;
 - That the child understands the nature of the allegations;
 - That the child understands the consequences of the admission; and
 - That the child understands that by entering the admission, the child is waiving the following rights:
 - To challenge witnesses and evidence against the party;
 - To remain silent; and
 - To introduce evidence at the adjudicatory hearing.
 - The court may hear testimony, review documents, or make further inquiry as it considers appropriate, or it may proceed directly to the adjudicatory findings.
 - A court must substantially comply with these requirements.

Procedure upon Entry of Denial [\[Juv.R. 29\(E\)\]](#)

- If a child subject to a delinquency complaint denies the allegations, the court shall:
- Direct the prosecuting attorney or another attorney-at-law to present evidence in support of the allegations;
- Order the separation of witnesses, upon a party's request;
- Take all testimony under oath or affirmation in either question-answer or narrative form; and
- Determine the issues by proof-beyond-a-reasonable-doubt.

Procedure Following Determination of the Issues [\[Juv.R. 29\(F\)\]](#)

- Upon determination of the issues, if the allegations were not proven, the court shall dismiss the complaint.

- Upon determination of the issues, if the allegations were proven or if the child entered an admission, the court shall do any one of the following, unless prohibited by statute:
 - Enter an adjudication and proceed forthwith to disposition;
 - Enter an adjudication and continue the matter for disposition for no more than 6 months, making appropriate temporary orders;
 - Postpone entry of adjudication for not more than 6 months; or
 - Dismiss the complaint if dismissal is in the best interest of the child and community.
- Upon a request of any party, the court shall make written findings of fact and conclusions of law pursuant to [Civ.R. 52](#).

HEARING PROCEDURE

- The judge or magistrate who presided over adjudication shall preside over the dispositional hearing if possible.
- The court may admit evidence that is material and relevant, including hearsay, opinion, social history, risk assessment instruments, and documentary evidence.
- Medical examiners and each investigator who prepares a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or at the court's discretion.
- Any party may offer evidence that supplements, explains, or disputes any information contained in the social history or other reports; and, the court may consider that information in determining disposition.

Judgment

- The court shall enter an appropriate judgment within 7 days and shall serve any requesting party with a copy thereof.
- In any case where a child is placed on probation, the child shall receive a written statement of the conditions of probation.

- If the judgment is conditional, the conditions shall be stated in the entry.
- If the child is not being returned to the child's home, the court shall determine the school district that is to bear the costs of the child's education and may fix an amount of support to be paid by the parent or from public funds.

DISPOSITIONAL ORDERS [\[R.C. 2152.19\]](#)

- When a child is found delinquent, the court may make any of the following orders of disposition, in addition to any other disposition authorized by [R.C. 2152](#):
 - Any order authorized by [R.C. 2151.353](#) for the care and protection of an abused, neglected, or dependent child;
 - Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care, treatment, or placement of delinquent children by the county, by a district organized under [R.C. 2152.41](#) or [R.C. 2151.65](#), or by a private agency or organization in or outside of the state;
 - Place the child in a detention facility for up to 90 days;
 - Place the child on community control under any sanctions, services, and conditions the court prescribes.

See Probation Bench Card.

- Commit the child to the custody of the court;
- Make any further disposition that the court finds proper, except that the child shall not be placed in a state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held.

License Suspension Limitations

- If a child is adjudicated delinquent for violating [R.C. 2923.122](#), the court may impose a class-four suspension of the child's license, permit, or privilege from the range specified in [R.C. 4510.02](#)

or deny the child the issuance of a license in accordance with [R.C. 2923.122\(F\)\(1\)](#).

- If a child is adjudicated delinquent for committing an act that would be a drug-abuse offense or for violating [R.C. 2917.11\(B\)](#), suspend the child's license, permit, or privilege for a period of time prescribed by the court.

Victim Impact Statement

- Ordered where a child is adjudicated delinquent of an offense that would be a felony if committed by an adult and in which the child caused, attempted to cause, threatened, or created a risk of physical harm.
- Prepared by the probation department of the county where the victim resides or by the victim's assistance program operated by the state or other governmental entity.
- The court shall consider the victim-impact statement in determining the order of disposition.
- The statement must identify the victim, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered and the serious and permanence of the injury, identify any change in the victim's personal welfare and relationships as a result of the act, and any psychological impact as a result of the act.
- Any victim-impact statement is confidential and not a public record.
- The court may furnish DYS with a copy of the victim-impact statement if the child is committed therein.
- The court shall furnish a copy of a victim impact statement for inclusion in a presentence investigation report under [Crim.R. 32.2](#); but, the statement shall be immediately returned to the juvenile court following its use in preparing the presentence-investigation report.

Notices after Hearing

- At the conclusion of the dispositional hearing, the court shall advise the child of the right to record expungement, and where any part of the

proceeding was contested, advise the parties of their right to appeal.

- When a court places a child on community control, the court shall provide the child’s parent, custodian, or guardian with a written notice that informs them that authorized probation officers may conduct searches pursuant to [R.C. 2152.19\(E\)\(1\)](#).
- A court shall notify the child that the court retains jurisdiction for purposes of granting a judicial release pursuant to [R.C. 2152.22\(D\)\(1\)](#). Failure to provide this notice is not jurisdiction and does not affect the court’s authority to grant judicial release.

COMMITMENT TO DYS [[R.C. 2152.16](#) - [R.C. 2152.17](#)]

- If a child is adjudicated delinquent for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for secure confinement as follows:
 - For aggravated murder or murder, until the child attains 21 years of age;
 - For attempted aggravated murder or attempted murder, a minimum period of 6 to 7 years maximum to the child’s 21st birthday;

- For all other homicide offenses, an indefinite minimum term of 1 to 3 years maximum to the child’s 21st birthday;
- For rape, other than [R.C. 2907.02\(A\)\(1\)\(b\)](#), when the sexual conduct or insertion involved was consensual and when the victim was older than the delinquent child, was the same age as the delinquent child, or was less than 3 years younger than the delinquent child, for an indefinite term consisting of a minimum period of 1 to 3 years, as prescribed by the court, maximum to the child’s 21st birthday;
- For other offenses that would be a felony of the first- or second-degree if committed by an adult, an indefinite term consisting of a minimum period of 1 year, maximum to the child’s 21st birthday; or
- For other offenses that would be a felony of the third-, fourth-, or fifth-degree if committed by an adult, an indefinite term consisting of a minimum period of 6 months maximum to the child’s 21st birthday.
- In each case where the court commits a child to DYS, the court retains control over the commitment for the minimum periods described in [R.C. 2152.16](#).

DEFINITE TERMS OF COMMITMENT FOR SPECIFICATIONS [[R.C. 2907.17](#)]

- If a child is adjudicated delinquent for committing an act that would be a felony if committed by an adult,³ in addition to the commitment imposed on the underlying offense, the court may require the child to serve an additional, definite commitment to DYS if the child also is responsible for a specification as follows:

Code Section	Specification Detail	Length of Specification
R.C. 2941.141	Firearm on or about person or under control.	Definite period of 1 year.
R.C. 2941.145	Displaying, brandishing, indicating possession, use or facilitation of firearm; or where the underlying offense is aggravated vehicular homicide committed as a result of an OVI.	Definite period of not less than 1 year, not more than 3 years.
R.C. 2941.144 ; R.C. 2941.146 ; R.C. 2941.142	Automatic firearm or firearm muffler or silencer, Discharging firearm from a motor vehicle, or Discharging firearm at peace officer or conditions officer.	Definite period of not less than 1 year, not more than 5 years.
R.C. 2941.142	Participation in a criminal gang.	Definite period of not less than 1 year, not more than 3 years.
R.C. 2941.1411	Offender wore body armor during offense.	Up to 2 years.

³ Excluding carrying concealed weapon

- Provided that the child who was found delinquent for the specifications outlined in [R.C. 2941.141](#) through [R.C. 2941.146](#) only was complicit in another's actions, and the child did not furnish, use, or dispose of any firearm that was involved in the underlying delinquent act or with the other person's specification-related conduct, in addition to the commitment imposed for the underlying act, the court only may impose a 1-year definite commitment for the accompanying specification.
- Definite periods of commitment imposed pursuant to [R.C. 2152.16](#) shall be served in addition and consecutively to any commitment imposed under [R.C. 2152.17](#).
- A court shall not commit a delinquent child to the legal custody of DYS under [R.C. 2152.17](#) for a period that exceeds the child's attainment of 21 years of age.

CONFINEMENT CREDIT [\[R.C. 2152.18\]](#)

- An order committing a child to DYS must include a calculation of the total number of days the child was confined in connection with the delinquent-child complaint upon which the order of commitment is based.
- Time a child spent being held pending adjudication for a probation violation also must be included.⁴
- Days that a child was under electronic-home monitoring are not included in the confinement-credit calculation; neither is time the child is held in a halfway house.
- The Supreme Court of Ohio has defined "confined" to mean any place a person is "not free to come and go as he wishes."⁵
- DYS must reduce the minimum period of institutionalization by the amount of days reflected in the order of commitment.

PROBATION REVOCATION PROCEEDINGS

[\[Juv.R. 35\]](#); [\[Juv.R. 29\]](#)

Jurisdiction Invoked by Motion

- The continuing jurisdiction of the juvenile court must be invoked by motion filed in the original proceeding.

Revocation of Probation

- Upon the filing of a motion to revoke a child's probation, the court must hold a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed.
- The parties have the right to counsel and to appointed counsel where indigent.

See Right to Counsel Bench Card

- The court must comply with the adjudicatory hearing procedures outlined in [Juv.R. 29](#) before revoking a child's probation.⁶

Findings

- The court may not revoke probation without first finding that the child has violated a condition of probation of which the child had, pursuant to [Juv.R. 34](#), been notified.

Detention

- A child may be placed in detention pursuant to [Juv.R. 7](#) during the pendency of revocation proceedings.

Confinement Credit

- If a child is confined pending revocation proceedings and ultimately committed to DYS, the child is to receive credit for the days confined relative to the revocation proceedings.

⁴ [In re Thomas](#), 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908.

⁵ [State v. Napier](#), 93 Ohio St.3d 646, 758 N.E.2d 1127 (2001).

⁶ [In re L.A.B.](#), 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471.

SUPERVISED RELEASE (“PAROLE”) OR DISCHARGE [R.C. 5139.51]; [R.C. 5139.52]; [R.C. 2152.22(E)]

Definitions

- “Discharge” means that DYS’ legal custody of a child is terminated.
- “Release” means the termination of a child’s stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.

Notice and Duty of Court to Journalize Supervised Release

- At least 30 days prior to placing a child on supervised release, the Release Authority shall prepare and provide the court with a copy of a supervised-release plan for the child and the terms and conditions of the release.
- The court, within 15 days of its receipt of the supervised-release plan, may add any additional consistent terms and conditions to the supervised-release plan, but may not decrease the level or degree of supervision set forth by the Release Authority that substantially increases the financial burden of supervision or that alters the child’s placement. The court shall then journalize the supervised-release plan and send the Release Authority a copy thereof.
- If, within 15 days of its receipt of the supervised-release plan, the court declines to add to the terms of the child’s supervised-release plan, the court shall journalize the supervised-release plan and send the Release Authority a copy thereof.
- If, within 15 days of its receipt of the supervised-release plan, the court neither journalizes the supervised-release plan nor journalizes a modified plan, the court and DYS may attempt to resolve any differences concerning the plan within 3 days. If no resolution is reached within that period, the plan shall be enforceable to the same extent as if it had been journalized.
- At least 30 days prior to conducting a periodic review, release hearing, or discharge review for a child in DYS custody, the Release Authority

shall give notice of the hearing or review to the committing court, the prosecuting attorney, and the victim or victim’s relative.

- When there is insufficient time to provide 30 days’ notice, the Release Authority must provide reasonable notice, at least 10 days prior to the child’s release, to the committing court, the prosecuting attorney, and the victim or victim’s relative.
- At least 2 weeks prior to placing a child on supervised release or discharging a child who was adjudicated delinquent of a category-one or -two offense, the Release Authority shall notify the following persons/entities of the release or discharge:
 - The prosecuting attorney of the county of adjudication.
 - The chief law enforcement officer of the municipal corporation, or county sheriff of an unincorporated area of the county where the child will reside.
- At least 15 days before discharging a child from institutional care without placing the child on supervised release, the Release Authority shall notify the court, in writing, of the planned discharge and the reason for the discharge.

Procedure Following Violation of a Term or Condition of Supervised Release or Judicial Release

- If the employee in charge of a child’s supervised release has reasonable grounds to believe that the child has violated a term or condition of supervised or judicial release, the employee may request that the supervising court issue a summons that requires the child to appear for a hearing on the violation or a warrant for the child’s arrest.

JUDICIAL RELEASE [\[R.C. 2152.22\]](#)

- When a child is committed to DYS, the court relinquishes jurisdiction of the child, generally, except that:
 - Upon the filing of a motion by the child, child's parent or guardian, DYS, or upon the court's own motion, the court may grant judicial release of a child to court supervision.
 - Upon a request for judicial release, the court shall: approve the release by journal entry; schedule a hearing within 30 days to determine whether the child should be released; or reject the request by journal entry without a hearing.
 - If the court schedules a hearing, it may order the department to deliver the child to the court for the hearing and may order the department to present a report on the child's progress. The child's presence is not required.
 - The court shall determine at the hearing whether to grant or deny the request for release.

Release During First Half of Prescribed Minimum Commitment

- If the court approves release, it shall order its staff to prepare a written treatment-and-rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court.
- If the initial request is denied, the child, child's guardian, or department may make one additional request before the expiration of the first half of the child's minimum commitment.

Release During Second Half of Prescribed Minimum Commitment

- If the court approves the request for release, the department shall prepare a written treatment-and-rehabilitation plan for the child that includes the conditions of the child's release. The department shall provide the committing court with a copy of the plan. The child's

actual date of release is contingent upon the department finding a suitable placement for the child.

- If the initial request is denied, the child, child's guardian, or department may make additional requests for judicial release, but no sooner than 90 days after the prior request.

Release after Expiration of Prescribed Minimum Commitment or Specification

- A court may grant judicial release of a child any time after the expiration of one of the following periods of time:
 - The expiration of the prescribed minimum term of commitment.
 - If the child was committed to the department under a specification outlined in [R.C. 2152.17\(A\), \(B\), \(C\), or \(D\)](#) and a period defined under [R.C. 2152.22\(D\)\(1\)\(a\)](#), all of the prescribed minimum periods shall be aggregated; and the court may grant judicial release of the child any time after the expiration of 1 year after the child begins serving the aggregate period of commitment.
- A child's release after the prescribed minimum shall be to Department of Youth Services supervised release.
- When a court grants a child judicial release after serving 1 year of a firearm specification, but prior to reaching the first half of the child's minimum commitment, the child shall be released to court supervision.

SEX OFFENDER CLASSIFICATION HEARING

[\[R.C. 2152.82 - R.C. 2152.83\]](#)

- Not every child who commits a sexually oriented offense is eligible to be classified as a juvenile-sex-offender registrant. Whether a child is required to register or eligible for registration depends on a number of factors, including the child's age and delinquency history.

Mandatory Registrants

- All children who were 16 or 17 at the time of their offense are required to register. [\[R.C. 2152.82\(A\)\]](#); [\[R.C. 2152.83\(A\)\]](#)
- Children who were 14 or 15 at the time of their offense and who have a prior adjudication for a sexually oriented offense are required to register. [\[R.C. 2152.82\(A\)\]](#)

Discretionary Registrants

- Children who were 14 or 15 at the time of their offense with no prior adjudication for a sexually oriented offense are discretionary registrants. The court must consider the factors outlined in [R.C. 2152.83\(D\)](#) to determine whether to classify those youth.
- In determining whether to classify a discretionary registrant, the court must consider the following:
 - The nature of the sexually oriented offense;
 - Whether the child has shown any genuine remorse or compunction;
 - The public interest in safety;
 - The factors set forth in [R.C. 2950.11\(K\)](#), provided that the references in those factors to “the offender” are construed for purposes of [R.C. 2152.38](#) to be references to the delinquent child;
 - The factors in [R.C. 2929.12\(B\)](#) and [\(C\)](#) as applied

regarding the delinquent child, the offense, and the victim; and,

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

Children Ineligible for Classification

- Children who were under 14 at the time of their offense are ineligible for classification. [\[R.C. 2152.82 - R.C. 2152.83\]](#)

Tier Level Determination

- Prior to issuing an order classifying the child as a juvenile-sex-offender registrant, the court must hold a hearing under [R.C. 2152.831](#) to determine whether the child is a tier-I, -II, or -III juvenile-offender registrant.
- Juvenile courts have discretion to determine a juvenile’s tier level.



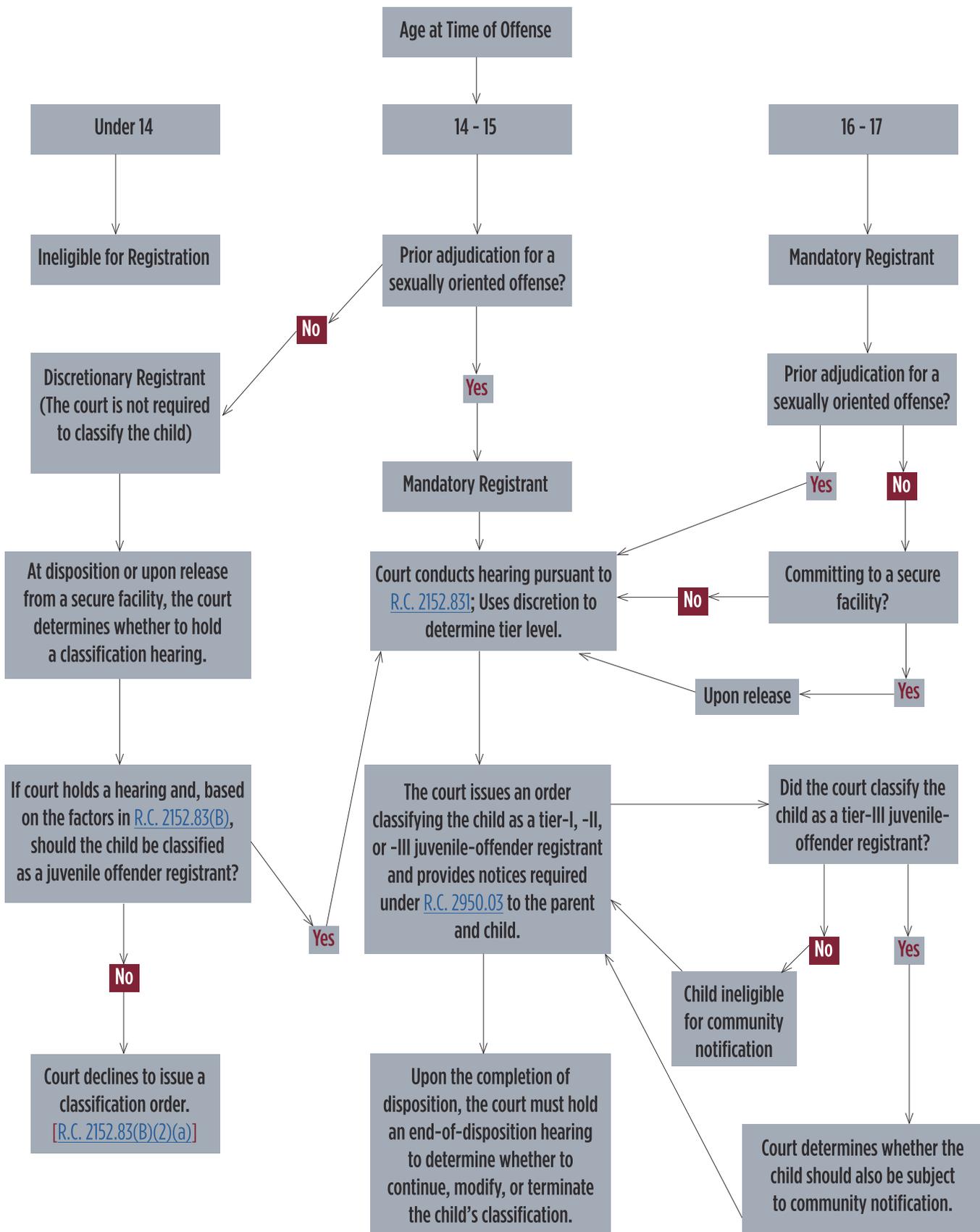
No statutory factors are outlined for court to make this determination. [\[R.C. 2152.381\]](#) However, the Attorney General has advised that the factors in [R.C. 2152.83\(D\)](#) are equally applicable to the tier determination.⁷

⁷ See pages 11 - 12 of the Brief of Amicus Curiae Ohio Attorney General, filed in support of neither party in [In re D.J.S., 130 Ohio St.3d 257](#), 2011-Ohio-5342, 957 N.E.2d 291.

Tiers Levels, Frequency, and Duration of Registration

Tier Level	Frequency of Registration	Duration of Registration
Tier I	Annually	10 years, unless declassified pursuant to R.C. 2152.84 or R.C. 2152.85 . [R.C. 2950.07(B)]
Tier II	Every 180 days	20 years, unless declassified or reclassified pursuant to R.C. 2152.84 or R.C. 2152.85 . [R.C. 2950.07(B)]
Tier III	Every 90 days	Life, unless declassified or reclassified pursuant to R.C. 2152.84 or R.C. 2152.85 . [R.C. 2950.07(B)]
PRQJOR (R.C. 2152.86)	No longer valid.	No longer a valid classification.

JUVENILE SEX OFFENDER REGISTRATION FLOW CHART



END-OF-DISPOSITION REVIEW HEARING AND PETITION FOR RECLASSIFICATION OR DECLASSIFICATION [\[R.C. 2152.84 - R.C. 2152.85\]](#)

End-of-Disposition Review Hearing

- The court must hold a hearing for children who are classified as juvenile-offender registrants upon the completion of the child's disposition.
- The purpose of the hearing is to review the effectiveness of the child's disposition, determine the child's risk to sexually reoffend, and determine whether to continue, modify, or terminate the child's duty to register.

Factors for Consideration

- In determining whether to continue, modify, or terminate a juvenile-offender registrant's duty to register, the court must consider the factors outlined in [R.C. 2152.83\(D\)](#).

See Discretionary Registrants section, p. 11 of this Bench Card.

Findings and Orders

- At the conclusion of the hearing, the court must determine whether to continue, modify, or terminate the child's classification.
- For all juvenile-offender registrants, the court may decrease the child's tier level, or where applicable, remove community notification from the child's registration requirements.
- The court may not increase a child's classification level at this hearing.
- At the conclusion of the hearing, the court must issue an order detailing the child's classification level and corresponding duties; and must provide a copy of the order to the delinquent child and to the bureau of criminal identification and investigation.

Petition for Reclassification or Declassification

- For juvenile offenders whose duty to register was not terminated at their end-of-disposition hearing, the child may petition the classifying

court for declassification 3 years after the end-of-disposition hearing.

- A subsequent petition may be filed 3 years after the initial petition and every 5 years thereafter.

Factors for Consideration

- In determining whether to continue, modify, or terminate a juvenile-offender registrant's duty to register, the court must consider the factors outlined in [R.C. 2152.83\(D\)](#).

See Discretionary Registrants section, p. 11 of this Bench Card.

Findings and Orders

- At the conclusion of the hearing, the court may either:
 - Enter an order denying the petition; or
 - Issue an order that reclassifies or declassifies the juvenile offender as requested.
- If the court denies the juvenile offender's petition, the prior-classification order remains in effect.
- If the court grants the petition and reclassifies the juvenile offender to a lower-tier level, the court shall issue an order that specifies the juvenile offender's new registration duties and shall provide a copy of the order to the child and to the bureau of criminal identification and investigation.
- If the court grants the petition and declassifies the juvenile offender, the court shall issue an order finding that the child is no longer a juvenile-offender registrant and no longer has a duty to comply with [R.C. 2950](#) and shall provide a copy of the order to the child and to the bureau of criminal identification and investigation.
- The court may not increase a child's classification level at this hearing.



Many courts institute automatic sealing and expunging of juvenile records. This eliminates the need for notice and saves the court time and financial resources.

SEALING AND EXPUNGING [\[R.C. 2151.355 - R.C. 2151.358\]](#)

Definitions and Eligibility

- Expunge: “Means to destroy, delete, and erase a record, as appropriate for the record’s physical or electronic form or characteristic, so that the record is permanently irretrievable.” [\[R.C. 2151.355\(A\)\]](#)
- Sealing: “To remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible to the juvenile court.” [\[R.C. 2151.355\(B\)\]](#)
- Delinquency records pertaining to children adjudicated delinquent of aggravated murder, murder, or rape are not eligible to be sealed or expunged.

Notice

- Upon the final disposition of a case, the court shall provide written notice to the child that states that the child may apply for an order to seal and/or expunge their record and explains what sealing or expunging a record means.

Records Subject to Immediate Sealing

- The following records shall be immediately and automatically sealed without an application being filed on behalf of the child:
- Any record pertaining to a child’s arrest or detention for a delinquent act if no complaint is ever filed and the child is not brought to court.
- If a child is brought before the court on an alleged delinquent act, but the matter is resolved without the filing of a complaint.
- If a child is charged with underage drinking, but the child successfully completes a diversion program with respect to that

charge.

- If a complaint is filed alleging that a child is delinquent and, after a hearing on the merits, the court finds the child to be not delinquent.
- If a child, after being adjudicated unruly, turns 18 and is not under the jurisdiction of the juvenile court in relation to a delinquency complaint.
- All public offices or agencies with original records pertaining to the case subject to sealing or expunging must deliver them to the court. [\[R.C. 2151.356\(B\)\(1\) - \(2\)\]](#)

Records Subject to Discretionary Sealing

- All other records eligible for sealing and expunging may be sealed and expunged upon the court’s own motion or upon a juvenile’s application if:
 - The child has been adjudicated delinquent; and
 - At the time of the child’s application, the child is no longer under the jurisdiction of the juvenile court in relation to an alleged delinquency complaint. [\[R.C. 2151.356\(C\)\(1\)\]](#)
- No fees may be assessed for the filing of an application.
- Children who are under 18 may apply for sealing and expunging: 6 months after the termination of any order made by the court in relation to the adjudication; 6 months after the unconditional discharge of the person from DYS or other facility of commitment with respect to the adjudication; or 6 months after the court enters an order declassifying the child from the juvenile-sex-offender registry. [\[R.C. 2151.356\(C\)\(1\)\(a\)\(i\) - \(iii\)\]](#)
- Children who are 18 or older may apply for sealing and expunging any time after the child attains 18 years of age or immediately after any occurrence listed in [R.C. 2151.356\(C\)\(1\)\(a\)\(i\) - \(iii\)](#). [\[R.C. 2151.356\(C\)\(1\)\(b\)\(i\) - \(ii\)\]](#)

Procedure Following Application for Sealing of Records

- Upon the filing of an application for sealing, the court may require the applicant to submit any relevant documentation to support the request and may cause an investigation to be made to determine whether the applicant has been rehabilitated to a satisfactory degree.
- The court must promptly notify the prosecutor of any proceedings to seal records. The prosecuting attorney may file a response within 30 days of receipt of the court's notice.
- If the prosecutor does not respond to the application, or responds, but does not object to sealing, the court may grant the application without a hearing.
- If the prosecutor objects to sealing, the court must hold a hearing within 30 days of receipt of the prosecutor's responsive pleading. The court shall give notice by regular mail, of the date, time, and location of the hearing to the prosecutor and applicant.
- When considering an application to seal, the court may consider the following: the age of the applicant; the nature of the case; the cessation or continuation of delinquent or criminal behavior; the education and employment history of the person; the granting of a new tier classification or declassification from the juvenile-offender registry; any circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.
- After conducting a hearing or after due consideration when a hearing is not conducted, the court may order the records of the applicant sealed if it finds that the person has been rehabilitated to a satisfactory degree.
- Upon sealing of a person's records, the court must provide verbal notice to an applicant who is present or written notice when the applicant is not present that explains what sealing a record means and that notifies the applicant that he/she may apply to have his/her records expunged under [R.C. 2151.358](#).

Response Respecting Sealed Records

- After records have been sealed, the applicant who is the subject of the sealed records may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.
- If the court orders a person's juvenile records sealed, the court must do all of the following:
 - Order that the proceedings in the case be deemed never to have occurred;
 - Delete all index references to the cases and the person so that they are permanently irretrievable;
 - Order that all original records of the case maintained by any public office or agency (except fingerprints, DNA specimens, and DNA records) be delivered to the court;
 - Order each public office or agency to expunge any remaining records of the case (except fingerprints, DNA specimens, and DNA records);
 - Send notice of the order to any public office or agency that the court has reason to believe may have a record of the sealed record, including, but not limited to, the bureau of criminal identification and investigation; and
 - Seal all of the records delivered to the court in a separate file in which only sealed records are maintained.

Procedure Following Application for Expunging of Records

- The juvenile court shall expunge all records (sealed under [R.C. 2151.356](#)) 5 years after the court issues an order sealing juvenile court records, or upon the 23rd birthday of a person who is the subject of a sealing order, whichever is earlier.
- A juvenile also may apply to the court to expunge a sealed record.
- In determining whether to expunge sealed records before the periods outlined in [R.C. 2151.358\(A\)](#), the court may require the applicant to submit any relevant documentation

to support the request and may cause an investigation to be made to determine whether the applicant has been rehabilitated to a satisfactory degree.

- The court must promptly notify the prosecuting attorney of any proceedings to expunge records. The prosecutor may file a response within 30 days of receiving the notice of expungement proceedings.
- If the prosecutor does not respond to the application, or responds, but does not object to expungement, the court may grant the application without a hearing.
- If the prosecutor objects to expungement, the court must hold a hearing within 30 days of receipt of the prosecutor's responsive pleading.
- After conducting a hearing or after due consideration when a hearing is not conducted, the court may order the records of the applicant sealed if it finds that the person has been rehabilitated to a satisfactory degree.
- When considering an application to expunge juvenile-court records prior to the expiration of the periods outlined in [R.C. 2151.358\(A\)](#), the court may consider the following:
 - The age of the applicant;
 - The nature of the case;

- The cessation or continuation of delinquent or criminal behavior;
 - The education and employment history of the person;
 - The granting of a new tier classification or declassification from the juvenile-offender registry; and
 - Any circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.
- After records have been expunged, the applicant who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.

TRUANCY



TRUANCY DEFINED [R.C. 2151.011(B)(18)]

- “Habitual truant” means any child of compulsory school age who is absent without legitimate excuse for:
 - 30 or more consecutive school hours; or
 - 42 or more hours in one school month; or
 - 72 or more hours in a school year.

SCHOOL DISTRICT REQUIREMENTS [R.C. 3313.668; R.C. 3321.16]

- No school district or school may suspend, expel, or remove a student from school solely on the basis of the student’s absences from school. [R.C. 3313.668]
- The school’s attendance officer must file a complaint in the juvenile court against a student on the 61st day after the implementation of an absence-intervention plan if: [R.C. 3321.16(B)(1)]
 - The student was absent without legitimate excuse for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year;
 - The school district or school has made meaningful attempts to re-engage the student through an absence-intervention plan or other intervention strategies; or
 - The student has refused to participate in or failed to make satisfactory progress on the plan.
- The attendance officer must file a complaint in juvenile court against a student if the student is absent without legitimate excuse for 30 or more consecutive hours or 42 or more hours in one school month at any time during the implementation phase of the absence-intervention plan or other intervention strategies. [R.C. 3321.16(B)(2)]
 - **Exception:** The absence intervention team determined that the student has made substantial progress on the absence-intervention plan.

NOTE

Within 10 days after a child is adjudicated an unruly child for being a habitual truant, the court must provide notice to the child’s current school district and to the school in which the child was enrolled at the time the complaint was filed.

[R.C. 2151.354(C)(2)(d)]

FILING OF COMPLAINT [R.C. 2151.27(G)]

- A formal filing must be used only as a last resort to address truancy.
- Upon the filing of a complaint the court shall consider an alternative to adjudication, including diversion.

See Diversion Bench Card.

- The court may consider any other alternative to adjudication that is available to the court, as long as the child has not already participated in or failed to complete the alternative.

BURDEN OF PROOF [R.C. 2151.27(H)]

- Prosecution
 - Must prove beyond a reasonable doubt that:
 - The child is of compulsory school age; and
 - The child was absent without legitimate excuse from the public school the child was supposed to attend for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year.
- Defense
 - The child may assert an affirmative defense that the child did participate in, or made satisfactory progress on, the absence-intervention plan or other alternatives to adjudication.

DISPOSITIONS [R.C. 2151.354(C)]; [R.C. 2152.19]

- If a child is adjudicated an unruly child for being a habitual truant, in addition to or in lieu of imposing any other order of disposition authorized by [R.C. 2151.354](#), the court may require the child to do any of the following:
 - Attend an alternative school (if an alternative school has been established in the child’s school district);
 - Participate in any academic program or community service program;
 - Participate in a drug-abuse or alcohol-abuse counseling program;
 - Receive appropriate medical or psychological treatment or counseling;
 - Make any other order that the court finds proper to address the child’s habitual truancy, including an order requiring the child to participate in a truancy-prevention mediation program.

PROCEEDINGS AGAINST PARENTS AND CAREGIVERS [R.C. 2151.354(C)(2)]

- If a child is adjudicated unruly for habitual truancy and the court determines that the parent, guardian, or caregiver has failed to cause the child’s attendance at school, all of the following apply:
 - The court may require the parent, guardian, or caregiver participate in any community service program;

- The court may require the parent, guardian, or caregiver participate in a truancy-prevention mediation program;
- The court shall warn the parent, guardian, or caregiver that any subsequent adjudication of the child as an unruly or delinquent child for being a habitual truant or for violating a court order regarding the child’s prior adjudication as an unruly child for being an habitual truant, may result in a criminal charge against the parent, guardian, or caregiver; and
- The court may order any other disposition authorized by [R.C. 2151.354](#).

TRUANCY DATA COLLECTION [R.C. 2151.18(B)]

- The court’s annual report, as required by [R.C. 2151.18](#), shall include the number of children who:
 - Were placed in alternatives to adjudication for truancy (under [R.C. 2151.27\(G\)](#)); and either
 - Successfully completed the alternative to adjudication; or
 - Failed to complete the alternative and were adjudicated unruly.
- While not required by [R.C. 2151.18](#), courts are strongly encouraged to report the:
 - Total number of habitual truant complaints filed during the year; and
 - Number of truants handled informally, including those who were diverted prior to the filing of a habitual-truancy complaint.

UNRULY CHILD



NOTE

Consider pre-filing alternatives.
See Diversion Bench Card.

COMPLAINT FOR UNRULY CHILD [\[R.C. 2151.27\]](#)

Upon the filing of a complaint alleging that a child is unruly, the court may hold the complaint in abeyance pending the child's successful completion of diversion programming.

- If the child completes diversion to the court's satisfaction, the court may dismiss the complaint.
- If the child fails to complete diversion to the court's satisfaction, the court may consider the complaint.

RIGHT TO COUNSEL AND APPOINTMENT OF GUARDIAN AD LITEM

A child's right to counsel and rules for appointment of a Guardian ad Litem apply in unruly cases.

See Right to Counsel and Appointment of Guardian ad Litem Bench Card.

HOLDING AN UNRULY CHILD [\[R.C. 2151.312\]](#); [\[R.C. 2151.33\]](#)

- A child alleged to be or adjudicated an unruly child may be held only in the following places:
 - A certified family foster home or a home approved by the court, for a period not more than 60 days or until final disposition of the case;
 - A facility operated by a certified child welfare agency;
 - Any other suitable place designated by the court.
- An unruly child may not be held in any of the following facilities:
 - A state correctional institution, county, multicounty, or municipal jail or workhouse,

or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;

- A secure correctional facility.
- A child alleged to be or adjudicated an unruly child may not be held for more than 24 hours in a detention facility. [\[R.C. 2151.312\(B\)\(2\)\]](#)

See Detained Youth bench card for additional information on detention of an unruly child.

ORDERS OF DISPOSITION [\[R.C. 2151.354\]](#)

- If the child is adjudicated an unruly child, the court may:
 - Make any of the dispositions authorized for an abused, neglected, or dependent child under [R.C. 2151.353](#);
 - Place the child on community control under conditions the court prescribes, provided that if the court imposes a period of community service upon the child, the period of community service not exceed 175 hours;
 - Suspend the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court;
 - Commit the child to the temporary or permanent custody of the court.
- If a child is adjudicated an unruly child for committing any act that would be a drug-abuse offense if committed by an adult, the court must do both of the following in addition to any other disposition that may be imposed:
 - Require the child to participate in a drug-abuse or alcohol-abuse counseling program;
 - Suspend the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of time prescribed by the court.



YOUTH IN ADULT COURT



RESEARCH CONTEXT

Research has shown that transferring a youth to adult court can have long-lasting negative impacts, including increased recidivism, a higher likelihood of physical and sexual abuse throughout their stay in prison, a significantly increased risk of suicide, inability to access appropriate education, and being subjected to harmful isolation. Research recommends transferring youth to the adult court system rarely.¹

EVIDENCE

The application of rules of evidence in bindover proceedings currently is undecided.



Attorney Representation: Any child charged with a SYO or bindover offense must be represented by counsel.

[R.C. 2152.13(C)(2)]; [Juv.R. 4(A)]

SERIOUS YOUTHFUL OFFENDERS (SYO)

In Ohio, a child can be given a blended juvenile and adult court sentence under the Serious Youthful Offender (SYO) statute. Under SYO, a child receives a juvenile court disposition, as well as a stayed adult court sentence; this stayed adult court sentence can only be invoked under certain circumstances as described below. SYO originally was created to serve as an alternative to bindover and must take into account the purpose of the juvenile court, which includes individual treatment, accountability, and rehabilitation.²

Housing

Youth who are filed as SYOs must be retained in a juvenile detention facility if they are not released on bond. [R.C. 2151.31(C)(2)] and [R.C. 2152.13(C)(2)]

SYO Process Initiation

A prosecutor must initiate the SYO process by:

- 1) Obtaining an SYO indictment;
- 2) If an indictment is waived, charging the child in a bill of information as an SYO; or
- 3) Until an indictment or information is obtained, either:

- Requesting a SYO dispositional sentence in the original complaint; or
- If the original complaint does not request a SYO dispositional sentence, filing a written notice of intent to seek an SYO sentence within 20 days after the later of the following (unless time is extended for good cause):
 - The first juvenile court hearing on the complaint;
 - The date the juvenile court determines not to transfer the case.
- Under the circumstances in 3) above, the court must hold a preliminary hearing to determine probable cause that the child committed the act charged and is age eligible or required to receive a SYO sentence. [R.C. 2152.13(B)]
- Once this notice is given, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecutor's intent to seek an SYO disposition. [R.C. 2152.13(A)]

Unique Rights for Youth Charged with SYO

- A child subject to an SYO proceeding has the right to:
 - A **grand jury** determination of probable cause for the offense and that the child is eligible for an SYO based on age. The grand jury may be impaneled by the court of common pleas, general division, or the juvenile court.
 - A **transcript** of the proceedings.
 - An open and speedy **jury trial** that begins upon the filing of the indictment or information, the original complaint, or the written notice.
 - **Bail** and all rights of adult court, including the right to raise the issue of competency. [R.C. 2152.13(C)]

¹ For more information, see Children's Law Center, *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012), available at nicic.gov/library/026406.

² *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9

SYO SENTENCING STRUCTURE [R.C. 2152.13(D)]

Mandatory SYO [R.C. 2152.13(D)(1)]

- The court shall:
 - Impose an adult sentence for the violation under [R.C. Chapter 2929](#), except a sentence of death or life imprisonment without parole.
 - Impose one or more traditional juvenile dispositions under sections [R.C. 2152.16](#), [R.C. 2152.19](#), and [R.C. 2152.20](#), and, if applicable, [R.C. 2152.17](#).
 - Stay the adult portion of the sentence pending the successful completion of the traditional juvenile dispositions imposed.

Discretionary SYO [R.C. 2152.13(D)(2)]

- The court:
 - May impose an adult sentence for the violation under [R.C. Chapter 2929](#) (except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole), if the juvenile court makes a finding on the record that given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in [R.C. 2152.01](#) will be met.
 - Shall impose one or more traditional juvenile dispositions under sections [R.C. 2152.16](#), [R.C. 2152.19](#), and [R.C. 2152.20](#) and, if applicable, [R.C. 2152.17](#), either in addition to or in lieu of an adult sentence, depending on the court's ruling above.
 - If an adult sentence is imposed, the court shall stay the adult portion of the SYO sentence pending the successful completion of the traditional juvenile dispositions imposed.

Appeal [R.C. 2152.13(D)(3)]

- A child can appeal the adult portion of the SYO sentence under [R.C. 2953.08\(A\)\(1\)](#), (3), (4), or (5), when applicable, and the court shall consider the appeal as if the adult portion were not stayed.

Invoking the Adult Portion of an SYO Disposition [R.C. 2152.14]

- The motion to invoke the SYO must be filed by the prosecuting attorney either with or without a request from DYS, the juvenile court that imposed the SYO, or the youth's probation department. However, if the prosecutor gets a request to file the motion and denies it, any of those entities also may file a motion or hold the hearing. The motion must show reasonable cause that – after the age of 14 – the youth:
 1. Committed a violation of institutional rules that could be a felony or first-degree misdemeanor; **AND**
 2. Engaged in conduct that creates a substantial risk to the safety or security of the institution, community, or victim.
- In invoking the SYO sentence, the court must find that all of the following apply:
 - The child is serving the juvenile portion of an SYO disposition;
 - The child is at least 14;
 - The child has been admitted to DYS or criminal charges are pending;
 - The child – after the age of 14 – committed a violation of institutional rules that could be a felony or first-degree misdemeanor or engaged in conduct that creates a substantial risk to the safety or security of the institution, community, or victim; **AND**
 - The child's conduct demonstrates the child is unlikely to be rehabilitated under juvenile court jurisdiction.
- If the adult sentence is invoked:
 - The juvenile court can modify the sentence to a lesser prison term or community control.
 - The juvenile court must transfer jurisdiction to adult court with the total number of days the child has been held in detention or a DYS facility, for which the youth must be given credit.

BINDOVER

- Youth ages 14 and up in Ohio can be bound over – or transferred – to the adult-court system. The bindover process can be either mandatory or discretionary. The juvenile court’s bindover proceedings determine the case’s jurisdiction and whether it remains in juvenile court or is transferred to adult court, not the merits of the case.

Category One & Two Offenses [R.C. 2152.02(BB) - (CC)]	
Category-One offense	Murder, aggravated murder, or attempts of either of these offenses
Category-Two offense	Voluntary manslaughter, involuntary manslaughter (felony-1 Level), aggravated robbery, aggravated burglary, rape, or aggravated arson. NOTE: Although kidnapping also is a Category-Two offense, it is not included in mandatory-bindover laws.

Housing [\[R.C. 2152.26\(F\)\(4\)\]](#)

- Children who are boundover may be placed in detention pursuant to the standard set forth in the Detained Youth bench card. Any child facing bindover charges must be held in a juvenile detention facility until the child is transferred to an adult court (after determination in a post-amenability hearing).
- If the child turns 18 while the bindover is pending, the judge may move the child to an adult jail if:
 - The judge determines the youth is a **threat to the safety and security of the facility**, based on whether the child has injured/created imminent danger, escaped more than once, or has a written record showing a pattern of disruptive behavior.
 - A hearing is held that takes into account the factors listed in [R.C. 2152.26\(F\)\(1\)\(4\)\(c\)](#).
- If a child is moved to jail, they can petition the court for a review to be placed back into detention every 30 days or by emergency petition. While in jail, the child must be separated by sight and sound from adults [\[R.C. 2152.26\(F\)\(1\)\]](#) and the fact the child is placed in the jail must be kept confidential and not made a public record, unless the child is convicted or pleads guilty to an adult sentence. [\[R.C. 2152.26\(G\)\]](#)

Bindover Process

- Children in the juvenile court can be boundover if:
 - **STEP #1:** A complaint is filed under [Juv.R. 30](#) requesting a transfer of jurisdiction to adult court. This transfer can be either mandatory or discretionary; the process for each of these types of bindover is laid out next with discretionary outlined first.

Discretionary Bindover

- **STEP #2:** Is the child eligible for bindover?
- The child must be both:
 - 14 or older; **AND**
 - Charged with a felony
- **Process STEP #3:**
- Three steps: [\[R.C. 2152.12\(B\) - \(E\)\]](#)
 - Does the child qualify for discretionary bindover above? **AND**
 - Is there probable cause to believe the child committed the act charged? **AND**
 - Is the child amenable to the care or rehabilitation within the juvenile system or does the safety of the community require the child to be boundover?
- To answer this question the judge must:
 - Conduct an investigation and receive a report within 45 days (with one extension allowed) regarding the child’s social history, education, family situation, and any other

factor. This report may be knowingly and intelligently waived and cannot be used to determine whether the factors in favor of transfer outweigh factors against transfer.

- The factors generally include the role of and impact on the victim, presence of a firearm, prior juvenile court involvement, the child's individual characteristics, and whether there is sufficient time to rehabilitate the child.



Record shall indicate that the court weighed the specific factors that were applicable, and shall state the reasons for transfer.

Mandatory Bindover

- **STEP #2:** Is the child eligible for bindover?

Category-One Offense

- Charged with a Category One Offense and **EITHER:**
 - 16 or older [\[R.C. 2152.10\(A\)\(1\)\]](#); **OR**
 - Meets all three of the following requirements:
 - 14 or 15 years old; **AND**
 - Previously adjudicated delinquent for a Category-One or -Two offense; **AND**
 - Committed to DYS for that adjudication.

Category-Two Offense

- Charged with a Category-Two Offense (other than kidnapping) and **BOTH:**
 - 16 or older; **AND**
 - Meets at least one of the following requirements:
 - Previously adjudicated delinquent for a Category-One or -Two offense **AND** committed to DYS for that adjudication;
 - Alleged to have a firearm on person or under control **AND** displayed/brandished/indicated possession/used the firearm.

Other Circumstances that Require Mandatory Bindover [\[2152.12\(A\)\(2\)\]](#)

- The child **previously has been boundover** under [R.C. 2152.12](#) **AND** is convicted of or pleads guilty to a felony in adult court.
- The child had the **adult portion of a SYO invoked** (this section does not apply to reverse-waiver child whose SYO sentence is not invoked).
- The child is from **another state** whose laws would require bindover.

Process **STEP #3**

- Two steps: [\[2152.12\(A\)\(1\)\]](#)
 - Does the child fall into one of the mandatory-bindover categories above?
 - Is there probable cause to believe the child committed the act charged?

Reverse waiver [\[R.C. 2152.121\]](#) **STEP #4:**

- Reverse waiver applies to mandatory-bindover children because they were 16 or 17 at the time of the offense and either were charged with a Category-One offense **OR** charged with a Category-Two offense with a firearm.
- Under reverse waiver, a child can return to the juvenile court depending on the adult court's decision:
- If a child is returned to juvenile court under reverse waiver, the court must impose an SYO disposition on the child giving preference to the sentence to the adult-court judge. The child can be transferred back to adult court if:
 - Within 14 days of the journal entry filing, the prosecutor objects to the youth remaining in juvenile court; **AND**
 - The court holds an amenability hearing as described in Step #3 of discretionary bindover; **AND**
 - The court determines, as described in Step #3 of discretionary bindover, that the child is not amenable to rehabilitation in the juvenile court system. If the child remains in juvenile court, the SYO disposition shall apply.

YOUTH CONVICTED IN ADULT COURT OF:	RESULT
Non-Bindover Offense	Child is returned to juvenile court and adult court records must be expunged
Mandatory-Bindover Offense	Child remains in adult court
Discretionary-Bindover Offense	Child is returned to juvenile court BUT can return to adult court (after prosecutor objection and judicial amenability hearing). If the child remains in juvenile court, he/she must receive an SYO adjudication.



Court should receive an entry from adult court with outcome of adult case.

Final Step

- If child is boundover for any reason listed previously, the court must state the reasons for transfer on the record.



THE SUPREME COURT *of* OHIO

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