

A PRACTITIONER'S GUIDE TO JUVENILE DETENTION IN OHIO

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CHAPTER I

THE ELEMENTS FOR A SUCCESSFUL JUVENILE DETENTION SYSTEM

In 1992, the Annie E. Casey Foundation launched a multi-year, multi-site project known as the Juvenile Detention Alternatives Initiative (JDAI).¹ The purpose of the initiative was to demonstrate that jurisdictions could establish more effective and efficient systems to accomplish the purposes of juvenile detention. The JDAI invested millions of dollars and considerable staff time in response to data that revealed a rapidly emerging national crisis in juvenile detention.² As the numbers of juveniles being held in detention increased from 1985-1995, many juvenile detention facilities became overcrowded, producing unsafe, unhealthy conditions for both the detainees and staff. In addition, crowding also placed additional financial pressure on already expensive public services.³

The JDAI developed an alternative to these trends, and demonstrated that jurisdictions could effectively control their detention problems.

I. PROJECT OBJECTIVES

- A. To eliminate the inappropriate or unnecessary use of secure detention;**
- B. To minimize failures to appear and the incidence of delinquent behavior;**
- C. To redirect public finances from building new facility capacity to responsible alternative strategies; and,**
- D. To improve conditions in secure detention facilities.⁴**

The JDAI project has generated a twelve-volume publication entitled *Pathways to Juvenile Detention Reform*, available through the Annie E. Casey Foundation.⁵ While this chapter does not purport to fully examine all of the JDAI components and findings, it

nonetheless highlights portions of this extensive report as a foundation for a good detention system. First, it examines the “guiding principles” that should be evident in good detention planning. Next, it provides mechanisms to document and describe a juvenile detention system. Third, the project attempts to identify local detention goals, and to define problems needed to create or reform a detention system. And finally, JDAI provides a mechanism to identify costs of reform efforts, the resources needed, and the barriers to reform.

While Ohio’s detention system is not analyzed here in terms of necessary reform, the JDAI report is important to consider when looking at the key elements of an effective detention system. It is in this light that the remainder of this chapter examines the findings and recommendations of JDAI as relevant to Ohio’s detention system.

II. GUIDING PRINCIPLES REGARDING DETENTION PLANNING

The JDAI report establishes a number of important principles that have emerged from its work and should be considered when planning any detention system, or the reform of an existing detention system.⁶

A. These principles include:

1. Detention planning must be based on adequate data. Current caseloads and operations must be collected to build an accurate factual foundation.
2. Detention planning must be collaborative and include multiple public and private agencies and stakeholders who can give input into the detention process. Collaboration helps to increase common understanding about detention problems and generates broader acceptance of proposed actions. Collaboration is also central to resolve interagency differences that can stand in the way of good detention practices.
3. Detention planning should maintain a thematic focus on creating a continuum of detention practices, including a rational set of alternatives to secure, pre-trial custody. This process is designed not only to help identify juveniles who are suitable for non-secure care, but helps planners to implement a suitable array of programmatic alternatives to secure custody.

4. Planning should be guided by the objectives of improving system efficiency from both operational and cost perspectives. While the structured planning process is designed to streamline the processing of cases through the juvenile courts, and to reduce unnecessarily long stays in detention, it also serves to minimize the need for construction and future operating costs that would be generated by adding new, and perhaps unnecessary, detention capacity.
5. Planning should be comprehensive in scope, and should address a variety of issues such as detention bed use, conditions of confinement, case processing delays, the relationship of the juvenile justice stakeholders, and minority overrepresentation in confinement. This helps to lay the best foundation for an informed assessment of local detention problems and for the selection of prudent implementation priorities.
6. Planning must be oriented toward action and practical results. Planners must be prepared to prioritize their recommendations for improvement and to move from discussion to action.⁷

III. DESCRIBING THE CURRENT DETENTION SYSTEM

With these guiding principles in mind, it is important that any detention system collect and maintain accurate information about the system that will provide a detailed picture of detention caseloads, procedures, policies and costs. In order to provide an accurate quantitative analysis, a process for accumulating aggregate, system-wide data on juvenile justice clients, caseloads, and facilities is important. This should include the following:

A. Arrest, Referral and Demographic Data

1. Demographic data on the at-risk juvenile population (e.g., age, gender, projected growth).
2. Juvenile arrest data by major offense groups and other elements (e.g., age, ethnicity).
3. Probation or detention intake data showing referrals to detention by as many characteristics as may be available (e.g., race, age, gender, offense, jurisdiction).
4. Petition data showing the number and types of cases petitioned, with related dispositions.⁸

B. Facility Population Counts

1. Number of juveniles by offense groups, court or processing status (e.g. post-disposition status) and other categories suspected of imposing high detention loads.⁹

C. Individual Case Data

1. Referral and admission characteristics, including such personal identifiers as age, race, gender, ethnicity, offense history, probation status, school status, and family status.
2. Detention exit characteristics, including the length of stay, why and to whom the juvenile was released, and the legal status of the juvenile when released (i.e., awaiting adjudication, post-disposition).
3. Outcomes for detained and non-detained juveniles that can determine whether current detention and release policies are working to protect the public and to assure the juvenile's appearance in court.
4. Data to support case processing reforms (i.e., data to support the need to reduce case processing time).
5. Data needed to project future detention capacity needs.¹⁰

IV. REVIEWING THE POLICIES AND PRACTICES OF THE DETENTION SYSTEM

A review of detention policies and procedures is vital to good detention planning because it can help shorten case processing time, reduce detention utilization, and improve outcomes for detained minors. Likewise, the process can help to better identify roles and responsibilities of the agencies involved in the detention process, and as such, help to resolve confusion over the purpose of or causes of delays and better streamline the flow of cases through detention facilities and courts.¹¹

A. A “Systems Analysis” Should Include at a Minimum, the Following:

1. A case processing flow chart that can identify the agencies (e.g., police, probation, judiciary, detention staff) responsible for decision making at each

critical point, and that indicates time lines for decisions made by each stakeholder, from initial referral to final disposition of the case.

2. Case processing time should be reviewed from a qualitative perspective to identify delays in detention that result from backlogged court calendars, attorney continuances, and other processing delays.¹²
3. Detention laws and practices should be identified to the extent that they have an effect on local juvenile detention. For example, attention should be focused on the impact of laws that provide for the transfer of juveniles to adult court and the effect this has on a facility's long-term detention rates. Detention and release procedures should be subject to special scrutiny. Important factors to consider include: a) police policies and decision making; b) the role of the intake workers, such as Court Designated Workers; and, c) the nature and type of release criteria and its application.
4. Post-disposition caseloads may occupy a large number of detention beds, and as such, may contribute to high detention numbers.
5. Developing detention alternatives is a critical element of any detention plan. A good "systems analysis" should include a description of alternatives currently available, their levels of use, target population, waiting lists (if any) and success rates.
6. The roles and policies of individual detention decision makers should be scrutinized to determine any gaps in communication or areas of dysfunction among the key players.
7. Finally, a "systems analysis" provides an opportunity to review the issue of disproportionate minority confinement from a qualitative perspective. This will enable policy makers to take a deeper look at community-wide factors that may contribute to excessive contacts with the justice system for particular ethnic groups.¹³

V. CONDUCTING A CONDITIONS ANALYSIS

The JDAI report recommends that policy makers recognize that secure juvenile detention carries with it a set of governmental obligations rooted in constitutional law concerning the safe and humane care of juveniles in these facilities. It suggests that all facilities, including those that are not overcrowded and are generally well run, can benefit from a conditions analysis to identify key areas of improvement.¹⁴ For a more detailed discussion of conditions of confinement, see Chapter VI.

VI. A WORKING SYSTEM OF DETENTION: ADDRESSING INTAKE, ALTERNATIVES AND UNNECESSARY DELAYS

For an effective system of detention to adequately address community concerns as well as the needs of individual juveniles, the JDAI report details three important aspects of decision making regarding detention practices: 1) effective intake practices; 2) appropriate alternatives to detention; and, 3) methods for countering delays in case processing that result in unnecessary detention. A summary of each of these three areas is provided.

A. Controlling the Front Gates: Effective Admissions

The JDAI report enumerates a number of contributing factors that may result in uncontrolled detention admissions practices. Often, the intended purpose of detention is unclear from the statutory language, so detention may be used improperly, or in some cases, in violation of the intent of the law.¹⁵ Likewise, many jurisdictions lack reliable standardized techniques for making the determination as to whether or not to detain, or the criteria set forth are too subjective.¹⁶ Finally, many juvenile justice systems utilize detention without routine supervisory reviews of detention decisions, without sufficient defense capacity to ensure the letter of the law is upheld, or without data that clarifies the effectiveness of the jurisdiction's practices.¹⁷ In response to these matters, JDAI has identified several policies and practices essential to overcome problems of ineffective admissions practices. It begins with the following principles for effective admissions, and defines the elements of a structured, objective admissions process.

B. Guiding Principles for Effective Detention Admissions

1. Admissions policies, practices and instruments must be based upon a clear understanding of the purpose of detention, and should be based upon using the least restrictive alternative necessary to ensure that the juveniles appear in court and remain arrest-free pending adjudication.
2. Effective admissions policies and practices rely on objective criteria to distinguish between juveniles who are likely to flee or commit new crimes

and those who are not. Otherwise, high-risk offenders may be released and low-risk offenders detained, a practice that endangers public safety, wastes public resources, and undermines confidence in the justice system.

3. Good admissions practices rely on a structured decision-making process to ensure timely, consistent screening.
4. Data are essential to the design, implementation and sustainability of effective admissions practices.
5. Effective implementation of objective admissions practices requires the support of the system's key stakeholders and line staff.
6. An objective admissions system requires constant monitoring and quality control.¹⁸

C. Elements of a Structured, Objective Admissions Process:

While eligibility for secure juvenile detention is generally defined by state law, most states use very broad and subjective criteria that allow admission of almost any juvenile for almost any infraction or offense.¹⁹ According to the JDAI, the result of this subjectivity is that as many as 71% of juveniles on a given day in detention are charged with nonviolent acts or technical probation violations.²⁰

The JDAI identifies two basic ways in which improvements in detention eligibility criteria occur: 1) through statutory criteria that are objective and restrict the placement of juveniles in secure detention; and, 2) through judicially-ordered criteria that refine state statutory criteria.²¹ Other than the criteria set forth in the Ohio Revised Code, Ohio has no objective criteria that is used consistently on a statewide basis.

For the detention criteria to be objectified further, however, several critical dilemmas for local stakeholders must be addressed. For example, juveniles who can no longer be detained after being picked up by the police need to go somewhere. Rather than becoming an inappropriate admission to detention, constructive alternatives available to police must be considered. Another dilemma stems from the fact that juveniles who are not detained often are

not assessed for appropriate case processing within the same period of time as those detained. As such, cases that should demand a high priority for services may not receive these services in a timely manner since the child is not confined.²² Finally, a shift in detention criteria may result in backlash from the community, or from various parts of the justice system. As such, it is necessary for jurisdictions to recognize that political climates can shift quickly, and that changes in detention criteria should have the support of public stakeholders and be backed by credible data.²³

VII. THE CASE FOR ALTERNATIVES TO DETENTION

The need for various options to supervise juveniles pending the outcome of their cases in juvenile court is essential in order to keep detention beds available for those juveniles who are truly a threat to the community, while at the same time reducing unnecessary expense for local or state jurisdictions. As such, the JDAI suggests several “guiding principles” for jurisdictions to follow regarding effective detention alternatives.²⁴ Likewise, JDAI suggests several essential elements of a good alternative to detention program.

A. Guiding Principles for Effective Detention Alternatives

1. Detention should be viewed as a legal status, with varying levels of custody supervision, rather than as a building. Detention systems are more likely to be effective when policymakers and practitioners think of detention as a continuum of options ranging from secure custody to various types and levels of non-custodial supervisions like home incarceration or day reporting. With these options in place, juveniles are more likely to end up in detention options consistent with the risks they pose, rather than being securely detained because there are no other alternatives.
2. For detention alternatives to be effective, agreement is needed on the purpose of secure detention and of alternatives. Developing the alternatives does not in and of itself reduce the population in secure detention. A common understanding among stakeholders as to how these alternatives can be most successful and why they are necessary is also needed.

3. Detention alternatives should be planned, implemented, managed and monitored using accurate data. This will help to document, among other matters: a) the numbers and type of juveniles placed in the programs; b) whether the program is displacing juveniles from the secure facility; and, c) how well the juveniles perform while in the alternatives.
4. A detention system should include a continuum of detention alternatives with various programs and degrees of supervision matched to the risks of detained juveniles.
5. Detention alternatives should be culturally competent, relevant and accessible to the juveniles they serve. This includes being sensitive to the needs of minority juveniles, females, and special needs populations. When possible, alternatives should be located in the juvenile's home neighborhood, both for the ease of participation, and because community context is important to program outcomes.
6. Detention alternatives should be designed and operated on the principle of using the least restrictive alternative possible. As such, they should: a) match the degree of restriction to the risks posed by the juvenile; b) increase or decrease restrictiveness according to the juvenile's performance; and, c) ensure cost-efficiency by "reserving" costly secure detention beds for juveniles who represent a danger to public safety.
7. Detention alternatives should reduce secure detention and avoid widening the net. As such, they should not be used to place more juveniles in the detention system.²⁵

B. Elements of a Successful Alternative to Detention Program

A continuum of detention alternatives generally includes various models for juveniles held in secure detention prior to a disposition hearing, including: 1) home or community detention (non-residential, non-facility based); 2) day or evening reporting centers (non-residential, facility based supervision); and, 3) shelter or foster care (non-secure, residential placement).²⁶ These programs are described further below.

1. Home or Community Detention

Home or community detention programs are designed for juveniles who can be supervised safely in their own homes or with relatives. They are cost-effective alternatives that include frequent, random, unannounced, face-to-face community supervision (and/or telephone contacts) to minimize the chances that juveniles are engaged in ongoing delinquent behavior and to ensure their future appearance in court.²⁷

2. Day or Evening Reporting

Programs that have day or evening reporting provide a non-secure community alternative for several hours per day at a facility where a higher level of supervision and structured activities are required. Juveniles in these programs are often not enrolled in school at the time of their release from detention, making routine monitoring difficult and leaving the juveniles with too much unfilled time. Reporting centers offer several benefits, including lower program costs, and intensive daily supervision. The juveniles in these programs may also be monitored with electronic devices.²⁸

3. Residential Alternatives

For those juveniles who cannot return home for various reasons, and for whom relative placement is not possible, residential alternatives such as shelter programs and emergency foster homes can provide a good option. In addition to being more cost-efficient than secure detention, non-secure alternative settings can provide “normal” age-specific services such as education, recreation, tutoring and life skills training in a family environment. Shelter programs generally offer consistent and structured programming, and generally employ professional staff who may provide case management, and/or counseling and advocacy services. Likewise, foster care homes may be available as a separate program, or to complement a shelter program. These programs are

particularly effective with younger juveniles whose developmental needs can best be met by an individual family.²⁹

4. Intensive Supervision Programs

In addition to detention alternative programs, another approach has been developed in many jurisdictions that combines case advocacy and intensive case management. This approach is used as an alternative to detention, but targets juveniles with histories of multiple system contacts who are likely to otherwise be detained pending adjudication. The model not only creates a case plan that must be presented to the court upon its completion, it also provides intensive case management by monitoring compliance and providing support to assist juveniles in overcoming adversity and patterns that lead to recidivism and/or failure to appear in court.³⁰

5. Special Challenges: Contemptors, Probation Violators and Juveniles Transferred as Adults

In addition to developing detention alternatives for juveniles awaiting juvenile court processing, the JDAI report suggests other specific program responses for juveniles held as probation violators and for juveniles held for adult court processing.

Probation violators and juveniles who are held in contempt of court for disobedience of court orders present special problems to juvenile court judges, probation officers and other stakeholders in the juvenile justice system. The JDAI report addresses this issue by first examining the extent to which a jurisdiction uses secure detention as a sanction for juveniles who violate the terms and conditions of court orders, or of their probation.³¹ Based on an analysis of the JDAI sites, the report recommends the development and implementation of “graduated sanctions” for juveniles who violate such conditions, using detention as a last resort. Sanctions of short duration were more effective in motivating juveniles to follow the terms of their probation. These sanctions may include:

- Warnings
- Problem solving
- Written assignments
- Community Service
- Mediation
- Office reporting
- Home confinement/parent supervision
- Day reporting
- Electronic monitoring
- House arrest
- Extended probation
- Detention³²

For juveniles facing transfer or trial in the adult system, long-term detention stays can create substantial problems in terms of programming and behavior management. Juvenile detention facilities are not typically designed for long-term stays. As such, the increasing number of these “transferred” juveniles present significant challenges to detention center staff.³³ The JDAI report notes in Cook County, Illinois, one of the JDAI sites, nearly 40% of the “waived” juveniles were transferred for drug or weapons offenses, and nearly half of those cases were dismissed or placed on probation by the adult court.³⁴ As such, the JDAI report recommends that local juvenile justice officials gather accurate data on transferred juveniles in their own jurisdiction before strategies can be developed and pursued with the support of juvenile and adult justice officials. These strategies might include facilitating bail (and bail reduction) hearings in selected cases, and working to ensure faster adult trials.³⁵

VIII. REDUCING UNNECESSARY DELAYS IN CASE PROCESSING

While maintaining objective admissions criteria and effective alternative programming is critical to facilitating an effective system of detention, it is likewise essential for a detention system to sustain efforts to reduce unnecessary case processing time. Delays in juvenile and criminal court case processing can greatly increase the use of juvenile detention beds even

though the number of admissions remain stable or even drop.³⁶ Such delays are apparent not only in those cases where juveniles are detained, but are often systematic of a particular juvenile court jurisdiction. As such, case processing delays may also effect juveniles released pending adjudication by increasing their rates of failure to appear, may significantly increase the length of time juveniles spend in alternative programs, and may lessen the correlation the juvenile perceives between his actions and the ultimate disposition of his case.³⁷

A. Guiding Principles to Reduce Unnecessary Delays

1. The end goal is not speed in case processing, but rather an improved justice system. The key to more efficient case processing is often eliminating wasted time, whether time between events, court hearings generally, or the time taken for the events themselves.
2. Custody levels alone should not drive case processing changes. Success in improving case processing should decrease the unnecessary use of detention beds while also providing other benefits to the courts, judges, victims, defense, prosecution and juveniles.
3. The use of every detention facility bed is worth scrutinizing; every bed day is worth saving.
4. No court hearing should be scheduled without a purpose. Many hearings are scheduled that have an unclear purpose, or the purpose is not accomplished. Efforts should focus not only on reducing unnecessary time between scheduled court events, but also scrutinizing the substantive purposes of each hearing.³⁸

While a number of models are available to jurisdictions that wish to better manage their case processing, the JDAI report enumerates several important factors to consider.

First, while the defense bar has a critical role in case processing speed, effective defense advocacy and improving case processing are not antithetical.³⁹ Although other system participants may focus on time and dollar savings, the defense bar is ambivalent about the first, and has little interest in the second. Rather, the focus of the defense bar is on the interest of the client. Participation by the defense bar in any systemic attempt to improve case processing is

important, and can ensure that proposed changes will be focused on benefits for the juvenile population first and foremost.⁴⁰

Local collaboratives that include all of the system participants are critical for bringing about case processing changes. System participants, while they may be extremely knowledgeable about their respective functions, may know little about how case processing actually works on a larger scale. With collaboration, key stakeholders can share credit, and blame, for resulting delays, and/or for improvements.⁴¹

For any collaborative effort to improve case processing, however, judicial leadership is imperative. Judges are key in managing and improving case processing; however, effective changes are most likely when they come through discussion, analysis and consensus building among the key players, rather than by court order.⁴²

Finally, a key element to improving case processing is producing and analyzing data that can determine the nature and extent of problem areas. Often, the data is incomplete or conflicting. The JDAI report stresses the need for key participants to first establish trust and common purpose, and then to begin the process of posing questions that can help determine the areas for improvement.⁴³

For a listing of juvenile detention resources, see Appendix A.

¹ Steinhart, David, *Pathways to Juvenile Detention Reform: A Structured Approach*, (Annie E. Casey Foundation, 2000) Vol. I.

² The Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities (1985-1995) showed an increase in detention population nationally by 72%. The report also noted that less than 1/3 of the juveniles in secure custody were charged with violent offenses, and that the increase in numbers of juveniles held in secure detention were severely disproportionate across race.

³ *Id.*, Total Operating Expenditures in U.S. Public Detention Centers, 1985-1995.

⁴ Steinhart, *supra*, at 6.

⁵ Requests for copies of this complete publication can be made to the Annie E. Casey Foundation, 701 St. Paul Street, Baltimore, MD 21202.

⁶ Steinhart, *supra*, at 13-14.

⁷ *Id.* at 13-14.

⁸ *Id.* at 20-22.

⁹ *Id.* at 22.

¹⁰ *Id.* at 23-27.

¹¹ *Id.* at 28.

¹² The report recommends that delays affecting both detained and non-detained juveniles be examined. It notes that non-detained juveniles often experience much longer times waiting for court hearings than detained juveniles, a factor which can contribute to high failure to appear (FTA) rates and to bench warrants resulting in arrest and mandatory detention. *Id.* at 29.

¹³ *Id.* at 32.

¹⁴ *Id.* at 32-35.

¹⁵ Frank Orlando, "Controlling the Front Gates: Effective Admissions," *Pathways to Juvenile Detention Reform* (Annie E. Casey Foundation, 2000) Vol. 3.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 10-12.

¹⁸ *Id.* at 13-15.

¹⁹ *Id.* at 16.

²⁰ Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities 1985-1995. One Day Counts of Detention Facilities by Offense Category, 1995.

²¹ Orlando, *supra*, n. 15 at 16-20.

²² *Id.* at 21.

²³ *Id.* at 23-24.

²⁴ Paul DeMuro, "Consider the Alternatives: Planning and Implementing Detention Alternatives," *Pathways to Juvenile Detention Reform*, (Annie E. Casey Foundation, 2000), Vol. 4.

²⁵ *Id.* at 11-14.

²⁶ *Id.* at 13.

²⁷ *Id.* at 15.

²⁸ *Id.* at 19.

²⁹ *Id.* at 23-24.

³⁰ *Id.* at 24-26.

³¹ *Id.* at 27.

³² *Id.* at 27-28.

³³ *Id.* at 23-24.

³⁴ *Id.* at 29.

³⁵ *Id.* at 29-30.

³⁶ D. Alan Henry, "Reducing Unnecessary Delay: Innovations in Case Processing," *Pathways to Juvenile Detention Reform*, (Annie E. Casey Foundation, 2000) Vol. 5.

³⁷ *Id.* at 11-12.

³⁸ *Id.* at 14-15.

³⁹ *Id.* at 37.

⁴⁰ *Id.*

⁴¹ *Id.* at 37-38.

⁴² *Id.* at 38.

⁴³ *Id.* at 39.

CHAPTER II

FEDERAL MANDATES REGARDING JUVENILE DETENTION: THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

I. HISTORY OF THE ACT

The Juvenile Justice and Delinquency Prevention Act (JJDP) was enacted by Congress in 1974.¹ The JJDP is administered by Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), in Washington, D.C.² The JJDP includes several juvenile justice and delinquency prevention initiatives, including funding initiatives available to establish alternatives to secure detention, specifically under the Title II Formula Grants Program.

II. TITLE II FORMULA GRANTS PROGRAM

The primary purpose of Title II of the JJDP is to encourage states to meet the following four core requirements in operating their juvenile detention systems.

A. Deinstitutionalization of Status Offenders

As a general rule, status offenders (juveniles who are charged with committing an offense that would not be criminal if it had been committed by an adult),³ alien juveniles in custody, or dependent or neglected children shall not be placed in secure detention facilities.⁴

1. Exceptions

a. Twenty-Four-Hour Hold Exception

The regulations issued by the OJJDP provide a temporary hold exception that permits accused status offenders or non-offenders to be securely held for up to 24 hours, excluding weekends and holidays, for purposes of identification, investigation, release to parents, or transfer to a non-secure program or the court.

A second 24-hour grace period may follow a court appearance. There is also a statutory exception for “valid court orders.”⁵

b. Valid Court Order Exception

A status offender accused of violating a valid court order may be securely detained for longer than 24 hours if the court has met certain requirements in its order to detain. A valid court order is an order issued by a court of competent jurisdiction as a result of a hearing during which the juvenile received all constitutional due process protections. If a juvenile violates a valid court order, the court can invoke the valid court order exception and order the juvenile securely detained as punishment, if the court: ⁶

- i. Affirms that the requirements for a valid court order were met at the time of the issuance of the original order finding the juvenile to be a status offender;
- ii. Makes a determination at the detention hearing that there is probable cause to believe that the juvenile violated the valid court order; and
- iii. Within 72 hours of the juvenile’s initial detention, exclusive of weekends and holidays, receives a report from a public agency, other than a court or law enforcement agency, stating that all other dispositions other than secure detention have already been tried or are inappropriate.

B. Separation

Juveniles shall not be detained or confined in any secure institution in which they have contact with incarcerated adults.⁷ If juveniles are incarcerated in the same facility as adults, they must be sight and sound separated from the adults.⁸

C. Jail and Lockup Removal

As a general rule, any juvenile subject to the original jurisdiction of the juvenile court, based upon age and offense as established by the state, may not be detained in jails or lockups in which adults may be detained or confined.⁹

1. Exceptions:

a. Six-Hour Hold Exception

The OJJDP regulations provide for a six-hour hold exception for accused public offenders for the limited purpose of identification, processing, interrogation, transfer to a juvenile facility or court, or pending release to parents.¹⁰

b. Rural Exception

The rural exception permits jails and lockups outside a Standard Metropolitan Statistical Area to hold accused public offenders for up to 24 hours, exclusive of weekends and holidays, while awaiting an initial court appearance, if state law requires a detention hearing within 24 hours and no alternative facility is available.¹¹

D. Disproportionate Minority Confinement

The disproportionate minority confinement (DMC) mandate requires states to determine if the proportion of minority juveniles in confinement exceeds the proportion of minority juveniles in the general population.¹² If the state determines that minorities are disproportionately confined, the state must conduct a study to determine the breadth of the issue, and then develop programs and systems improvement initiatives to address the issue.¹³

E. Requirements for Participating in Title II

States meeting the requirements described above are eligible to receive Title II formula grant funding to help them to meet the core requirements of the JJDP, and to support a broad array of juvenile programs and services aimed at preventing juvenile delinquency once compliance with the four core requirements has been achieved.¹⁴ Funding is made available to states under the JJDP based upon the state's juvenile population.¹⁵

To qualify for funding, a state must have a state advisory group, and it must meet at least one of the core requirements.¹⁶ Each core requirement carries 25% of the available funding, so a state meeting three of the four core requirements would be eligible to receive 75% of the funding available to that state.¹⁷ Ohio has recently had a significant turnover in state advisory group members and has sought to select members who are familiar with the role of the state advisory group.¹⁸

The challenge grant program is another funding source available to states that receive Title II funds. Challenge grant funds provide resources to assist states in identifying and addressing systemic issues within the state juvenile justice system.

III. OHIO'S COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

A. Most Recently Reported Compliance Status

Ohio's system of juvenile detention is generally a county-based system with a minimal amount of oversight by the Ohio Department of Youth Services. The county-by-county nature of this system makes it difficult to obtain accurate current data regarding juvenile detention issues. The most comprehensive reported data available is contained in Ohio's Revised Application and Comprehensive Three-Year Plan FY 2000-2003 and the Office of Juvenile Justice and Delinquency Prevention's Annual Report 2000.

B. Deinstitutionalization of Status Offenders

The most recently reported data indicates that Ohio is out of compliance with Section 223(a)(12)(A) of the JJDPA regarding deinstitutionalization of status offenders.¹⁹ Several jurisdictions within the state detain and confine status offenders and non-offenders in secure facilities.²⁰ This is attributable to judges, detention staff and law enforcement officers being unfamiliar with the requirements of the JJDP and the implications and consequences of these

violations.²¹ The checklist required for compliance with the valid court order exception for detention of status offenders is not consistently used throughout the state. Thus, there is a lack of proper verification that the requirements have been met, which has resulted in further violations of this provision of the JJDP. Ohio has sought technical assistance by way of training for juvenile court judges, law enforcement officials and other juvenile court personnel in order to obtain compliance with this provision. Ohio has also sought technical assistance to provide alternatives to secure detention for status offenders.²² The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has withheld funds from Ohio pending additional compliance data in this area.²³

In order to achieve compliance in this area, the Governor's Council on Juvenile Justice and the Ohio Department of Youth Services have placed special emphasis on the following activities and services:

- Identifying the geographic areas of non-compliance
- Identifying the causes of non-compliance
- Identifying resources currently available
- Identifying additional resources needed
- Identifying alternative/solutions
- Providing technical assistance
- Implementing alternatives/solutions.²⁴

C. Jail and Lockup Removal

The most recently reported data indicates that Ohio is out of compliance with Section 223(1)(14) of the JJDP, which requires that juveniles be removed from adult jails and lockups.²⁵ Although Ohio law prohibits juveniles from being detained or confined in adult jails and lockups, many facilities still report holding and locking up juveniles. This is attributed to

inadequate compliance monitoring resulting from a lack of proper policies and procedures in place and lack of adequate systems for collecting and tracking compliance data.²⁶ A lack of readily accessible local juvenile facilities and the impracticality of transporting juveniles to facilities that may be 100 miles away are cited by local law enforcement officials as reasons why juveniles are held with adults.²⁷ Law enforcement and adult facility personnel appear to be unaware that holding juveniles with adults is a violation of the JJDPA.²⁸ The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has withheld funds from Ohio pending additional compliance data in this area.²⁹

As with the problem of non-compliance with the deinstitutionalization of status offenders, in order to achieve compliance in the area of jail lockup and removal, the Governor's Council on Juvenile Justice and the Ohio Department of Youth Services have placed special emphasis on the following activities and services:

- Identifying the geographic areas of non-compliance
- Identifying the causes of non-compliance
- Identifying resources currently available
- Identifying additional resources needed
- Identifying alternative/solutions
- Providing technical assistance
- Implementing alternatives/solutions.³⁰

IV. ADDRESSING DISPROPORTIONATE MINORITY CONFINEMENT

Congress added the disproportionate minority confinement (DMC) mandate in 1988 after several studies indicated that significant overrepresentation of minority juveniles being confined nationally. Essentially, disproportionality exists when the percentage of incarcerated minority juveniles exceeds the percentage of minority juveniles in the general population. For example,

the U.S. Department of Justice noted in its December 1999 report *Minorities in the Juvenile Justice System* that:

[I]n 1997, minorities made up about one-third of the juvenile population nationwide but accounted for nearly two-thirds of the detained and committed population in secure juvenile facilities. For black juveniles, the disparities were most evident. While black juveniles age 10 to 17 made up about 15% of the juvenile population, they accounted for 26% of juveniles arrested and 45% of delinquency cases involving detention. About one-third of adjudicated cases involved black juveniles, yet 40% of juveniles in secure residential placements were black.³¹

A. Required Procedure for Addressing Disproportionate Minority Confinement

The JJDPa specifically outlines the process each state must follow when it addresses DMC. States must “address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.”³² This assessment involves three steps:

1. Identification

States must compare the number of minority juveniles in detention to the number of minority juveniles in the population. If the percentage of those in detention is greater than the population, then the state has determined that DMC may exist.³³

2. Assessment

Once overrepresentation is realized, then the state must “identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than

incarceration, the rates and periods of pre-hearing detention and dispositional commitments to secure facilities of minority juveniles in the juvenile justice system, and transfers to adult court.”³⁴

3. Intervention

If the state determines that DMC exists, it “must develop a plan of action for reducing the disproportionate confinement rate of minorities in secure facilities.”³⁵ No specific guidelines exist to determine when this step has been satisfied, but the following five activities must be part of the state’s plan:

- a. Diversion: States must increase the number and quality of diversion programs provided for minority juveniles within the juvenile justice system.³⁶
- b. Prevention: States must aid minority communities in creating and applying prevention programs.³⁷
- c. Reintegration: States must address recidivism by creating and applying programs that will help minority juveniles reintegrate themselves into society after incarceration.³⁸
- d. Policies and Procedures: States must induce “necessary changes in statewide and local executive, judicial, and legal representation policies, and procedures” by providing financial and technical assistance when needed; and,³⁹
- e. Staffing and Training: States must provide “financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority juveniles in secure facilities.”⁴⁰

B. Building Blocks for Youth Initiative: *And Justice for Some*

Disproportionate minority confinement is an issue that has and will continue to generate considerable national attention. On April 25, 2000, the Building Blocks for Youth initiative, a nationwide project sponsored by the Youth Law Center, released *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, an extensive study that revealed “sharp racial disparities in nation’s juvenile justice system.”⁴¹ This nationwide study examined each step of the juvenile justice process and found that minority juveniles were overrepresented at virtually every stage. Information in this report reveals a “cumulative disadvantage” of

minority juveniles across the nation. Below are some of the key findings of this report at each phase of the juvenile justice process:

1. Arrest

The report found that in 1998, the majority of arrests of juveniles involved white juveniles, while African American juveniles were overrepresented as a proportion of arrests in 26 of 29 offense categories documented by the FBI.⁴²

2. Referral to Juvenile Court

In 1997, while the majority of cases referred to juvenile court involved white juveniles, minority juveniles were overrepresented in the referral court.⁴³

3. Detention

While white juveniles comprised 66% of the juvenile court referral population, they comprised 53% of the detained population. In contrast, African American juveniles made up 31% of the referral population and 44% of the detained population. In every offense category (person, property, drug, public order) a substantially greater percentage of African American juveniles were detained than white juveniles.⁴⁴

4. Formal Processing

African-American juveniles are more likely than white juveniles to be formally charged in juvenile court, even when referred for the same type of offense. Minority juveniles were overrepresented in the detained population in 43 of 44 states.⁴⁵

5. Waiver to Adult Court

Minority juveniles were much more likely to be waived to adult criminal court than white juveniles in all offense categories.⁴⁶

6. Disposition

In every offense category, minority juveniles were more likely than white juveniles to be placed out of the home (e.g., commitment to a locked institution).

In all offense categories, white juveniles were more likely than minority juveniles to be placed on probation.⁴⁷

7. Incarceration in Juvenile Facilities

Although minority juveniles are one-third of the adolescent population in the United States, minority juveniles are two-thirds of the over 100,000 juveniles confined in local detention and state correctional systems.⁴⁸

8. Incarceration in Adult Prisons

In 1997, 7400 new admissions to adult prisons involved juveniles under the age of 18. Three out of four of these juveniles were minorities.⁴⁹

C. Ohio's Approach to Addressing Disproportionate Minority Confinement

Ohio's juvenile corrections system claims to have reduced its African American offender population by nearly 12% between 1994 and 2000.⁵⁰ In 1994, African American youth made up 56.4% of Ohio Department of Youth Services (ODYS) population while Caucasian youth made up 40.3%, whereas in May 2000, the African American youth population had dropped to 44.8% while Caucasian youth made up 49.9%.⁵¹ Ohio attributes this steady decrease in the number of African-American youth in its ODYS facilities to its RECLAIM (Reasoned and Equitable Community and Local Alternatives for the Incarceration of Minors) initiative.⁵² RECLAIM

allows juvenile judges to create community sanctions and rehabilitation alternatives for youth and requires the juvenile courts to report their efforts in ensuring equitable treatment of all youth regardless of race or ethnicity.⁵³

Ohio completed Phase I of its DMC plan, determining whether minority youth are disproportionately confined in secure facilities, in the mid 1990s, but did not complete Phase II, the assessment phase.⁵⁴ Ohio plans to reinitiate Phase I of its DMC efforts and incorporate DMC into its compliance monitoring efforts. ODYS plans on working with the courts to identify and enumerate minority youth at two key points in the system: namely, intake and admissions to one of Ohio's 38 detention centers. Further, ODYS plans on proceeding with activities that will:

- Identify minority youth populations within Ohio
- Identify minority youth populations within a state juvenile correctional facility
- Identify the number and ethnicity of juveniles held in detention
- Identify the number and ethnicity of juveniles held in adult jails and lockups.⁵⁵

Jurisdictions need to consider a more hands-on approach to pinpoint critical stages in the juvenile justice system where overrepresentation is present, develop more specific research findings regarding likely disparities, and begin to generate community-based solutions aimed at reducing disparities. The Building Blocks project and other national and state initiatives can provide jurisdictions with model programs that have been used throughout the country in an effort to address DMC issues.

¹ Juvenile Justice and Delinquency Prevention Act of 1974, 42 USC 5601 et seq.
² 42 USC 5611.
³ Juvenile Justice Act Requirements, 28 CFR 31.304(h) (2000).
⁴ 42 USC 5633(a)(12)(A).
⁵ 28 CFR 31.303(f)(2) (2000).
⁶ 28 CFR 31.303(f)(3) (2000).
⁷ 42 USC 5633(a)(13).
⁸ 28 CFR 31.303(d)(ii) (2000). See also 28 CFR 31.303(e)(3)(C) (2000).
⁹ 42 USC 5633(a)(13).
¹⁰ 28 CFR 31.303(e)(2) (2000).
¹¹ 42 USC 5633(a)(14).
¹² 42 USC 5633(a)(23).
¹³ 28 CFR 31.303(j) (2000).
¹⁴ 42 USC 5633(a).
¹⁵ 42 USC 5632(a)(1).
¹⁶ 42 USC 5633 (a)(3).
¹⁷ 42 USC 5633 (c)(3).
¹⁸ Juvenile Justice and Delinquency Prevention Title II Formula Grant Program, Revised Application and Comprehensive Three-Year Plan, State of Ohio, FY 2000-2003.
¹⁹ *Id.*
²⁰ *Id.*
²¹ *Id.*
²² *Id.*
²³ Office of Juvenile Justice and Delinquency Prevention Annual Report 2000.
²⁴ See *supra* n. 18.
²⁵ See *supra* n. 18.
²⁶ See *supra* n. 18.
²⁷ See *supra* n. 18.
²⁸ See *supra* n. 18.
²⁹ See *supra* n. 23.
³⁰ See *supra* n. 18.
³¹ Randy S. Thomas, Kentucky Disproportionate Minority Confinement Initiative: Interim Report 3, 3 (2000).
³² *Id.* at 4.
³³ *Id.* at 4.
³⁴ See *id.* at 4-5 (citing 28 CFR 3.303(j), OJJDP Formula Grants Regulation).
³⁵ Thomas, *supra* note 31, at 5.
³⁶ See *id.*
³⁷ See *id.*
³⁸ See *id.*
³⁹ See *id.*
⁴⁰ See *id.*
⁴¹ Eileen Poe-Yamagata & Michael A. Jones, Building Blocks for Youth, And Justice for Some: Differential Treatment of Minority Youth in the Justice System (2000).
⁴² See *id.* at 1.
⁴³ See *id.*
⁴⁴ See *id.* at 2.
⁴⁵ See *id.*
⁴⁶ See *id.*
⁴⁷ See *id.*
⁴⁸ See *id.* at 2-3.
⁴⁹ See *id.*
⁵⁰ See *supra* n. 18.
⁵¹ See *supra* n. 18.

⁵² See supra n. 18.

⁵³ See supra n. 18.

⁵⁴ See supra n. 18.

⁵⁵ See supra n. 18.

CHAPTER III

AN OVERVIEW OF OHIO'S JUVENILE DETENTION SYSTEM

I. HISTORY OF THE OHIO JUVENILE CODE

Ohio became one of the first states to enact juvenile court legislation, establishing the Cuyahoga County Juvenile Court in 1902.¹ This legislation governed juvenile court practice until 1937 when Ohio adopted the Standard Juvenile Court Act.² The right to counsel, the privilege against self-incrimination, trial by jury, and the right to bail were all held inapplicable to juvenile proceedings.³ The justification being based on the *parens patriae* theory that the state, in the form of the court, should take a parental and protective approach to adjudication of juveniles. This led to the distinction that juvenile proceedings were civil or criminal in nature, and for the purpose of rehabilitation through treatment, rather than rehabilitation for punishment as in the adult criminal justice system. (Juvenile proceedings are now considered to be civil in nature, as held by the Ohio Supreme Court in *In re Anderson*, thus the civil rules apply).⁴

The landscape of juvenile justice changed significantly after the *In re Gault*⁵ decision in 1967. In 1981, the legislature began the deinstitutionalization of unruly children and delinquent-misdemeanants and conversely increased control over delinquent-felons via statutory, minimum institutionalization periods of time.⁶ With the assistance of state subsidies, local communities were given responsibility for developing programs for unrulies and delinquent-misdemeanants, primarily through diversion from juvenile court to community agencies.⁷ The resources of the state were restricted to delinquent-felons.⁸ In response to the perception that the volume of juvenile crime was increasing, in 1995 the General Assembly amended several statutes governing juvenile delinquency proceedings. Most importantly, the minimum age for transfer to

adult court was reduced from fifteen to fourteen, transfer to adult court was required under certain circumstances, and the minimum terms of commitment to the Department of Youth Services were increased for certain specified delinquency offenses.⁹

Senate Bill 179, effective January 1, 2002, emphasizes this change to the Juvenile Code by establishing the dispositions unruly children, delinquent children, and juvenile traffic offenders may be subject to. Though few substantial changes were made to the substance of the current statutes, several changes to the format occurred. For instance, a new chapter was created to deal specifically with delinquent children and juvenile traffic offenders, whereas before, they were lumped together in chapter 2151 along with unruly children. By doing this, the statute makes it clear that unruly children (generally status offenders) are not to be confused with children who have actually committed criminal acts. Also, this allows for the new chapter to encompass issues such as transfer to criminal court, fine and fee schedules, enhancement factors, and the many different, and often strict, dispositions available to the court for delinquents and traffic offenders, all of which are not appropriate for unruly children.

II. STATUTORY AUTHORITY OVER JUVENILE DETENTION

Ohio's juvenile justice system is a "Home Rule System"¹⁰ wherein cities and counties throughout the State function independently. Juvenile justice services, in most instances, are typically overseen by the Courts of Common Pleas in the Probate or Domestic Relations Divisions, however several counties have separate Juvenile Divisions. Services offered through these divisions often differ from place to place as local administrations have instituted various programs in regard to prevention and intervention.¹¹

The State administers commitments for juvenile delinquents through the Department of Youth Services (DYS).¹² DYS promulgates rules for juvenile courts throughout the state which

seek financial assistance for the operation of juvenile detention facilities¹³. Ohio Revised Code, Section 5139.37 sets forth the standards to which courts must comply to receive assistance from DYS, specifically outlining procedures from administration and management of the facilities to construction, training and management of committed children.

Along with promulgating rules, the DYS has the duty to support service districts through a central administration office;¹⁴ accept custody of all children committed to DYS under Chapter 2152, issuing any orders necessary to address the needs of those children and the interest of the public, for treatment of the children;¹⁵ obtain the necessary personnel to perform its duties;¹⁶ train or provide training of probation and youth correction workers;¹⁷ submit operations reports to the governor and general assembly on a yearly basis;¹⁸ research diagnosis, training and treatment of delinquent children in order to evaluate the success of services provided by the department and develop more appropriate measures;¹⁹ receive reports from juvenile courts and prepare an annual state report of juvenile statistics which shall be available to the governor and members of the general assembly upon request;²⁰ develop a standard form for the disposition investigation report for the juvenile courts to complete and provide to the department whenever a court commits a child to the legal custody of the department;²¹ as well as any other actions deemed necessary to fulfill the department's obligations and duties.²²

III. DISPOSITIONAL ALTERNATIVES TO SECURE DETENTION

Many times both the juvenile and the community are better served by placing a juvenile in an alternative to secure detention. Given the overall philosophy of the juvenile justice system as being more rehabilitative and treatment oriented than punitive, alternatives to secure detention can serve as valuable tools to assist the juvenile in becoming a productive member of society.

Currently, any child that is alleged to be or is an adjudicated unruly child, delinquent child, or juvenile traffic offender may be held in the following places as an alternative to secure detention: 1) a certified foster home or other approved home; 2) a facility operated by a child welfare agency; or 3) any other suitable place designated by the court.²³ However, the child may only be held in a foster home or other home approved by the court for a period not to exceed sixty days or until final disposition of the case, whichever comes first.²⁴

A. Unruly Children

An unruly child is any child who violates a law only applicable to a child, or a child who is a habitual truant from home or school, habitually disobedient to parents or teachers, attempts to enter marriage without parental consent, or a child that endangers the health or morals of herself or others.²⁵ However, the IJA-ABA standards recommend that a child's unruly behavior that does not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction, and voluntary social services should be substituted.²⁶

Several alternatives are also available to the court when imposing a disposition upon an adjudicated unruly child. The court may choose from the following dispositions as alternative to secure detention: 1) place the child on probation;²⁷ 2) suspend the child's driver's license or vehicle registration;²⁸ 3) require the child to undergo drug or alcohol abuse counseling,²⁹ or 4) if the child is adjudicated unruly for truancy, require the child to participate in certain academic programs or attend a certain number of school days.³⁰

B. Delinquent Children

Pursuant to statutory amendments which became effective in 1999, an adjudicated delinquent child may be subject to the following dispositions as alternatives to secure detention:³¹ 1) place the child on probation;³² 2) commit the child to the temporary custody of

any school, camp, or institution, or other facility operated for the care of delinquent children;³³ 3) impose a fine and/or costs;³⁴ 4) require the child to make restitution;³⁵ 5) suspend or revoke the child's driver's license or vehicle registration;³⁶ 6) impose a period of electronically monitored house detention or arrest;³⁷ 7) impose a period of day reporting;³⁸ 8) impose up to 500 hours of community service;³⁹ 9) impose a period in an alcohol or drug treatment program with a level of security as determined by the court;⁴⁰ 10) require a period of drug and alcohol use monitoring;⁴¹ 11) impose a period of intensive supervision, in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment, programs as the order of disposition;⁴² 12) impose a period of basic supervision, in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanction imposed by the court;⁴³ 13) impose a period in which the court orders the child to observe a curfew that may involve daytime or evening hours;⁴⁴ 14) require the child to obtain a high school diploma, or the equivalent of, or obtain employment;⁴⁵ 15) if the court obtains the assent of the victim, require the child to participate in a reconciliation or mediation program that includes a meeting in which the child and the victim may discuss the delinquent acts, discuss restitution, and consider other sanctions;⁴⁶ 16) if the child is delinquent for truancy, require the child not to be absent without legitimate excuse from school for five or more consecutive days, several or more school days in one school month, or twelve or more school days in a school year or require the child to participate in a truancy prevention mediation program.⁴⁷

C. Summary

Broader discretion and numerous alternatives enable the juvenile justice system to better meet the specific rehabilitative needs of the child. These statutory options are essential, given that the choice of dispositions available to the court is confined to those provided by statute.⁴⁸

In making the decision to commit an adjudicated delinquent child to detention or impose any number of available alternatives, the court should consider: 1) whether the victim was five years of age or younger, 2) whether the victim sustained physical harm, 3) whether the victim was 65 years of age or older or disabled, 4) whether the delinquent act would have been an offense of violence if committed by an adult, and 5) whether the child has previously been adjudicated a delinquent child.⁴⁹ The court should consider the presence of these factors in favor of commitment, but the factors shall not control the court's decision.⁵⁰

IV. REGIONAL AND COUNTY JUVENILE DETENTION FACILITIES

There are thirty-five juvenile detention facilities in Ohio; almost half of these facilities serve more than one county, while the other facilities detain juveniles adjudicated in one particular county. Several counties send their juveniles to a variety of detention facilities, depending on the availability of space.

Allen County Juvenile Justice Center: with 12 beds, serves Allen county.

Ashland Detention Facility: with 10 beds, serves Ashland county.

Ashtabula County Youth Detention Center: with 12 beds, serves Ashtabula county

Sargas Juvenile Detention Center: with 20 beds, serves Belmont and Harrison counties.

Butler Juvenile Detention Center: with 20 beds, serves Butler county.

Clark Juvenile Detention Center: with 29 beds, serves Belmont, Champaign, Clark, Fairfield, Gailia, Greene, and Madison counties.

Clermont County Detention Center: with 15 beds, serves Clermont and Brown counties.

Cuyahoga County Detention Center: with 86 beds, serves Cuyahoga county.

Edward J. Ruzzo Juvenile Justice Center: with 47 beds, serves Crawford, Hardin, Knox, Licking, Marion, Morrow, and Wyandot counties.

Erie County Detention Center: with 14 beds, serves Erie county.

Five County Joint Juvenile Detention Center: with 45 beds, serves Champaign, Delaware, Logan, Madison, and Union counties.

Franklin County Juvenile Detention Center: with 112 beds, serves Franklin county.

Greene County Juvenile Detention Center: with 20 beds, serves Green county.

Hamilton County Juvenile Detention Center: with 107 beds, serves Hamilton county.

Jefferson County Juvenile Detention Center: with 22 beds, serves Jefferson county.

Lake County Youth Detention Center: with 40 beds, serves Lake county.

Lorain County Detention Home: with 46, serves Lorain county.

Louis Tobin Detention Center: with 25 beds, serves Carroll, Columbiana, Holmes, Stark, Tuscarawas, and Wayne counties.

Lucus County Child Study Institute: with 74 beds, serves Lucas county.

Martin P. Joyce Detention Center: with 40 beds, serves Mahoning county.

Montgomery County Detention Center: with 59 beds, serves Montgomery county.

Muskingum County Detention Center: with 14 beds, serves Coshocton, Knox, and Muskingum counties.

Portage-Geauga Detention Center: with 30 beds, serves Geauga and Portage counties.

Richland County Detention Center: with 20 beds, serves Richland County.

Sandusky County Juvenile Detention Center: with 19 beds, serves Huron and Sandusky counties.

SCOR Juvenile Detention Center: with 19 beds, serves Fayette, Highland, Jackson, Pike, Ross, and Vinton counties.

Seneca County Youth Center: with 25 beds, serves Crawford, Morrow, Seneca, and Wyandot counties.

Stark Detention Center: with 35 beds, serves Columbiana, Holmes, Stark, Tuscarawas, and Wayne counties.

Summit County Detention Services: with 45 beds, serves Summit county.

Trumbull County Detention Center: with 36 beds, serves Trumbull county.

Tuscarawas Detention Center: with 20 beds, serves Carroll, Lisbon, Stark, Tuscarawas, and Wayne counties.

Warren County Maryhaven: with 12 beds, serves Adams, Brown, Clinton, and Warren counties.

Wayne-Holmes Detention Center: with 20 beds, serves Carroll, Columbiana, Holmes, Stark, Tuscarawas, and Wayne counties.

West Central Juvenile Facility: with 48 beds, serves Auglaiza, Clinton, Darke, Mercer, Miami, Shelby, and Trumbull counties.

Wood County Juvenile Detention: with 48 beds, serves Defiance, Fulton, Hamilton, Hardin, Henry, Huron, Mercer, Ottawa, Paulding, Putnam, Van Wert, Williams, and Wood counties.

V. RECLAIM OHIO⁵¹

RECLAIM Ohio (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors) is a funding initiative that encourages courts to develop or purchase a range of community-based options as alternatives to incarceration to better meet the individual rehabilitative needs of each juvenile offender.⁵²

Prior to RECLAIM Ohio, the Department of Youth Services (DYS) allocated separate funding, which the counties had no control over, for state juvenile institutions.⁵³ Consequently, committing a juvenile offender to DYS appeared “free” to the courts, and thus, there was a fiscal incentive to do so. The counties are now free to spend the allocated DYS funds for commitment to a DYS facility or for local alternatives.

Under RECLAIM Ohio, each of Ohio’s 88 counties receive a yearly allocation from DYS for the treatment of juvenile offenders, which is determined by the counties percentage of felony

offenders; if Hamilton county has 10% of Ohio's juvenile felony offenders, they receive 10% of the state funds. DYS then charges individual counties 75% of the cost to house individual youths committed to DYS; or 50% if the facility is state funded by locally operated facility.⁵⁴ Thus, the counties have more of an incentive to place juvenile offenders in less expensive, local programs, rather than committing a youth to a DYS facility.

However, the law provides for a category of public safety beds for which the county is not charged. This provides for placement in a DYS facility for serious offenses, including murder, rape, and kidnapping.⁵⁵ In addition to funding alternatives to institutionalization, RECLAIM funds may also be used to develop prevention and diversion programs for unruly youth and juvenile traffic offenders.⁵⁶

In 1994, the RECLAIM Ohio pilot program (with nine counties participating) saw a 42.7% reduction in the number of commitments to DYS.⁵⁷ As a result of RECLAIM Ohio, more youth today are being treated locally where their rehabilitative needs are better met, institutions are less crowded, and DYS can focus treatment on the more serious offenders.⁵⁸

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- ¹ 95 Ohio Law 785 (1902).
- ² William A. Kurtz & Paul C. Giannelli, *Ohio Juvenile Law*, Baldwin's Ohio Handbook Series 26 (2000).
- ³ *Id.*
- ⁴ GET CITE
- ⁵ 387 U.S. 1, 87 S.Ct. 1428 (1967).
- ⁶ Kurtz, *supra* note 2, at 28.
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ Office of Juvenile Justice and Delinquency Prevention, Juvenile Female Offenders: A Status of the States Report, Individual State Approaches, Ohio, (Accessed January 25, 2002), <<http://ojjdp.ncjrs.org/pubs/gender/state-oh.html>>.
- ¹¹ *Id.*
- ¹² National Center for Juvenile Justice, State Juvenile Justice Profiles, "Ohio", (Accessed January 25, 2002) <<http://www.ncjj.org/stateprofiles>>.
- ¹³ ORC 5139.281 (effective 1/1/02).
- ¹⁴ ORC 5139.04(A) (effective 1/1/02).
- ¹⁵ ORC 5139.04(B) (effective 1/1/02).
- ¹⁶ ORC 5139.04(C) (effective 1/1/02).
- ¹⁷ ORC 5139.04(D) (effective 1/1/02).
- ¹⁸ ORC 5139.04(F) (effective 1/1/02).
- ¹⁹ ORC 5139.04(G) (effective 1/1/02).
- ²⁰ ORC 5139.04(H) (effective 1/1/02).
- ²¹ ORC 5139.04(I) (effective 1/1/02).
- ²² ORC 5139.04(J) (effective 1/1/02).
- ²³ ORC 2151.312(A)(1-3)(effective through 12/31/01); ORC 2151.312(A)(1-3)(effective 1/1/02)(applies only to alleged or adjudicated unruly children).
- ²⁴ ORC 2151.34(not affected by Senate Bill 179).
- ²⁵ ORC 2151.022(A-H)(effective through 12/31/01); ORC 2151.022(effective 1/1/02)(see definition Appendix B for subtle changes to definition of unruly child).
- ²⁶ Kurtz *supra* note 2, at 52; *IJA-ABA Standards Relating to Noncriminal Misbehavior* 23 (1980).
- ²⁷ ORC 2151.354(A)(2)(effective through 12/31/01); ORC 2151.354(A)(2)(effective 1/1/02)(no longer called probations, but 'community control').
- ²⁸ ORC 2151.354(A)(3)(not affected by Senate Bill 179).
- ²⁹ ORC 2151.354(B)(1)(not affected by Senate Bill 179).
- ³⁰ ORC 2151.354(C)(1-2)(not affected by Senate Bill 179).
- ³¹ All of the following dispositional options that became effective in 1999 remain in effect as of the editing of this manual. Senate Bill 179 change these options only slightly. If the previously effective chapter is altered by SB 179, such change will be acknowledged in the endnote.
- ³² ORC 2151.355(A)(2)(effective through 12/31/01); ORC 2152.19(A)(3)(effective 1/1/02)(no longer called probation, but 'community control.' See ORC 2152.19(A)(3)(a-l) for suggested sanctions and conditions for community control, such as day reporting, community service, drug and alcohol use monitoring, electronically monitored house arrest, suspension of driver's license, etc.).
- ³³ ORC 2151.355(A)(3)(effective through 12/31/01); ORC 2151.19(A)(2)(effective 1/1/02).
- ³⁴ ORC 2151.335(A)(8)(effective through 12/31/01).
- ³⁵ ORC 2151.355(A)(9)(effective through 12/31/01).
- ³⁶ ORC 2151.355(A)(10)(effective through 12/31/01); ORC 2152.19(A)(3)(l)(effective 1/1/02)(possible sanction of community control).
- ³⁷ ORC 2151.355(A)(11) & (13)(effective through 12/31/01); ORC 2152.(A)(3)(k)(effective 1/1/02)(possible sanction of community control).
- ³⁸ ORC 2151.355(A)(12)(effective through 12/31/01); ORC 2152.19(A)(3)(c)(effective 1/1/02)(possible sanction of community control).

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- ³⁹ ORC 2151.355(A)(14)(effective through 12/31/01); ORC 2152.19(A)(3)(d)(effective 1/1/02)(possible sanction of community control).
- ⁴⁰ ORC 2151.355(A)(15)(effective through 12/31/01); ORC 2152.19(A)(3)(g)(effective 1/1/02)(possible sanction of community control).
- ⁴¹ ORC 2151.355(A)(18)(effective through 12/31/01); ORC 2152.19(A)(3)(f)(effective 1/1/02)(possible sanction of community control).
- ⁴² ORC 2151.355(A)(16)(effective through 12/31/01); ORC 2152.19(A)(3)(b)(effective 1/1/02)(possible sanction of community control).
- ⁴³ ORC 2151.355(A)(17)(effective through 12/31/01); ORC 2152.19(A)(3)(a)(effective 1/1/02)(possible sanction of community control).
- ⁴⁴ ORC 2151.355(A)(19)(effective through 12/31/01).
- ⁴⁵ ORC 2151.355(A)(20)(effective through 12/31/01); ORC 2152.19(A)(3)(e) (effective 1/1/02)(in addition, the court may require the child obtain vocational training as one of these possible community control sanctions).
- ⁴⁶ ORC 2151.355(A)(21)(effective through 12/31/01); ORC 2152.19(C)(effective 1/1/02).
- ⁴⁷ ORC 2151.355(A)(23) & 24(a)(i)(effective through 12/31/01); ORC 2152.19(A)(5) & (6)(a)(i)(effective 1/1/02).
- ⁴⁸ *In re Sanders*, 72 Ohio App.3d 655 (Cuyahoga 1991).
- ⁴⁹ ORC 2151.355(E)(effective through 12/31/01).
- ⁵⁰ *Id.*
- ⁵¹ 1993 H.B. 152.
- ⁵² Carol Zimmerman, *Reasoned and Equitable Community & Local Alternatives to the Incarceration of Minors*, Department of Youth Services, <<http://www.state.oh.us/dys/RECLAIMOhio.html>> (2000).
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*§

CHAPTER IV

OHIO STATUTORY PROVISIONS REGARDING JUVENILE DETENTION

I. INTRODUCTION

The passage of Senate Bill 179, effective January 1, 2002, changed many sections of the Ohio Revised Code. Some changes are subtle, providing little change in meaning, while others are significant, altering the entire meaning and purpose of the section. The bill created a new chapter so that the Juvenile Code now encompasses two chapters entirely, 2151 (pre-existing and partly revised) and 2152 (new). This chapter will break down the old, revised and entirely new law, outlining the changes and similarities.

II. PURPOSE OF THE OHIO JUVENILE CODE

Prior to the passage of Senate Bill 179, Chapter 2151 of the Revised Code provided for the care, protection, and mental and physical development of juveniles who are alleged *or* adjudicated unruly or delinquent.¹ The underlying concept was that as these juveniles are protected and treated, the community and public interests are also served by removing the consequences of criminal behavior and the taint of criminality from these juveniles through a program of supervision, care, and rehabilitation.²

Thus, the goal of Chapter 2151 of the Revised Code was to protect the juvenile and the community, which sometimes required detention of the juvenile in a facility outside of the home. Yet, detention was not deemed a first resort. In fact, the Code provided that the juvenile should remain in a family environment whenever possible, separating the juvenile from his parents only when necessary for his welfare or for public safety.³ While achieving these goals, all judicial

procedures were required to assure that all parties were ensured a fair hearing and their constitutional and legal rights were consistently recognized and enforced.⁴

The amended version of 2151.01 states that Chapter 2151 is to serve only two purposes: “to provide for the care, protection, and mental and physical development of children subject to Chapter 2151 of the Revised Code, whenever possible, in a family environment, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety; [and] to provide judicial procedures through which Chapters 2151 and 2152 of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.”⁵ Notice that this section no longer lists “removing the consequences of criminal behavior and the taint of criminality from children” as one of its purposes.

Chapter 2152 of the Revised Code builds on, rather than supersedes, the purposes and goals of Chapter 2151 as summarized above.⁶ Chapter 2152 differs slightly in that “the overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and rehabilitate the offender.”⁷ The key difference at this point is that Chapter 2152 does not merely provide for the “care, protection, and mental and physical development of children” but also holds the offender accountable for the offender’s actions through a “system of graduated sanctions and services.”⁸

Likewise, a greater focus on harm to the victim and the seriousness of the offender’s conduct exists in Chapter 2152, which in turn leads to a defined “system of graduated sanctions and services,” specifically, the many dispositions that can be reached through the juvenile court

process.⁹ Such dispositions are not to be based on the juvenile's race, ethnic background, gender, or religion, and they should be consistent with similar dispositions for similar acts committed by similar juveniles.¹⁰

All dispositions for juveniles, whether a juvenile traffic offender, unruly child, or delinquent child, are temporary and must end when the juvenile attains the age of twenty-one.¹¹ This builds on the theory that juveniles are not to be punished indefinitely, but should be treated and rehabilitated for a temporary time period. If a juvenile was held in detention indefinitely, such detention would constitute punishment, rather than treatment or rehabilitation designed to help the juvenile be a productive part of society.

III. WHO MAY FILE A COMPLAINT AGAINST A JUVENILE

Until December 31, 2001, ORC 2151.27 provided that *any* person having knowledge of a child who *appears* to have violated ORC 2151.87 or who is a juvenile traffic offender, delinquent, or unruly child, may file a sworn complaint in the juvenile court. "The sworn complaint may be upon information and belief, and, in addition to the allegation... the complaint shall allege the particular facts upon which the allegation...is based."¹² If someone believed a juvenile was unruly or delinquent for being a habitual truant or chronic truant, that person could file a sworn complaint against the child and the parent based only on information and belief. Such complaint had to allege that the child was unruly for being a habitual truant or delinquent for being a chronic truant *or* a habitual truant, previously adjudicated unruly for being a habitual truant, and that the parent failed to assure the child attend school.¹³

In general, ORC 2151.27 allowed "any person with standing under applicable law to file a complaint for determination of any other matter over which the juvenile court has jurisdiction... The complaint shall be filed in the court in which the child who is subject of the complaint is

found or was last known to be found [where the act was allegedly committed].”¹⁴ Thus, a complaint could formally be lodged against a child by only one person with knowledge that the child appears to be unruly or delinquent. This standard was very broad because, whether or not the juvenile was taken into custody and given a hearing depended on factors such as the severity of the alleged offense, the juvenile’s past offenses, and varying factors such as specific practices of each police station, staff availability, and many others.

The changes instituted by Senate Bill 179 significantly altered ORC 2151.27 which no longer authorizes any person having knowledge of a child who appears to be a juvenile traffic offender or delinquent to file a sworn complaint.¹⁵ Now, a sworn complaint can only be filed against a child if the child appears to be unruly. Likewise, any person having knowledge of a child who appears to be truant can only file a sworn complaint if the child appears to be an unruly child for being a habitual truant, not a delinquent child for being a chronic truant.¹⁶

Senate Bill 179 changed ORC 2151.27 to apply only to the filing of complaints against unruly children. The new chapter, 2152, deals with juvenile traffic offenders and delinquents.¹⁷ The process for filing the sworn complaint remains unchanged. Thus, any person “may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the traffic offense or delinquent act allegedly occurred. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child is a delinquent child or a juvenile traffic offender, the complaint shall allege the particular facts upon which the allegation... is based.”¹⁸

If the prosecuting attorney seeks a serious youthful offender (SYO) disposition under ORC 2152.11 for a child who appears to be delinquent and is eligible for a SYO dispositional sentence, he may initiate a case in juvenile court by:

1. presenting a case to the grand jury for indictment;
2. charging the child in a bill of information as a SYO;
3. requesting a SYO dispositional sentence in the original complaint; or,
4. filing a written notice of intent to seek a SYO dispositional sentence with the juvenile court.¹⁹

As for children who appear to be truant, this section only applies to those who appear to be delinquent for being habitual or chronic truants.²⁰ The complaint must still allege that the child is delinquent for being a chronic truant or a habitual truant or who previously has been adjudicated unruly for being a habitual truant. The complaint must also state the specific facts upon which the allegation is based and that the parent or guardian having care of the child failed to cause the child's attendance at school.²¹

IV. TAKING A CHILD INTO CUSTODY

There are a number of ways in which a child may be taken into custody.²² However, "the taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States."²³ A child may be taken into custody pursuant to a court order under ORC Chapters 2151, 2930.05 and 4109.08, or by a law enforcement officer when the child is believed to have run away.²⁴ Additionally, a child may be taken into custody by a law enforcement officer in any of the following situations:

1. when the officer reasonably believes that the conduct, conditions, or surroundings of the child are endangering the child's health, welfare or safety;
2. a complaint as been filed against the child pursuant to ORC 2151.27 and there is reason to believe the child will abscond or be removed from the court's jurisdiction; or,
3. the child is required to attend court but there is reason to believe the child will not show up.²⁵

ORC 2151.31 was slightly amended by the passage of Senate Bill 179. In addition to the ways stated above, a law enforcement officer may take a child into custody when a complaint has been filed against the child pursuant to either ORC 2151.27 *or* ORC 2152.021, if the child has been indicted under Section ORC 2152.13(A), or if the child is charged by information as described in that section and there is reason to believe the child will abscond or be removed from the court's jurisdiction.²⁶ A new clause provides that a child may be taken into custody if there is reason to believe that the child committed a delinquent act and taking the child into custody is necessary to protect public interest and safety.²⁷ Because this new section deals specifically with children alleged to be delinquent, Chapter 2152 does not contain a similar provision for when a child may be taken into custody.

V. PROCEDURE UPON APPREHENSION; PROCESSING

Prior to January 1, 2001, under ORC 2151.311, the person taking the child into custody was required, with reasonable speed, to release the child to the child's parents, unless detention or shelter care appeared necessary or warranted under ORC 2151.31²⁸, or bring the child to court or a detention facility and give prompt notice of such action to the child's parent.²⁹ Before doing either of these, the person taking the child into custody could hold the child for processing in a county or municipal jail, or other place where adults charged with a crime are held for a short period of time. Processing includes fingerprinting, photographing, contacting the child's parents, interrogating the child, arranging for placement, or arranging for transferring the child.³⁰

Several requirements had to be met for a child to be held and processed in this manner, and a short time period was prescribed as follows:

A. No more than six hours: all of the following requirements must be met:

- The child is alleged to be delinquent for committing an act that would be a felony if committed by an adult;
- The child remains beyond the range of touch of all adult detainees;
- The child is visually supervised by jail personnel at all times; and
- The child is not handcuffed or otherwise physically secured to a stationary object.³¹

B. No more than three hours: all of the following requirements must be met:

- The child is alleged to be delinquent for committing an act that would be a misdemeanor if committed by an adult, to be delinquent for being a chronic truant or habitual truant who has previously been adjudicated unruly for being a habitual truant, or an unruly child or a juvenile traffic offender;
- The child remains beyond the range of touch of all adult detainees;
- The child is visually supervised by jail personnel at all times; and
- The child is not handcuffed or otherwise physically secured to a stationary object.³²

These encompassed the only circumstances under which a child taken into custody could be held in an adult facility.³³ If the child was not released to the child's parents after being taken into custody, but was instead taken to a juvenile detention or shelter care facility, the child could be confined prior to the court's final disposition only in the following situations:

- if such detention was required to protect the child from immediate or threatened physical or mental harm;
- because the child might abscond without attending court;
- because the child had no parent or other person to provide adequate supervision and care; or,
- because the court ordered such detention or shelter care.³⁴

Senate Bill 179 altered ORC 5121.31 by allowing for a child alleged to be delinquent who has been taken into custody to be confined in a juvenile detention facility prior to the court's

final disposition if such confinement is authorized by ORC 2152.04 or the child is alleged to be a SYO under ORC 2152.13 and not released on bond.³⁵ Chapter 2152 does not alter these provisions.

VI. REQUIRED ACTIONS UPON DETENTION, DETENTION HEARING

When a child is taken into custody by an authorized officer and then delivered to a detention facility or shelter care rather than being released, several actions must be taken. ORC 2151.314 provides that when a child is taken into custody and brought before the court or taken to a detention facility, the intake or other officer “shall immediately make an investigation and shall release the child unless it appears that the child’s detention or shelter care is warranted or required under Section 2151.31 of the Revised Code.”³⁶ If such detention is necessary, a complaint must be filed and an informal detention hearing must be held within 72 hours after the child is placed into detention or shelter care.³⁷ This hearing is to determine if further detention is necessary. If further detention is not necessary, the child should be released immediately.³⁸

Both the child and the child’s parent or guardian must be given reasonable notice of the time, place, and purpose of the hearing. Likewise, the court shall inform these parties that they have a right to counsel, including appointed counsel if they are indigent.³⁹ If the parties have conflicting interests, then each has a right to a separate attorney, whether appointed or hired, throughout the entire court process.⁴⁰ To aid the parties in retaining appointed counsel, each juvenile court shall have one employee to assist indigent persons in obtaining appointed counsel. The court shall provide the employee’s name and phone number to each party.⁴¹

Under the new legislation, if a child is not released from detention or shelter care after being taken into custody, a complaint shall be filed under Section 2151.27 *or* 2152.021 *or* an information under Section 2152.13 *or* an indictment may be sought under Section 2152.13(C).⁴²

Thus, the legislature simply worked the new chapter, 2152, into the amended version of 2151.314 without making any significant changes to the statute. The only other change to this section is that each juvenile court shall have at *least* one employee to assist indigent parties in obtaining appointed counsel, thus leaving each court with the ability to have additional such employees.⁴³ If the court has more than one such employee, then the indigent parties must be given the names and phone numbers of each employee.⁴⁴

VII. PLACEMENT OPTIONS FOR AND CONFINEMENT OF ALLEGED OR ADJUDICATED DELINQUENT OR UNRULY CHILDREN OR JUVENILE TRAFFIC OFFENDERS

After a complaint has been filed, a child alleged to be unruly or a juvenile traffic offender may be detained in a foster home for no more than 60 days or until the final disposition of the case, whichever occurs first.⁴⁵ An alleged or adjudicated unruly child may also be “assigned to an alternative diversion program established by the court for a period not exceeding sixty [60] days after a complaint is filed or until final disposition of the case, whichever comes first.”⁴⁶

A child alleged or adjudicated delinquent may be confined in a juvenile detention facility for no more than 90 days, while a social history may be prepared. The social history may include “court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that juvenile offender.”⁴⁷

VIII. PLACES OF DETENTION FOR ALLEGED OR ADJUDICATED DELINQUENT, UNRULY AND JUVENILE TRAFFIC OFFENDERS

ORC 2151.312, as discussed below, was effective through December 31, 2001. Senate Bill 179 went into effect January 1, 2002, changing ORC 2151.312 so that it *only* applies to

alleged and adjudicated *unruly* children. A *new* chapter, ORC 2152, will apply to alleged and adjudicated *delinquent* children and *juvenile traffic offenders*.

Under past legislation, ORC 2151.312 provided that a child alleged to be or adjudicated delinquent, unruly, or a juvenile traffic offender could be held only in the following places: “a certified foster home or other home approved by the court; a facility operated by a certified child welfare agency; or any other suitable place designated by the court.”⁴⁸ Additionally, a child alleged or adjudicated delinquent could be held in a detention home or facility for delinquent children.⁴⁹

A child alleged or adjudicated unruly or a juvenile traffic offender *could not* be held in a state or county correctional institution, jail or other place where adults are held; or, a secure correctional facility.⁵⁰ However, if an alleged or adjudicated unruly child or juvenile traffic offender was taken into custody by a police or other authorized officer, the child could be held in a state or county correctional institution, jail or other place where adults are held for processing purposes for a period not to exceed six hours or three hours, depending on the circumstances.⁵¹ Further, in accordance with ORC 2151.356(A)(6), a child who is adjudicated a juvenile traffic offender for violating ORC 4511(A) (driving while under the influence of drugs or alcohol) could be held for no more than five days in a detention home, any school, camp, institution, or other county or district facility which operates specifically for juvenile traffic offenders, or in a privately run facility that is capable of providing the necessary care and treatment required.⁵² If an order of disposition required such placement, the Code required, “the length of the commitment shall not be reduced or diminished as a credit for any time that the child was held in a place of detention or shelter care, or otherwise detained, prior to entry of the order of disposition.”⁵³

A child alleged or adjudicated an unruly child or a juvenile traffic offender could not be held in a juvenile detention facility for more than 24-hours.⁵⁴ However, in accordance with ORC 2151.356(A)(6), a child who is adjudicated a juvenile traffic offender for violating ORC 4511.19(A) (driving under the influence of drugs or alcohol) might be held for no more than five days in a detention home, any school, camp, institution, or other county or district facility which operates specifically for juvenile traffic offenders, or in a privately run facility that is capable of providing the necessary care and treatment required.⁵⁵ Exceptions also existed in ORC 2151.56-61 dealing specifically with Interstate Compact orders.⁵⁶ Further, an alleged or adjudicated unruly child who is taken into custody on a weekend or legal holiday could be held until the next business day.⁵⁷

Generally, an alleged or adjudicated delinquent child could not be held in a state or county correctional institution, jail, or other facility where adults are held.⁵⁸ However, a child might be held for processing for no more than six or three hours, depending on the circumstances, in an adult facility.⁵⁹ Further, longer periods of detention might be required when the child was transferred to criminal court and when a child has been permanently committed to the Department of Youth Services (DYS).⁶⁰

Senate Bill 179 simplified many sections of ORC 2151 with the creation of ORC 2152. For example, ORC 2151.312 now only addresses the allowable places of detention for children alleged or adjudicated unruly, not those alleged or adjudicated delinquent or juvenile traffic offenders. Chapter 2152 was created to deal only with alleged or adjudicated delinquent or juvenile traffic offenders. The actual requirements for where an alleged or adjudicated unruly child may be held did not change with the passage of the bill. But, the numbering of ORC

2151.312 did change, since so many other components of the statute were removed and put in the new chapter.⁶¹

IX. DISPOSITION OF AN UNRULY CHILD

Before the changes of Senate Bill 179 went into effect, ORC 2151.354 allowed the court to place an adjudicated unruly child “on probation under any conditions that the court prescribes, suspend or revoke the driver’s license, probationary driver’s license, temporary instruction permit issued to the child and suspend or revoke the registration or all motor vehicles registered in the name of the child... [or] commit the child to the temporary or permanent custody of the court...”⁶²

If, after making one of the previously listed *dispositions*, except temporary or permanent commitment to the court, the court decided the child was not amenable to treatment or rehabilitation with that disposition, the court could authorize a subsequent disposition under ORC 2151.355(A)(1-2) and (8-12). This included the following dispositions: any order authorized by ORC 2151.353;⁶³ placing the child on probation under any conditions the court deemed appropriate;⁶⁴ imposing a fine and costs based on the schedule set forth in ORC 2151.3512;⁶⁵ requiring the child to make restitution;⁶⁶ suspending or revoking the child’s driver’s license, temporary permit, and/or registration of any vehicle in the child’s name;⁶⁷ electronically monitored house detention;⁶⁸ or imposing a period of day reporting.⁶⁹ At no time could an unruly child be held in a juvenile detention facility, and such a child could not be held in a juvenile detention home for more than 24-hours unless the child was taken to the home on a weekend or legal holiday.⁷⁰

If a child was adjudicated unruly for committing what would be a drug abuse offense if committed by an adult, the court might impose additional dispositions such as requiring the child

to attend drug or alcohol abuse counseling⁷¹ or suspending or revoking the child's driver's license, temporary permit, and/or registration of any vehicles in the child's name.⁷²

If a child is adjudicated unruly for being a habitual truant the court may impose one of the following dispositions in addition to those authorized by ORC 2151.354(A) or in lieu of such disposition:

- order the board of education of the child's school district to require the child to attend an alternative school if one is available;
- require the child to participate in any academic or community service program;
- require the child to receive appropriate medical or psychological treatment or therapy; or,
- make any other order the court deems appropriate to address the child's habitual truancy, including mandatory attendance at school.⁷³

The court could also impose sanctions on the child's parent if the court determined the parent failed to cause the child's attendance at school.⁷⁴

ORC 2151.354 underwent minor changes with the passage of Senate Bill 179. The legislature no longer uses the term probation, but substitutes it with "community control." The court is authorized to impose community control upon a child under any "sanctions, services, and conditions that the court prescribes" as described in ORC 2152.19(A)(3).⁷⁵

The second set of changes to the statute is in subsection (A)(5). Currently, if the court determines that the child is not amenable to the dispositions listed in this section, other than temporary or permanent custody to the court, the judge may impose an additional disposition authorized by several subsections of the new chapter, specifically ORC 2152.19(A)(1)(3-4) and (7).⁷⁶ The court may only impose the following additional sanctions upon a child who is not amenable to treatment or rehabilitation under sanctions authorized by ORC 2151.354(A)(1-3): any order that is authorized by ORC 2151.353; place the child on community control; commit

the child to the custody of the court; and/or require the child to not be absent from school without a legitimate excuse.⁷⁷

Finally, while a child adjudicated unruly still may not be held in a secure correctional facility, an unruly child may be held in a detention “facility,” rather than “home,” for up to 24-hours, unless the child is taken to the detention facility on a weekend or legal holiday, in which case the child may be held until the next business day.⁷⁸

X. PLACES OF DETENTION FOR ALLEGED AND ADJUDICATED JUVENILE TRAFFIC OFFENDERS

Under the new legislation, ORC 2152.26 sets out the places of detention for alleged and adjudicated juvenile traffic offenders. Alleged and adjudicated juvenile traffic offenders may still only be held in the following places: a certified foster home or other home approved by the court; a child welfare facility; or any other place deemed suitable by the court.⁷⁹

Juvenile traffic offenders may only be held in a state or county jail, workhouse, or other place where adults are held if they have been taken into custody by an authorized officer and are being processed.⁸⁰ They cannot be held in such a facility for more than three hours.⁸¹ Only under limited circumstances may juvenile traffic offenders be held in a secure correctional facility.⁸²

An alleged or adjudicated juvenile traffic offender cannot be held for more than 24-hours in any type of detention facility, (except as allowed under ORC 2152.21(A)(5), see below) or as allowed under interstate compact statutes.⁸³ Under the prior statute, a juvenile traffic offender could be held for more than 24-hours when taken into custody on a weekend or legal holiday. So, if juvenile traffic offenders were taken into custody on Saturday morning, they could be held until Monday morning, which would be more than 24-hours. Since January 1, 2002, juvenile

traffic offenders can only be held for 24-hours, unless they are in detention pursuant to a dispositional order.⁸⁴

XI. DISPOSITION OF JUVENILE TRAFFIC OFFENDERS

Until December 31, 2001, when a child was adjudicated a juvenile traffic offender (JTO), the court might make any of the following dispositions: impose a fine and costs; suspend the child's driver's license, temporary permit, and/or registration of any vehicle in the child's name; revoke the child's driver's license, temporary permit, and/or registration of any vehicle in the child's name; place the child on probation; or require the child to make restitution.⁸⁵ If the child violated ORC 4511.19(A), for driving while under the influence of drugs or alcohol, the child could be held for no more than five days in a detention home, any school, camp, institution, or other county or district facility which operates specifically for juvenile traffic offenders, or in a privately run facility capable of providing the necessary care and treatment required.⁸⁶

If the child did not comply with any of the prior dispositions ordered by the court, the court could make any disposition authorized by ORC 2151.355(A)(1-2), (10-11), and (22), except that the child could not be placed in a secure correctional facility unless the child violated ORC 4511.19(A) (as described above).⁸⁷ In addition to those dispositions authorized by ORC 2151.356(A)(1-6), the court might also order electronically monitored house detention⁸⁸ and temporary or permanent commitment to the custody of the court.⁸⁹

If a child was adjudicated a juvenile traffic offender for driving while under the influence of drugs or alcohol, the court was required to suspend or revoke the child's driver's license or temporary permit for as long at the court deems appropriate or for a period of no less than sixty (60) days but not more than two (2) years, depending on the blood alcohol level of the child.⁹⁰ The court might also mandate that the child successfully complete a drug or alcohol abuse

education, intervention, or treatment program, during which time the child's driver's license or temporary permit will be withheld by the court.⁹¹

Dispositions for adjudicated juvenile traffic offenders are more numerous and more harsh under the new legislation. For example, Senate Bill 179 created a new section that establishes a fee schedule for many acts for which children may be adjudicated juvenile traffic offenders or delinquents.⁹² These fines, which range from \$50 to \$2,000, may accompany another disposition authorized by ORC 2152.21.⁹³ Like these fines, the other dispositional options listed in ORC 2152.20 may be combined with any of the other authorized dispositions established in ORC 2152.21. The additional dispositional options that apply to juvenile traffic offenders are as follows:

- requiring the child to pay costs;⁹⁴
- requiring the child to make restitution in many different forms;⁹⁵ or,
- requiring the child to reimburse costs for services or sanctions provided or imposed, including but not limited to costs for community control or confinement in a residential facility or DYS institution.⁹⁶

Most of the original dispositions of ORC 2151.356 remain in the new section created by Senate Bill 179, but several subsections underwent minor changes mainly in creating specific guidelines for the judge. As explained in the preceding paragraph, rather than the court having broad discretion in imposing financial sanctions, a set fee schedule was added.⁹⁷ Likewise, the court may suspend the child's driver's license, temporary permit, and/or vehicle registration for no more than two years, rather than for any time period the court sees fit.⁹⁸ The court may no longer revoke the child's license, temporary permit, or vehicle registration.⁹⁹ This section still authorizes the placement of the child on community control (probation) and the requirement of restitution.¹⁰⁰

If a child is adjudicated a juvenile traffic offender for driving while under the influence of drugs or alcohol, the court may impose nearly identical sanctions under this new section as it could under ORC 2151.356 (as discussed above).¹⁰¹

If the child has not complied with prior court orders, the court may make any additional dispositions authorized by ORC 2152.19(A)(1),(3),(4), and (7), except that the child may not be placed in a secure correctional facility unless the child was adjudicated for driving while under the influence of drugs or alcohol.¹⁰² Under these circumstances, the child may not be held for more than 24-hours.¹⁰³ In addition to those dispositions authorized by 2152.21(A)(1-5), the court may order temporary or permanent commitment to the custody of the court.¹⁰⁴

When a child is adjudicated a juvenile traffic offender for driving while under the influence of drugs or alcohol, the court may now impose any of the previously mentioned dispositions, along with a mandatory suspension of the child's driver's license or temporary permit "for a definite period of at least three months but not more than two years or, at the discretion of the court, until the child attends and satisfactorily completes a drug abuse or alcohol abuse education, or treatment program specified by the court."¹⁰⁵

XII. PLACES OF DETENTION FOR ALLEGED AND ADJUDICATED JUVENILE DELINQUENTS

Alleged and adjudicated juvenile delinquents may be held in a variety of places. Like alleged and adjudicated unruly children and juvenile traffic offenders, delinquents can be held in a certified foster, or other home, approved by the court, a child welfare agency facility, or any other place deemed appropriate by the court.¹⁰⁶ They may also be held in a detention facility with some exceptions. A child alleged to be or adjudicated delinquent for chronic truancy may not be held in a detention facility unless the child also violated a valid court order mandating

school attendance.¹⁰⁷ Likewise, a child alleged or adjudicated delinquent for being a habitual truant, who previously was adjudicated unruly for being a habitual truant, may not be held in a detention facility unless the child violated a valid court order mandating school attendance.¹⁰⁸ An alleged or adjudicated delinquent child may be held in a juvenile detention facility for a maximum of 90 days while awaiting final disposition.¹⁰⁹ During this time, a social history, including “court record, family history, personal history, school and attendance record, and any other pertinent studies and material” may be prepared.¹¹⁰

Only a few circumstances exist under which alleged or adjudicated juvenile delinquents may be held in a state correctional facility, jail, workhouse, or any other place in which adults are held. First, they may be held in an adult facility up to *six* hours for processing purposes pursuant to ORC 2151.311(C). An alleged or adjudicated delinquent who has been committed to the DYS may also be held in an adult facility if certain circumstances are present,¹¹¹ as well as when the child is transferred to criminal court for prosecution as an adult.¹¹² When alleged or adjudicated delinquent children are held in an adult facility pursuant to these exceptions, they must be kept beyond the range of touch of all adult detainees and monitored by staff at all times.¹¹³

XIII. DISPOSITION OF A JUVENILE DELINQUENT

Presently, an adjudicated juvenile delinquent could be subject to one or more dispositions as listed in ORC 2151.355. The severity and length of each disposition is based on the act for which the child is adjudicated delinquent.

A. Disposition Options

Disposition options for adjudicated juvenile delinquents include the following:

1. Place the child under probation under any conditions the court prescribes;¹¹⁴
2. Require the child to pay restitution for property damage;¹¹⁵

3. "Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children;"¹¹⁶
4. If the child is adjudicated delinquent for committing act that would be a 3rd, 4th, or 5th degree felony if committed by an adult, commit the child to the legal custody of DYS for institutionalization for an indefinite term of one to three years, but not past the child's twenty-first birthday;¹¹⁷
5. Commit the child to the legal custody of DYS for institutionalization in a secure facility until the child's attainment of twenty-one years of age.¹¹⁸
6. Other periods of secure confinement may be appropriate if the child is adjudicated delinquent of other offenses that would be felonies if committed by adults. These offenses are numerous, and they call for commitment to DYS and placement in secure facilities for varying periods of time, but never beyond the child reaching the age of twenty-one;¹¹⁹
7. "Impose a fine and costs in accordance with the schedule set forth in Section 2151.3512 of the Revised Code;"¹²⁰
8. Suspend or revoke the child's driver's license, temporary permit, or vehicle registration;¹²¹
9. Impose electronically monitored house detention for a period of time no to exceed the maximum sentence of imprisonment that could be imposed on an adult for committing the same offense;¹²²
10. Impose a period of day reporting and require the child to participate in work, education or training, treatment, and other approved programs;¹²³
11. "Impose a period of community service of up to five hundred (500) hours;"¹²⁴
12. "Impose a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court or impose a period of drug and alcohol use monitoring;"¹²⁵
13. Impose a period of basic or intensive supervision in which the child must maintain contact with a court appointed person or maintain employment, training, education, or treatment;¹²⁶
14. Impose a curfew observing day or evening hours;¹²⁷
15. Require the child to obtain a high school diploma, the equivalent, or employment;¹²⁸
16. Commit the child to the temporary or permanent custody of the court;¹²⁹
17. If the child is adjudicated delinquent for being a chronic truant or habitual truant who previously has been adjudicated unruly for being a habitual truant,

require the child to attend school without absence or participate in a truancy prevention mediation program;¹³⁰ or

18. Make any further disposition the court finds proper, except that the child shall not be placed in any correctional institution, jail, or workhouse where adults are held.¹³¹

B. Community Control

Chapter 2152 was created to deal specifically with delinquent children, thereby eliminating the need for the former provision, ORC 2151.355. The new section, ORC 2152.19, specifies the different dispositional options for children adjudicated delinquent. The body of this new section is quite similar to ORC 2151.355, but some important changes have been made. First, the statute replaces “probation,” with “community control.” Community control is one of the main disposition options available to the court under this section, and it carries with it many additional options for the court. For example, as listed above, requirements that an adjudicated delinquent gain a high school diploma, observe a curfew, or undergo drug and alcohol treatment could serve alone as the disposition. Now, such requirements are part of the community control sanction.¹³² Thus, a child may be required to gain employment or a high school diploma as part of a community control disposition, but not as the disposition on its own.

There are a few significant changes to these requirements. The first is in relation to how many hours of community service the child may be required to perform. Prior to the implementation of ORC 2152.19, a child could be scheduled for as much as 500 hours of community service, no matter what type of offense he committed. However, the new provision states that a child may be required to perform up to 500 hours *only if the offense committed would be a felony or first-degree misdemeanor if committed by an adult*. If the child committed an offense that would be a second, third, or fourth-degree misdemeanor, no more than 200 hours may be required, and for a minor-misdemeanor, only 30 hours may be required.¹³³ The other

change concerns electronic monitoring, which may not always require house arrest and shall not be included as credit for time served toward any other disposition, unless specifically ordered by the court.¹³⁴

C. Fines

Adjudicated juvenile delinquent children are subject to the same fine schedule as juvenile traffic offenders.¹³⁵ The additional dispositional options that apply to adjudicated juvenile delinquents are requiring the child to pay costs,¹³⁶ make restitution,¹³⁷ or reimburse costs for services or sanctions provided or imposed, including but not limited to costs for community control or confinement in a residential facility or DYS institution.¹³⁸

D. Discretionary or Mandatory Serious Youth Offender (SYO)

Under the newly implemented legislation, a child alleged to be delinquent who is not transferred to the criminal court for prosecution may be eligible for a discretionary or mandatory SYO Dispositional Sentence within the juvenile court. The prosecuting attorney may initiate the process through indictment, bill of information, or the original complaint.¹³⁹ If the child is not indicted or charged by a bill or information, but the complaint indicates the prosecutor will seek a SYO dispositional sentence, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act and is eligible for a discretionary SYO disposition by age, or if the child is required to receive a mandatory SYO disposition.¹⁴⁰

A child for whom a SYO dispositional sentence is sought is entitled to a grand jury hearing to determine probable cause, and upon indictment or information, the child is entitled to an open and speedy trial by jury in the juvenile court.¹⁴¹ If the child is awaiting adjudication, the child has the same rights as an adult, including the right to bail as an adult, and the criminal rules

shall apply in the case and to the child.¹⁴² The only exception is that the child may not waive the right to counsel.¹⁴³

To determine if the child is eligible for a discretionary or mandatory SYO dispositional sentence or a traditional juvenile sentence, the court must determine if the act with which the child is charged was enhanced. If the act is considered enhanced, the child is eligible for a more restrictive disposition.

1. An act is considered enhanced if one or more of the following factors apply:
 - a. The act charged would be an offense of violence if committed by an adult;
 - b. The child used, displayed, brandished, or indicated the possession of a firearm and actually had a firearm during the commission of the act; or
 - c. The child was previously admitted to DYS for committing an act that would be aggravated murder, murder, any felony of the first or second-degree if committed by an adult, or an act that would be a third-degree felony and an offense of violence.¹⁴⁴

Whether the act is considered enhanced is only one factor the court must consider before enforcing a SYO or traditional juvenile dispositional sentence. The other two factors are the child's age at the time the act was allegedly committed and the offense category/type of offense that was allegedly committed. Table 1 describes juvenile dispositions a court may impose on an adjudicated delinquent child:¹⁴⁵

Table 1. Available Juvenile Dispositions

<i>Offense/Felony Category</i>	Age 16 & 17	Age 14 & 15	Age 12 & 13	Age 10 & 11
Murder/Aggravated Murder	N/A	MSYO, TJ	MSYO, TJ	DSYO, TJ
Attempted Murder/Attempted Aggravated Murder	N/A	MSYO, TJ	DSYO, TJ	DSYO, TJ
First-Degree (enhanced by offense of violence factor and firearm factor or previous DYS admission factor)	MYSO, TJ	DSYO, TJ	DSYO, TJ	DSYO, TJ
First-Degree (enhanced by any factor)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ

<i>Offense/Felony Category</i>	Age 16 & 17	Age 14 & 15	Age 12 & 13	Age 10 & 11
First-Degree (not enhanced)	DSYO, TJ	DSYO, TJ	TJ	TJ
Second-Degree (enhanced by any factor)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ
Second-Degree (not enhanced)	DSTO, TJ	DSYO, TJ	TJ	TJ
Third-Degree (enhanced by any factor)	DSYO, TJ	DSYO, TJ	TJ	TJ
Third-Degree (not enhanced)	DSYO, TJ	TJ	TJ	TJ
Fourth-Degree (enhanced by any factor)	DSYO, TJ	TJ	TJ	TJ
Fourth-Degree (not enhanced)	TJ	TJ	TJ	TJ
Fifth-Degree (enhanced by any factor)	DSYO, TJ	TJ	TJ	TJ
Fifth-Degree (not enhanced)	TJ	TJ	TJ	TJ

When a child is adjudicated delinquent and the circumstances mandate a SYO dispositional sentence, all of the following apply:

- the juvenile court shall impose a sentence upon the child as if the child were an adult under ORC 2929, except that the child cannot be sentenced to life imprisonment without parole and cannot be sentenced to death;
- the juvenile court shall impose one or more traditional juvenile dispositions under Sections 2152.16 and 2152.19 of the Revised Code; and,
- the juvenile court shall stay the adult portion of the SYO dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.¹⁴⁶

If a child is adjudicated delinquent and eligible for a discretionary SYO dispositional sentence, the court may impose a SYO disposition only if it finds 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 to the juvenile system alone are not adequate

to provide the juvenile court with a reasonable expectation that the purposes set forth in Section 2152.01 of the Revised Code.”¹⁴⁷ If a SYO dispositional sentence is imposed, the juvenile court shall sentence the child like an adult under ORC 2929, except that the child may not be sentenced to life imprisonment without parole, nor may a juvenile be sentenced to death. The juvenile court shall also impose a traditional juvenile disposition under ORC 2152.16, 2152.17, 2152.19, or 2152.20, and the court must stay the adult portion of the sentence pending the successful completion of the traditional juvenile disposition.¹⁴⁸

If the child is not eligible for a mandatory SYO dispositional sentence and the court does not impose a discretionary SYO dispositional sentence, the juvenile court *may* impose one or more traditional juvenile dispositions.¹⁴⁹ These disposition options are established in ORC 2152.16, 2152.19, and 2152.17 (if applicable).

If a child is 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:

1. For an act that would be aggravated murder or murder, until the offender attains 21-years-old;
2. For a violation of Section 2923.02 that involves an attempt to commit an act that would be aggravated murder or murder, for a minimum of six to seven years as prescribed by the court and a maximum period not to exceed past the offender’s 21st birthday;
3. For certain sexual offenses, for an indefinite minimum term of one to three years as prescribed by the court, and a maximum term not to exceed past the offender’s 21st birthday;¹⁵⁰
4. If the child is adjudicated for an offense not previously described in this section that would be a first or second-degree felony, for an indefinite minimum term of one to three years as prescribed by the court, and a maximum term not to exceed past the child’s 21st birthday; or

5. For committing a third, fourth, or fifth-degree felony or for violation of ORC 2923.211, for an indefinite minimum term of six months and a maximum term not to exceed past the child's 21st birthday.¹⁵¹

The juvenile court may commit a child to the custody of the DYS only when the child is at least ten-years-old at the time the delinquent act was committed. However, if the child is ten or eleven-years-old, the delinquent act must be a violation of ORC 2909.03, which encompasses aggravated murder, murder, or a first or second-degree violent felony offense if it were committed by an adult.¹⁵² Additionally, if the child is ten or eleven, he must be housed separately from children who are twelve-years-old and above.¹⁵³ When the court makes a disposition under this section, it retains control over the child during the minimum period specified by the court. So, DYS cannot move the child to a nonsecure facility without court permission during that time.¹⁵⁴ Once the minimum period of court prescribed time is past, DYS may release the child at any time.¹⁵⁵ If the child has been previously adjudicated delinquent for a violation of a law or ordinance, the court shall consider that prior adjudication as a conviction when determining the degree of the offense the current act would be if an adult had committed it.¹⁵⁶

If a child is adjudicated delinquent for committing what would be a felony, other than a violation of ORC 2923.12, and the violation is one as set forth in Section ORC 2941.141, 2941.144, 2941.145, or 2941.146, in addition to any commitment or disposition the court imposes for the underlying delinquent act, all of the following apply:

- if the court determines that the child would be guilty of a specification of the type set forth in ORC 2941.141, the court may commit the child to DYS for a definite period of up to one year;
- if the child would be guilty of a specification type in ORC 2941.145, the court shall commit the child to DYS for a definite period of time no less than one year or more than three years, along with any commitment for the underlying delinquent act; and,
- if the child would be guilty of an act within the specification of ORC 2941.146, the court shall commit the child to DYS for a definite period of time

no less than one year or more than three years, along with any commitment for the underlying delinquent act.¹⁵⁷

Additionally, if a child is adjudicated delinquent for committing an act that would be aggravated murder, murder, or a first, second, or third-degree felony offense of violence, and if the child were an adult, she would be guilty of a specification, the court shall commit the child to DYS for secure confinement for a definite period of not less than one year or more than three years, as well as commit the child for the underlying delinquent act.¹⁵⁸ The court shall commit a child to the custody of DYS for more than five years based on a specification and authorized under this section for any one act, and each commitment imposed under the specification and based on the underlying delinquent act shall be served consecutively.¹⁵⁹

At no time may a delinquent child be kept in the custody of DYS beyond the child's twenty-first (21st) birthday.¹⁶⁰ When a delinquent child is committed to DYS custody, the court shall state in the commitment order how many days the child was in detention prior to the disposition, and DYS shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been held in detention and the total number of any additional days that the child has been held in detention subsequent to the commitment order but prior to the transfer of physical custody to DYS.¹⁶¹

The juvenile court may commit a child as young as ten to the Department of Youth Services, if the child committed an act that would be aggravated murder, murder, or a first or second-degree felony offense of violence if committed by an adult.¹⁶² The length of such commitment depends on the act charged, with the maximum period of commitment not to exceed the child's twenty-first birthday.¹⁶³ If a ten or eleven-year-old child is committed to the custody of DYS, that child must be held separately from other adjudicated delinquent children twelve years of age and older.¹⁶⁴ However, after Senate Bill 179 went into effect, the Governor of Ohio

issued an Executive Order that requires ten and eleven-year-old serious youthful offenders committed to DYS to be held in private facilities that provide appropriate educational and treatment plans.¹⁶⁵ They may only be held in a DYS facility, separate from children age twelve and older, while awaiting private placement.

Finally, if the child is adjudicated delinquent for committing an offense that would be aggravated murder, murder, rape, felonious sexual penetration, involuntary manslaughter, a first or second-degree felony resulting in the death of or physical harm to a person, complicity in or an attempt to commit any of these offenses, or a past or presently existing offense that is substantially similar, for which the court commits the child to DYS, the adjudication may be used in the future to convict the child, as an adult, as a repeat offender.¹⁶⁶ Thus, if a child is adjudicated delinquent and committed to DYS for committing one of these acts, the adjudication will always remain on the child's record, even as an adult, and it may be used to impose stricter punishments on the adult as a repeat offender.

XIV. TRANSFER TO ADULT CRIMINAL COURT

ORC 2152.10 requires mandatory transfer of children alleged to have committed felonies. The juvenile court must transfer a child charged with committing a first degree felony (aggravated murder, murder, attempted aggravated murder, or attempted murder), for which there is probable cause, when one of the following applies:

- the child was at least 16-years-old when charged with the act; or,
- the child was 14 or 15 when charged with the act and previously adjudicated a delinquent for committing a first or second-degree felony and committed to DYS for such act.¹⁶⁷

Further, mandatory transfer is required if the child is charged with a second-degree felony (other than ORC 2905.01), for which there is probable cause, and he was at least 16-years-old when the act was committed and either of the following apply:

- the child was previously adjudicated delinquent for committing a first or second-degree felony and was committed to DYS; or,
- the child allegedly had a firearm and displayed it while committing the act, or used it to facilitate the commission of the act.¹⁶⁸

The juvenile court may authorize the discretionary transfer of a child to criminal court if:

- the child is at least 14-years-old at the time he is charged;
- the act is a felony;
- there is probable cause; and,
- the child is not amenable to care or rehabilitation within the juvenile system; and,
- the safety of the community requires the child be subject to adult sanctions.¹⁶⁹

Before effecting a discretionary transfer, the court shall consider the following factors in favor of transfer:

- The victim of the act suffered physical or psychological harm, or serious economic harm;
- The physical or psychological harm was exacerbated because of the physical or psychological vulnerability or age of the victim;
- The child's relationship with the victim facilitated the act;
- The child allegedly committed the act charged for hire or part of gang activity;
- The child had a firearm and during the act displayed, brandished, or indicated that he had a firearm;
- The child was awaiting adjudication or disposition as a delinquent when charged with the act, the child was under community control, or the child was on parole for a prior adjudication or conviction;

- The results of previous juvenile sanctions indicate that rehabilitation is not likely in the juvenile system;
- The child is emotionally, physically, or psychologically mature enough for the transfer; or
- There is not sufficient time to rehabilitate the child within the juvenile system.¹⁷⁰

The juvenile court shall also consider the following factors as being against a discretionary transfer of a child to adult court:

- Did the victim induce or facilitate the act;
- Was the child provoked into committing the act;
- If the child was not the principal actor, or the child was under the negative influence of another person when act was committed;
- If the child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur;
- If the child has not been adjudicated delinquent in the past;
- If the child is not emotionally, physically, or psychologically mature enough for the transfer;
- If the child is mentally ill or mentally retarded; or
- If there is sufficient time to rehabilitate the child within the juvenile system and the level of security available “provides a reasonable assurance of public safety.”¹⁷¹

A child eligible for discretionary transfer upon the circumstances listed above may be subject to mandatory transfer if the child was convicted of or pleaded guilty to a felony in a prior case that was transferred to the criminal court.¹⁷² Thus, a child only 14-years-old who is alleged to have committed any type of felony must be transferred to the criminal court if the child has been adjudicated delinquent for committing any type of felony in the past. Because the transfer becomes mandatory the above factors for and against transfer need not be considered by the court.

If a case is transferred to criminal court, the child may be held for detention “in a jail or other facility in accordance with the law governing the detention of persons charged with crime.”¹⁷³ However, such detention must meet two requirements: the child must remain beyond the range of touch of adult detainees and the child must be supervised by staff at all times.¹⁷⁴ If the child is convicted or pleads guilty to the offense for which he was transferred to criminal court and sentenced to a prison term while under the age of 18, then the child shall be housed in a unit separate from adult inmates unless:

- The child does not observe the rules and regulations or the child otherwise creates a security risk being housed separately; or,
- The department receives too few inmates under 18 to fill a housing unit separate from adult inmates, in which case, the department may house the child in a unit that includes both inmates under 18-years-old and under 21-years-old; or,
- Upon the child reaching 18-years-old, the department may house the child with the adult population.¹⁷⁵

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- ¹ ORC 2151.01(A)(effective through 12/31/01).
² ORC 2151.01(B)(effective through 12/31/01).
³ ORC 2151.01(C)(effective through 12/31/01).
⁴ ORC 2151.01(D)(effective through 12/31/01).
⁵ ORC 2151.01(A-B)(effective through 12/31/01).
⁶ ORC 2152.01(C).
⁷ ORC 2152.01(A).
⁸ *Id.*
⁹ ORC 2152.1(B).
¹⁰ *Id.*
¹¹ ORC 2151.38.
¹² ORC 2151.27(A)(1)(effective through 12/31/01).
¹³ ORC 2151.27(A)(2)(a-b)(effective through 12/31/01).
¹⁴ ORC 2151.27(E)(effective through 12/31/01).
¹⁵ ORC 2151.27(A)(1)(effective 1/1/02).
¹⁶ ORC 2151.27(A)(2)(effective 1/1/02).
¹⁷ ORC 2152.021(A)(1)(effective 1/1/02).
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ ORC 2152.021(A)(2)(effective 1/1/02).
²¹ ORC 2152.021(A)(2)(a-b)(effective 1/1/02).
²² ORC 2151.31(A)(1-6)(effective through 12/31/01).
²³ ORC 2151.31(B)(1)(effective through 12/31/01).
²⁴ ORC 2151.31(A)(1-2) & (4-5)(effective through 12/31/01).
²⁵ ORC 2151.31(A)(6)(a-c)(effective through 12/31/01).
²⁶ ORC 2151.31(A)(6)(b)(effective through 1/1/02).
²⁷ ORC 2151.31(A)(6)(d)(effective through 1/1/02).
²⁸ ORC 2151.31(C)(effective through 12/31/01).
²⁹ ORC 2151.311(A)(1-2)(effective through 12/31/01).
³⁰ ORC 2151.311(D)(1-2)(effective through 12/31/01).
³¹ ORC 2151.311(C)(1)(a)(i-iv)(effective through 12/31/01).
³² ORC 2151.311(C)(1)(b)(i-iv)(effective through 12/31/01).
³³ ORC 2151.31(B)(2)(effective through 12/31/01).
³⁴ ORC 2151.31(C)(effective through 12/31/01).
³⁵ ORC 2151.31(C)(1-2)(effective 1/1/02).
³⁶ ORC 2151.314(A)(effective through 12/31/01).
³⁷ *Id.*
³⁸ *Id.*
³⁹ *Id.*
⁴⁰ ORC 2151.331
⁴¹ ORC 2151.314(D)(effective through 12/31/01).
⁴² ORC 2151.314(A)(effective 1/1/02).
⁴³ ORC 2151.314(D)(effective 1/1/02).
⁴⁴ *Id.*
⁴⁵ ORC 2151.331(not substantially affected by Senate Bill 179).
⁴⁶ *Id.*
⁴⁷ ORC 2151.34(effective through 12/31/01).
⁴⁸ ORC 2151.312(A)(1-3)(effective through 12/31/01).
⁴⁹ ORC 2151.312(B)(effective through 12/31/01).
⁵⁰ ORC 2151.312(C)(1)(a-b)(effective through 12/31/01).
⁵¹ ORC 2151.312(C)(1) citing ORC 2151.311(C)(1)(a-b)(both effective through 12/31/01).
⁵² ORC 2151.312(C)(1) citing ORC 2151.356(A)(6)(both effective through 12/31/01).
⁵³ ORC 2151.356(A)(6)(effective through 12/31/01).
⁵⁴ ORC 2151.312(C)(2)(effective through 12/31/01).

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- 55 *Id.*
- 56 *Id.*
- 57 ORC 2151.312(C)(3)(effective through 12/31/01).
- 58 ORC 2151.312(D)(effective through 12/31/01).
- 59 ORC 2151.312(D) citing 2151.311(C)(1)(both effective through 12/31/01).
- 60 ORC 2151.312(D) citing ORC 5120.162, 5139.06(C)(2), and 5120.16(B)(all effective through 12/31/01).
- 61 See ORC 2151.312(effective 1/1/02).
- 62 ORC 2151.354(A)(1-4)(effective through 12/31/01).
- 63 ORC 2151.355(A)(1)(effective through 12/31/01).
- 64 ORC 2151.355(A)(2)(effective through 12/31/01).
- 65 ORC 2151.355(A)(8)(effective through 12/31/01).
- 66 ORC 2151.355(A)(9)(effective through 12/31/01).
- 67 ORC 2151.355(A)(10)(effective through 12/31/01).
- 68 ORC 2151.353(A)(11)(effective through 12/31/01).
- 69 ORC 2151.353(A)(12)(effective through 12/31/01).
- 70 ORC 2151.354(A)(5)(effective through 12/31/01).
- 71 ORC 2151.354(B)(1)(effective through 12/31/01).
- 72 ORC 2151.354(B)(2)(effective through 12/31/01).
- 73 ORC 2151.354(C)(1)(a-e)(effective through 12/31/01).
- 74 ORC 2151.354(C)(2)(a-c)(effective through 12/31/01).
- 75 ORC 2151.354(A)(2)(effective 1/1/02).
- 76 ORC 2151.354(A)(5)(effective 1/1/02).
- 77 ORC 2152.19(A)(1)(3-4) and (7)(effective 1/1/02).
- 78 ORC 2152.354(A)(5)(effective 1/1/02).
- 79 ORC 2152.26(A)(1-3)(effective 1/1/02).
- 80 ORC 2152.26(C)(1)(a)(effective 1/1/02).
- 81 ORC 2151.311(C)(1).
- 82 ORC 2152.26(C)(1)(b) citing ORC 2151.21(A)(5)(both effective January 1, 2002).
- 83 ORC 2152.56 to 2151.61.
- 84 ORC 2152.26(C)(effective 1/1/02).
- 85 ORC 2151.356(A)(1-5)(effective through 12/31/01).
- 86 ORC 2151.356(A)(6)(effective through 12/31/01). If an order of disposition requires such placement, “the length of the commitment shall not be reduced or diminished as a credit for any time that the child was held in a place of detention or shelter care, or otherwise detained, prior to entry of the order of disposition.”
- 87 ORC 2151.356(A)(7)(effective through 12/31/01).
- 88 ORC 2151.355(A)(11)(effective through 12/31/01).
- 89 ORC 2151.355(A)(22)(effective through 12/31/01).
- 90 ORC 2151.356(B) citing ORC 4511.19(A) and (B)(each effective through 12/31/01).
- 91 ORC 2151.356(B)(effective through 12/31/01).
- 92 ORC 2152.20(A)(1)(a-k)(effective 1/1/02).
- 93 *Id.* Such a fine may be imposed with the following schedule:
- | | |
|---|-------------|
| Act if committed by adult would be: | <u>Fine</u> |
| <u>Minor misdemeanor/unclassified misdemeanor</u> | \$50 |
| 4 th degree misdemeanor | \$100 |
| 3 rd degree misdemeanor | \$150 |
| 2 nd degree misdemeanor | \$200 |
| 1 st degree misdemeanor | \$250 |
| 5 th degree felony/unclassified felony | \$300 |
| 4 th degree felony | \$400 |
| 3 rd degree felony | \$750 |
| 2 nd degree felony | \$1,000 |
| 1 st degree felony | \$1,500 |
| Aggravated murder | \$2,000 |
- 94 ORC 2152.20(A)(2)(effective 1/1/02).
- 95 ORC 2152.20(A)(3)(effective 1/1/02).

⁹⁶ ORC 2152.20(A)(4)(a-b)(effective 1/1/02). These costs may include, but are not limited to, a per diem fee for room and board, costs for medical and dental treatment, and costs to repair property damaged by the child while confined. The amount of reimbursement ordered “shall not exceed the total amount of reimbursement the child is able to pay as determined at a hearing and shall not exceed the actual costs of the confinement.”

⁹⁷ ORC 2152.21(A)(1)(effective 1/1/02).

⁹⁸ ORC 2152.21(A)(2)(effective 1/1/02).

⁹⁹ ORC 2152.21(A)(effective 1/1/02).

¹⁰⁰ ORC 2152.21(A)(3-4)(effective 1/1/02).

¹⁰¹ ORC 2152.21(A)(5)(a-b)(effective 1/1/02).

¹⁰² ORC 2152.21(A)(6) see ORC 4511.19(A) or (B)(each effective 1/1/02).

¹⁰³ *Id.*

¹⁰⁴ ORC 2152.19(A)(7)(effective 1/1/02).

¹⁰⁵ ORC 2152.21(B)(effective 1/1/02).

¹⁰⁶ ORC 2152.26(A)(1-3)(effective 1/1/02).

¹⁰⁷ ORC 2152.(B) citing ORC 2152.19(A)(5)(both effective 1/1/02).

¹⁰⁸ ORC 2152.26(B) citing ORC 2151.354(C)(1)(e)(both effective 1/1/02).

¹⁰⁹ ORC 2152.04(effective 1/1/02).

¹¹⁰ *Id.*

¹¹¹ ORC 2152.26(D) citing ORC 5139.06(C)(2)(effective 1/1/02).

¹¹² ORC 2152.26(D) citing ORC 5120.162, ORC 5120.16(B), ORC 2152.12 (each effective 1/1/02).

¹¹³ ORC 2152.26(F)(effective 1/1/02).

¹¹⁴ ORC 2151.355(A)(2)(effective through 12/31/01).

¹¹⁵ ORC 2151.355(A)(2) and 2151.355(A)(9)(effective through 12/31/01). Restitution may be appropriate if the child has been adjudicated delinquent for violating ORC Section 2909.05, 2909.06, or 2909.07. Restitution may also be appropriate as a condition of probation if the child is adjudicated delinquent for committing what would be a theft offense if committed by an adult, as defined in ORC 2913(K). Restitution can be paid in many different forms. The court may consider the age and health of the victim of the child’s crime in determining if restitution is appropriate.

¹¹⁶ ORC 2151.355(A)(3)(effective through 12/31/01).

¹¹⁷ ORC 2151.355(A)(4)(effective through 12/31/01). A delinquent may also be committed to DYS for violating ORC 2923.211(A).

¹¹⁸ ORC 2151.355(6) only if the child is adjudicated delinquent for violating ORC 2903.01 or 2903.02 (effective through 12/31/01).

¹¹⁹ See ORC 2151.355(A)(5)(a-c) and (A)(7)(a-d)(effective through 12/31/01).

¹²⁰ ORC 2151.355(A)(8)(effective through 12/31/01). See footnote 92 for schedule of fines.

¹²¹ ORC 2151.355(A)(10) subject to 2151.355(D)(effective through 12/31/01).

¹²² ORC 2151.355(A)(11) and (13) citing ORC 2929.23(A)(3) and subject to 2151.355(J)(effective through 12/31/01).

¹²³ ORC 2151.355(A)(12)(effective through 12/31/01).

¹²⁴ ORC 2151.355(A)(14)(effective through 12/31/01).

¹²⁵ ORC 2151.355(A)(15) and (18)(effective through 12/31/01).

¹²⁶ ORC 2151.355(A)(16) and (17)(effective through 12/31/01).

¹²⁷ ORC 2151.355(A)(19)(effective through 12/31/01).

¹²⁸ ORC 2151.355(A)(20)(effective through 12/31/01).

¹²⁹ ORC 2151.355(A)(22)(effective through 12/31/01).

¹³⁰ ORC 2151.355(A)(23) and (24)(effective through 12/31/01).

¹³¹ ORC 2151.355(A)(25)(effective through 12/31/01).

¹³² ORC 2152.19(A)(3)(a-l)(effective 1/1/02).

¹³³ ORC 2152.19(A)(3)(d)(effective 1/1/02).

¹³⁴ ORC 2152.19(A)(3)(K)(effective 1/1/02).

¹³⁵ ORC 2152.20(A)(1)(a-k)(effective 1/1/02) see footnote 92 for schedule of fines.

¹³⁶ ORC 2151.20(A)(2)(effective 1/1/02).

¹³⁷ ORC 2152.20(A)(3)(effective 1/1/02).

¹³⁸ ORC 2152.20(A)(4)(a-b)(effective 1/1/02). These costs may include, but are not limited to, a per diem fee for room and board, costs for medical and dental treatment, and costs to repair property damaged by the child while

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

¹³⁹ ORC 2152.13(A)(1-2)(effective 1/1/02).

¹⁴⁰ ORC 2152.13(C)(effective 1/1/02).

¹⁴¹ ORC 2152.13(D)(1)(effective 1/1/02).

¹⁴² ORC 2152.13(D)(2)(effective 1/1/02).

¹⁴³ *Id.*

¹⁴⁴ ORC 2152.11(A)(1-3)(effective 1/1/02).

¹⁴⁵ Table taken from ORC 2152.11(H) (effective 1/1/02).

¹⁴⁶ ORC 2152.1 3(E)(1)(a-c)(effective 1/1/02).

¹⁴⁷ ORC 2152.13(E)(2)(a)(i)(effective 1/1/02).

¹⁴⁸ ORC 2152.1 3(E)(2)(a)(i-ii)(effective 1/1/02).

¹⁴⁹ ORC 2152.13(E)(2)(b)(effective 1/1/02).

¹⁵⁰ ORC 2152.16(A)(1)(c) including violations of ORC Sections 2903.03, 2905.01, 2909.02, or 2911.01.

¹⁵¹ ORC 2152.16(A)(1)(a-e)(effective 1/1/02).

¹⁵² ORC 5139.05(A)(effective 1/1/02).

¹⁵³ ORC 5139.05(A)(4)(effective 1/1/02).

¹⁵⁴ ORC 2152.1 6(A)(2)(effective 1/1/02).

¹⁵⁵ ORC 2152.3 6(B)(effective 1/1/02).

¹⁵⁶ ORC 2152.16(C)(effective 1/1/02).

¹⁵⁷ ORC 2152.17(A)(1-3)(effective 1/1/02).

¹⁵⁸ ORC 2152.17(C)(effective 1/1/02).

¹⁵⁹ ORC 2152.17(D)(effective 1/1/02).

¹⁶⁰ ORC 2152.17(E)(effective 1/1/02).

¹⁶¹ ORC 2152.18(B)(effective 1/1/02).

¹⁶² ORC 5139.05(A)(effective 1/1/02).

¹⁶³ ORC 5139.05(A)(1-3).

¹⁶⁴ ORC 5139.05(A)(4)(effective 1/1/02).

¹⁶⁵ Executive Order 2001-OIT.

¹⁶⁶ ORC 2152.17(F)(effective 1/1/02).

¹⁶⁷ ORC 2152.10(A)(1)(a-b) and ORC 2152.12(A)(1)(a)(effective 1/1/02).

¹⁶⁸ ORC 2152.10(A)(2)(a-b) and ORC 2352.12(A)(1)(b)(effective 1/1/02).

¹⁶⁹ ORC 2152.10(B) and ORC 2152.12(B)(1-3)(effective 1/1/02).

¹⁷⁰ ORC 2152.12(D)(1-9)(effective 1/1/02).

¹⁷¹ ORC 2152.12(E)(1-8)(effective 1/1/02).

¹⁷² ORC 2152.12(A)(2)(a)(effective 1/1/02).

¹⁷³ ORC 2151.312(F)(effective through 12/31/01).

¹⁷⁴ *Id.*

¹⁷⁵ ORC 5120.16(B)(1-4)(not substantively changed by Senate Bill 179).

CHAPTER V

LEGAL ISSUES CONCERNING JUVENILE CONFINEMENT

PART I. ADDRESSING CONCERNS REGARDING THE FACT OF, DURATION OF, AND PLACE OF CONFINEMENT

When a child is confined in a juvenile detention facility, juvenile holding facility, or an intermittent juvenile holding facility, it is incumbent upon practitioners to be aware of the legal issues that may arise as a result of the decision to initially detain, the decision to continue detention, and/or the place where the child is being detained. Such issues generally arise based on the fact of or duration of confinement to which the child is subjected. The legal challenges presented may arise as a result of violations of state or federal statutory law or constitutional law concerning the time and/or place of detention, or because of the child's particular status.

This chapter will help practitioners identify circumstances that may result in the illegal or unconstitutional detention of children. This chapter includes a synopsis of problems that may give rise to a claim of illegal confinement based on fact, duration, or placement issues, and it provides a discussion of the relevant statutes and/or case law that should be considered when such circumstances arise. Further, this chapter will identify remedies that courts and legal practitioners may consider to ensure that children are not confined illegally as a result of time of detention, place of detention, or status of the child.

I. RESTRICTIONS ON JUVENILE DETENTION

This section provides practitioners with a list of rules to remember regarding the fact of, duration of, or place of detention, along with the statutory or other authority upon which each is

based. While this list is not exhaustive, it does provide a quick reference identifying problem areas that may arise when the decision to detain is being made.

A. Representation of the Juvenile by Legal Counsel

Juveniles who are detained must be represented by legal counsel and afforded basic due process rights as proscribed by the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United Constitution. Ohio law also guarantees the child's right to counsel: "A child... is entitled to representation by legal counsel at all stages of the proceeding under this chapter [2151] or chapter 2152 of the Revised Code."¹ The opportunity for juveniles to be represented by counsel is a critical right in our adversarial system of justice. This is particularly true with juveniles, who are generally less able to represent themselves in the judicial process.

Indeed, it has been recommended by some standards that juveniles should not be permitted to waive counsel at all in pre-trial proceedings, including detention.² In Ohio, a child's right to an attorney may be waived only if the waiver is truly voluntary, knowing and intelligent.³ This right is so protected that the child's parent cannot even waive the child's right to an attorney.⁴

Ohio's Rules of Juvenile Procedure and the Ohio Revised Code both codify the long standing principle enunciated by the United States Supreme Court in *In re Gault*, where the highest court recognized that juveniles have the right to be represented by counsel when accused of violating the law.⁵ In particular, the Ohio Revised Code establishes the statutory right to counsel for a juvenile, and states:

A child... is entitled to representation by legal counsel at all stages of the proceeding under this chapter or chapter 2152 of the Revised Code and if, as an indigent person, any such person is unable to employ counsel, to have counsel provided for the person pursuant to Chapter 120 of the Revised Code. Counsel must be

provided for a child not represented by the child's parent, guardian, or custodian.⁶

Additionally, Rule 4 of the Ohio Rules of Juvenile Procedure emphasizes the right to an attorney, as well as the right to be appointed an attorney if the child, or the child's parent or guardian, is indigent. "These rights shall arise when a person becomes a party to a juvenile court proceeding."⁷ The child's right to an attorney is often interpreted broader than an adult's right to an attorney. For example, the Ohio Attorney General has determined that juvenile traffic offenders are entitled to counsel, even if the child does not face incarceration.⁸

Further, the U. S. Supreme Court, in *Schall v. Martin*, recognized that juveniles have a fundamental right to be free from institutional restraint.⁹ The Court defined the liberty interest of a juvenile, however, more narrowly than that of an adult because in the Court's reasoning, a juvenile is always in someone's custody (either parent or state).¹⁰ While reaching the conclusion that the juvenile's right to liberty may in some cases be outweighed by the state's *parens patriae* interest in preserving and promoting the juvenile's welfare, the Court acknowledged that certain procedural due process rights were required in a state statutory scheme to protect a juvenile's liberty interest once the juvenile is detained. According to *Schall*, these factors include: 1) an expeditious probable cause hearing; 2) findings regarding the need for detention once probable cause is established; 3) expedited fact finding hearings; and, 4) conditions of confinement which do not amount to punishment.¹¹

Ohio's statutory scheme has important procedural safeguards that are designed to comport with the Due Process Clause of the Fourteenth Amendment and are consistent with *Schall*. Of particular importance are provisions related to specific times required for detention hearings, the right to counsel throughout these critical proceedings, an inquiry into the factors determining the need for continued detention, and the requirement of specific findings to justify

a juvenile's loss of liberty throughout every step of the judicial proceedings. Finally, practitioners should be cognizant of the place of detention and the conditions of confinement to which juveniles are subjected to ensure that the cautionary language of *Shall* regarding conditions amounting to punishment is followed.

B. Timing of Detention Hearing

When a child has been taken into custody by a police officer or otherwise authorized person, that person shall release the child to the child's parent or guardian, unless shelter care or detention appears to be warranted or is required.¹² If the child is not released, then the officer must bring the child to the court or a place of detention or shelter care, unless the child is being held for processing, which may not exceed a six-hour period.¹³

If the child is not released, a detention hearing is required within a given time period in order for the continued detention of the juvenile to be legal. This is true even if the juvenile is released to a nonsecure setting, which still restricts the juvenile's liberty. The Rules of Juvenile Procedure require that "when a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether shelter care is required."¹⁴ If the court finds probable cause at the detention hearing, then a date for the adjudicatory hearing must be determined within seventy-two hours after the complaint is filed.¹⁵ If the child is held in detention beyond the time of the detention hearing, then the adjudicatory hearing must be held within ten days after the complaint is filed.¹⁶

C. Necessity of Appropriate Court Findings for Continued Detention

Courts must make appropriate findings throughout the process in order for a juvenile to continue being detained. The Ohio Revised Code states that courts may not detain a child in secure juvenile detention or shelter care prior to the court's final disposition, unless:

Detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child may abscond or be removed from the jurisdiction of the court, because the child has no *parents*, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.¹⁷

Additionally, a child may be held in detention prior to the court's disposition if the child is alleged to be a serious youthful offender or if confinement is authorized under ORC 2152.04.¹⁸ Beginning January 1, 2002, a child alleged to be or adjudicated delinquent may be detained for a maximum of ninety days while the court completes a social history. This history may "include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that alleged or adjudicated delinquent child."¹⁹

D. Determining the Legal Status of a Juvenile

The legal status of a juvenile must be correctly determined to ensure the appropriate use of detention. In addition to the requirements and exceptions discussed above, other considerations must be remembered regarding the status of juveniles who come into custody. The key requirement to remember is that children alleged or adjudicated to be unruly, also known as status offenders, cannot be securely detained, unless the court finds one of the above-referenced exceptions applicable. For a detailed discussion of where and under what specific

circumstances a child alleged to be unruly, delinquent, or a juvenile traffic offender may be detained, see Chapter III.

E. Minority Overrepresentation and the Decision to Detain

Courts should be aware of minority overrepresentation in secure detention facilities, and they should ensure that the policies and practices in their districts do not result in racial disparity. The Juvenile Justice and Delinquency Prevention Act (JJDP A) mandates that states examine the overrepresentation of minority juveniles in the juvenile justice system, particularly in confinement, and to address disparities that may exist. Of particular concern are policies and procedures that determine which juveniles get detained, and whether such policies, even if race-neutral on their face, may have a disparate impact on minority juveniles. Courts should continue to examine disparities that may exist in their particular districts, and address this through re-examining policies on detention and release, staff training, and other effective means of increasing sensitivity to this issue.

II. JUDICIAL REMEDIES FOR ILLEGAL DETENTION RESULTING FROM THE FACT OF, DURATION OF, OR PLACE OF DETENTION

Juveniles who are being illegally detained by virtue of their legal status, or in violation of the state's statutory provisions regarding the purpose for detention, the place of detention, or the duration of detention, have judicial remedies to enable their release. In some instances these remedies are designed to assure the district court's compliance with the law.

A. Writ of Habeas Corpus

A writ of habeas corpus is a procedural safeguard governed by statute. Generally, a writ of habeas corpus is an appropriate remedy, and will be granted, only when the person is entitled to immediate relief. The Ohio Revised Code states that "whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully

deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint or deprivation.”²⁰ If a writ of habeas corpus is filed, the juvenile court retains jurisdiction to hear and determine the outcome of the action.²¹ Specific examples of when habeas relief may be required include:

1. Any time the state has lost jurisdiction.
2. To correct an illegal sentence.
3. When the juvenile’s status does not allow for detention by law, such as when the juvenile is a status offender, curfew violator, or dependent, neglected or abused juvenile.
4. When a juvenile for whom detention is otherwise allowable is held beyond the allowable statutory time.
5. When the juvenile is not represented by counsel at the detention hearing or there has not been a detention hearing and proper findings made regarding the necessity for detention.

B. Appeal of Detention Decision

Once a final disposition has been entered, a juvenile has the right to appeal all elements of the disposition to the appropriate court.²² If the child was transferred to criminal court for trial as an adult, any appeals shall be directed to a court of appeals. If the child is adjudicated in juvenile court, depending on the county in which it occurs, the appeal shall be directed to the court of common pleas or other court of appeals.

C. Writs of Prohibition and Mandamus

If the juvenile court fails to follow the statutes and case law governing juveniles, the filing of a writ of mandamus may be appropriate. Pursuant to the Ohio Revised Code, a writ of mandamus may be granted by the supreme court, the court of appeals, or the court of common pleas²³ only when no other “plain and adequate remedy in the ordinary course of the law” exists.²⁴ Upon granting a writ of mandamus, the court may issue “an order that the defendant,

immediately upon service, do the act required to be performed, or, when an alternative writ is allowed, that he do the act or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal.”²⁵ Thus, a writ of mandamus orders a trial judge to do something, but the higher court is limited in what it may require the lower court to do. The higher court may not require a reversal of the lower court’s appropriately exercised judicial discretion.²⁶

Technically, these *writs* are not an appeal, rather they are original proceedings in an appellate court seeking to direct a trial judge to enter or vacate a particular order. In general, they can be used in situations where a wrong needs an immediate remedy and no other remedy is available. Examples of situations in which these writs may be appropriate include:

1. Double jeopardy violations;
2. Violations of interstate or intrastate detainer statutes;
3. Erroneous discovery orders;
4. Failure of trial court to follow appropriate detention procedures, but where immediate release is not necessarily warranted through habeas relief.

D. Judicial Review

When the juvenile court commits a child to the custody of the Department of Youth Services (DYS) for committing a felony, it retains the power to release the child, based on its sole discretion, to court or DYS supervision within a statutorily permitted period.²⁷ If the child was adjudicated delinquent for committing an act that would be a third, fourth, fifth degree felony, the juvenile court has the power to release the child within the ninety days.²⁸ For a first or second degree felony offense, the court may release the child within the first 180 days, whereas if the child committed an act that would be aggravated murder or murder, the court may release the child during the first half of the prescribed period of commitment.²⁹ Parties to the

original juvenile action may also seek continued jurisdiction by motion during the original action.³⁰

¹ ORC 2151.352

² IJA/ABA Standards Relating to Pretrial Proceedings, Standard 6.1 and Commentary (1981).

³ *In re Johnson*, 665 N.E.2d 247 (1995).

⁴ *In re Collins*, 253 N.E.2d 824 (1969).

⁵ *In re Gault*, 387 U.S. 1 (1967).

⁶ ORC 2151.352(not substantially effected by SB 179).

⁷ Ohio Rule Juv. Pro. 4.

⁸ OAG 97-040, 1997 WL 561203.

⁹ *Schall v. Martin*, 467 U.S. 253 (1994).

¹⁰ *Id.* at 265.

¹¹ *Id.* at 269.

¹² ORC 2151.311(A)(1).

¹³ ORC 2151.311(A)(2) & (C).

¹⁴ Ohio Juv. Rule Civ Pro 7(F)(1).

¹⁵ ORC 2151.28(A).

¹⁶ ORC 2151..28(A)(1); Ohio Juv. Rule Civ. Pro 29(A).

¹⁷ ORC 2151.31(C)(1).

¹⁸ ORC 2151.31(C)(2).

¹⁹ ORC 2152.04(effective 1/1/02).

²⁰ ORC 2725.01.

²¹ ORC 2151.23(A)(2)(not substantially affected by SB 179).

²² ORC 2505.03.

²³ ORC 2731.02.

²⁴ ORC 2731.05.

²⁵ ORC 2731.07.

²⁶ ORC 2731.03.

²⁷ ORC 2152.22(B)(1).

²⁸ ORC 2152.22(B)(1)(a).

²⁹ ORC 2152.22(B)(1)(b-c).

³⁰ Ohio Rule Juv. Pro. 35(A).

CHAPTER VII

THE RIGHT TO REGULAR AND SPECIAL EDUCATION FOR JUVENILES IN DETENTION

Juveniles in the State of Ohio have both the right to a regular education program, as well as the responsibility by law for prompt and regular attendance. These rights and responsibilities arise from both federal and state mandates and are applicable to all juveniles, whether incarcerated or not. Ohio law states that children between the ages of six and eighteen years are of “compulsory school age” and must attend school.¹ Ohio law also imposes a duty on the parents and/or guardian of school age children to see that they attend school.²

Providing education programs to juveniles who are in juvenile detention and juvenile holding facilities poses a challenge to administrators given the transient nature of the juveniles in these facilities, the general lack of education records and history, and the relatively short time most juveniles are detained.

The bigger challenge for practitioners, however, is to understand the rights of juveniles within the juvenile justice system who have been identified as, or suspected to be, disabled students within the meaning of federal law and regulations. It is this segment of the detention population that must be better understood, and better served.

The Individuals with Disabilities Education Act (IDEA) requires every juvenile between the ages of three and 21 who has a disability be provided with a free appropriate public education (FAPE).³ This federal legislation provides that all eligible juveniles, including those incarcerated or involved with the juvenile justice system, are entitled to be provided with educational services tailored to their specific academic needs. The identification, evaluation, and specially designed instruction for juveniles who are detained can present special challenges to detention center staff,

educators, and other key decision makers. As more fully explained in Chapter VIII, the prevalence of juveniles with disabilities in detention and treatment facilities, both suspected and actually identified, necessitates an understanding of the rights these juveniles possess as disabled students.

This chapter explains the basic requirements of the IDEA as it relates to all disabled students, and underscores the need to better identify students with disabilities who are detained in an attempt to develop more meaningful interventions and treatment strategies. It does not attempt to delineate all of the requirements of the Rehabilitation Act of 1974⁴ or the Americans with Disabilities Act,⁵ two additional pieces of federal legislation that provide protection for disabled students and others. It should be noted, however, that both of these latter two pieces of legislation are applicable to detention and correctional settings for juveniles, and as such, present compliance issues for detention center administrators and local education agencies that provide services therein.⁶

I. LEAST RESTRICTIVE ENVIRONMENT

The IDEA requires that “to the maximum extent appropriate,” juveniles with disabilities should be educated in classes with non-disabled students.⁷ This provision, often called the least restrictive environment (LRE), includes juveniles in public and private institutions along with other care facilities. Placement of juveniles in regular classes may require the use of supplemental aids and services. Placement in special classes, separate schooling, or other removal from the regular educational environment is done only when the nature and/or severity of the disability is such that inclusion in regular classes cannot be satisfactorily achieved.⁸

Generally speaking, juveniles in detention facilities do not have a range of placement options available to them given their involuntary incarceration. The provisions of IDEA were

developed with school settings in mind. Nonetheless, while the application of this provision within the confines of a detention facility is particularly difficult, it is still possible that juveniles with disabilities in correctional facilities may receive educational services with non-disabled, incarcerated peers.

II. IDENTIFICATION, REFERRAL AND EVALUATION, INCLUDING CHILD FIND REQUIREMENTS

The IDEA requires schools and other public agencies to not only evaluate juveniles for disabilities, but also to actively search out and identify those who may have a disability and who would be eligible for special services. This is often referred to as the “Child Find” obligation.⁹ States must have administrative regulations and policies as to whom may request an evaluation and what procedures must be followed.¹⁰

Generally, a teacher, parent or other interested party involved with the juvenile makes an evaluation request. A referral system must be in place within a given school system to explain how referrals from district and non-district sources will be accepted and acted upon in a timely manner. As this is a public document, copies of the district’s policies are available upon request.

States are required to notify parents or guardians and obtain parental consent before evaluating the juvenile.¹¹ The local education agency will then administer a variety of tests, appropriate to the juvenile’s cultural and linguistic background, designed to identify and quantify disabilities. The tests or evaluations are administered over a period of time, often by several different knowledgeable and qualified personnel, including speech and language therapists, psychologists, and special education teachers.¹²

Once a juvenile is identified through an evaluation as being eligible for special services, the juvenile must be re-evaluated at least once every three years. This evaluation must be made to assess the present levels of performance and educational needs of the juvenile, determine the

need for continued special education and related services, and determine whether any additions or modifications to the special education and related services are needed to enable the juvenile to meet the measurable annual goals set out in the individualized education program (IEP).¹³

III. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

When a juvenile is evaluated and found eligible for special education services, his school district must develop and implement an individualized education program, commonly referred to as an IEP. Federal regulations require that a meeting must be held to develop the plan no more than 30 days after the determination that the juvenile is eligible for special services. The committee that develops the IEP includes:¹⁴

- The juvenile's parents;
- At least one of the juvenile's regular education teachers (if the juvenile is or may be participating in a regular education environment);
- At least one special education teacher (or provider, if appropriate) of the juvenile;
- A qualified representative of the local education agency, often the principal;
- An individual who can interpret the institutional implications of evaluation results;
- Others (at the discretion of the parents or the agency) who have knowledge or special expertise regarding the juvenile, including related service personnel as appropriate. This category may include:
 - Probation officers
 - Institutional staff
 - Others with special knowledge or expertise regarding the juvenile
 - The juvenile's attorney or advocate for the child or parents
 - The juvenile with the disability may also be included if appropriate, and must be invited if over 14-years-old.¹⁵

Federal regulations require an IEP to be in place at the start of every school year.¹⁶ In developing the IEP, the committee considers the present level of educational performance, the juvenile's particular disability and the services that will be required to keep him in the least restrictive environment. Services are devised and must include the objectives to be met, a timeline for meeting those objectives, services to be delivered and the mode in which the services will be provided, and a way in which progress may be assessed.¹⁷

A. IDEA requires each IEP to include the following basic elements:¹⁸

1. A statement of the juvenile's present levels of educational performance, including but not limited to:
 - a. How the juvenile's disability affects his or her involvement and progress in the curriculum for non-disabled juveniles.
2. A statement of *measurable* (emphasis added) annual goals, including benchmarks or short-term objectives, related to:
 - a. Meeting the needs of the juvenile that are a result of his disability to enable him to be involved in and progress in the general curriculum (the curriculum for non-disabled students).
 - b. Meeting each of the juvenile's other educational needs that are a result of his disability.
3. A statement of special education and related services (including supplementary aides and services) to be provided to the juvenile, or on his behalf, and a statement of the program modifications or support for school personnel that will be provided for the juvenile to:
 - a. Advance appropriately toward attaining the annual goals.
 - b. Be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities.
 - c. Be educated and participate with other juveniles with disabilities and non-disabled juveniles in the activities described above.
4. An explanation of the extent, if any, to which the juvenile will not participate with non-disabled juveniles in the regular class and in extracurricular and other nonacademic activities.

5. A statement of any individual modifications in the administration of state or district-wide assessments of the student achievement that are needed for the juvenile to participate in the assessment.
6. If the committee determines that the juvenile will not participate in a particular state or district assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the juvenile and how he will be assessed is needed.
7. A projected date for the beginning of services and modifications, including the anticipated frequency, location, and duration of these services and modifications.
8. A statement of how the juvenile's progress toward the annual goals will be measured and how the juvenile's parents will be regularly informed of his progress toward the annual goals, at least as often as the parents of non-disabled juveniles are informed of their child's progress. The statement will also inform the parents of whether that progress is sufficient to enable the juvenile to achieve the stated goals by the end of the school year.

For older students, the Individuals with Disabilities Act also requires that the IEP include:

9. A statement of transition service needs of the student that focuses on the student's course of study (e.g., advanced placement courses, vocational education) if the juvenile involved is 14-years-old (or younger if determined appropriate by the IEP). This statement must be updated annually.
10. A statement of needed transition services if the juvenile involved is 16-years-old (or younger if determined appropriate by the committee).

The latter two requirements are particularly significant for juveniles in the juvenile justice system because they are provided for juveniles moving from school to post-school activities. These requirements address vocational training, employment (including supported employment), post-secondary education, including continuing and adult education, special adult services, and independent living and community participation.¹⁹ Individualized Education Plans may include specific assistance in applying for vocational school, access to community services such as job training or group housing and independent living, or applications to colleges.²⁰ When an IEP meeting is held to determine transition services, the juvenile with a disability of any age must be invited to attend.

In addition, an IEP must include the following if appropriate:

11. In a case when the juvenile's behavior impedes his or her learning or that of other students, consider strategies, if appropriate, to address the behavior including positive behavior interventions, strategies, and supports.
12. In the case of a juvenile with limited English proficiency, consider the language needs of the juvenile as those needs relate to his IEP.
13. In the case of a blind or visually impaired juvenile, provide for instruction in Braille and the use of Braille unless the committee determines, after an evaluation of the juvenile's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the juvenile's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the juvenile.
14. Consider the communication needs of the juvenile, and in the case of a juvenile who is deaf or hard of hearing, consider the juvenile's language and communication needs, opportunities for direct communication with peers and professional personnel in the juvenile's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the juvenile's language and communication mode.
15. Consider whether the juvenile requires technology devices and services to assist him.²¹

Individualized Education Programs must be implemented as soon as possible after the IEP meeting. The IEP must be reviewed by the committee and revised at least once a year after that. Revisions should address any lack of expected progress, results of re-evaluation, information provided by parents, the juvenile's anticipated needs or other matters.²²

IV. SPECIAL EDUCATION AND RELATED SERVICES

The definition of special education under the IDEA is "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability..."²³ including "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education."²⁴ The IDEA also requires provision of related services including transportation, and other supportive services such as speech and language therapy and psychological services and mobility services. Other services that may be required

include various therapies such as physical, occupational and recreational, early identification and assessment of disabilities in juveniles and rehabilitation counseling. Related services may also include social work services in schools and parent counseling and training.²⁵

V. DUE PROCESS PROTECTIONS

The juvenile's parents should be involved as much as possible in all facets of the juvenile's educational decisions. A full range of procedural safeguards is in place to assist them, including the right to:

- Examine all records;
- Receive written notice of proposed actions or refusal to take requested actions;
- Participate in meetings relating to the identification, evaluation and educational placement and provisions of a free appropriate public education to their child.²⁶

When a parent (as defined in 34 C.F.R. § 300.20) cannot be identified, and/or the whereabouts of the parent cannot be discovered after reasonable efforts, or the juvenile is a ward of the state, IDEA provides for the assignment of a surrogate parent to protect the educational rights of the juvenile.

A surrogate parent may not be employed by the school district or the state educational agency or other agency involved in the care of the juvenile, except for non-public agency employees providing non-educational care for the juvenile who meet the other requirements. In addition, the surrogate must have no conflicting interest with the interest of the juvenile he represents, and must have knowledge and skills that ensure adequate representation of the juvenile.²⁷

When the juvenile reaches the statutory age of majority, a state may provide for transfer of parental rights to the juvenile with a disability, unless the student is determined incompetent

under state law. When this occurs, the state must take steps to ensure that the parents of the juvenile with a disability have notice of the transfer to the juvenile. The state must also ensure that any rights the parents had under IDEA transfer to the juvenile.²⁸

VI. ENFORCEMENT OF RIGHTS THROUGH IDEA

The IDEA provides several remedies for juveniles whose rights have been violated under the Act, including mediation, a request for a due process hearing, and/or the filing of a formal complaint through the state education agency.

A. Mediation

The IDEA requires that a mediation procedure to resolve disputes must be established by the state and local education agencies and made available to the parties whenever a due process hearing is scheduled, or as otherwise agreed to by the parties.

1. The mediation must be:

- a. voluntary;
- b. scheduled in a timely manner;
- c. held in a place convenient to the parties to the dispute; and,
- d. conducted by a qualified and impartial mediator who is trained in effective mediation techniques.²⁹

Mediation may not be used to deny or delay the parents' right to pursue their complaints through due process hearing procedures. In addition, mediation may not be used to deny any other rights afforded under part B of IDEA.³⁰

Finally, any agreement reached through mediation must be put in writing.³¹

B. Due Process Hearings

Due process hearings are another way that a juvenile's parent or legal representative may pursue remedies under IDEA. These hearings are conducted either by the state or local

educational agency, depending upon state regulations.³² A parent or a local education agency may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation or educational placement of a juvenile with a disability, or the provision of a free and appropriate public education to the juvenile, or the refusal to initiate or change the identification, evaluation or educational placement of the juvenile.³³

A request for a due process hearing is made to the superintendent of the school district of resident who must forward a copy to the Director, Division of Special Education, Ohio Department of Education.³⁴ The request must specify, in writing, the specific issues to be resolved.³⁵

The parents and the local education agency or any other parties must disclose any evaluations and recommendations the party intends to use five business days before the hearing. The hearing officer must not be employed by either the state or the local education agency involved in the education or care of the juvenile.³⁶ An attorney and/or other person with specialized training and/or knowledge about the needs and problems of the juvenile may accompany the parents to the hearing.

2. Parents also have the right to:

- a. present evidence;
- b. prohibit the introduction of evidence not disclosed five business days before the hearing;
- c. confront, cross-examine, and compel the attendance of witnesses;
- d. obtain a written, or at the option of the parents, electronic verbatim record of the findings of fact and decision.³⁷

If the due process hearing was conducted by the local educational agency, any party aggrieved by the findings and decision of the hearing may appeal the decision to the state education administration.³⁸ A party who wishes to appeal the state education agency's decision

may file a civil action in the appropriate state or federal court.³⁹ The court has the discretion to award reasonable attorneys' fees to the parents of a juvenile with a disability who is the prevailing party in any action or proceeding brought under the IDEA. Attorneys' fees may also be awarded under IDEA in connection with IEP meetings convened as the result of administrative proceedings, judicial action, or, at the discretion of the state, pre-complaint mediation. The IDEA does not, however, allow attorneys' fees following the rejection of a settlement offer unless the parents were substantially justified in rejecting the offer.⁴⁰

C. Other Complaint Procedures

In addition to the above remedy procedures, the state must have a complaint procedure in place for IDEA violations. Complaints may also be filed with the Office of Civil Rights, United States Department of Education for discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disability Act.⁴¹ Any organization or individual may utilize the state complaint process. Complaints must be resolved within 60 days after a complaint is filed.⁴² Possible outcomes of these procedures may include monetary reimbursement or other corrective action appropriate to the needs of the juvenile and appropriate provision of future services.⁴³

VII. CHANGES IN PLACEMENT OF DISABLED JUVENILES

Because placement is determined by the committee, it cannot be changed unilaterally by a school official or other individual, with exceptions, which are set out below. Changes in placement must consider the least restrictive alternatives available and be justified on the basis of the juvenile's IEP requirements.

Federal law requires that while any judicial or administrative proceeding is pending, the "stay put provision" is in effect. This means that the juvenile shall remain in his current

educational placement unless there is some agreement reached between the parent and the school district for placement of the juvenile elsewhere.⁴⁴

A change in placement occurs when a juvenile is removed from his current educational setting for more than ten days, or if a series of removals such as disciplinary suspensions, totals more than ten days. If a change in placement has occurred, an IEP meeting must be convened within ten business days after the removal that constituted the change in placement, that is, either after a suspension for more than ten days or the last suspension that puts the number of days above ten.⁴⁵ Expulsion is also considered a change of placement, and is subject to the same requirements.⁴⁶

A hearing officer may order a change in placement of a juvenile with a disability to an appropriate interim alternative educational setting for not more than 45 days. This may be done only after the public agency has demonstrated substantial evidence to the hearing officer that maintaining the current educational setting would be “substantially likely to result in injury to the child or to others.”⁴⁷ When a hearing officer makes such a change in placement, he must consider whether or not the present educational setting was appropriate for the juvenile and whether the public agency has made reasonable efforts to minimize the risk of harm to the juvenile and to others (e.g., the use of supplementary aides and services).⁴⁸

Because continuity in the progression of the juvenile’s education is very important, the hearing officer should determine whether the alternative setting can appropriately render the services and educational curriculum that the juvenile’s IEP requires. Additionally, services and modifications to address the juvenile’s behavior and prevent a recurrence of the offending behavior must be addressed in the alternative setting.⁴⁹

A. Manifestation Determination

If an action is contemplated that will result in a change of placement for a juvenile with a disability who has engaged in behavior that violated any rule or code of conduct of the school district that applies to all juveniles, certain procedural safeguards must be followed in order to determine the relationship between the juvenile's disability and the behavior subject to the disciplinary action.

If there has been no behavior assessment of the juvenile, and thus no behavior plan in place in the IEP, the committee must examine the offending behavior and its relationship to the juvenile's disability. This is called a "manifestation determination" and is required under the 1997 amendments to IDEA.⁵⁰ In making this determination, the committee must consider all relevant information including evaluation and diagnostic results. The team must also examine whether the IEP and placement were appropriate, whether services were provided consistent with the IEP and whether the juvenile's disability affected not only his ability to understand the consequences of the offending action, but the ability to control his behavior as well. If the behavior is a manifestation of the disability, the committee must develop a plan to address the offending behavior in that meeting to immediately remedy any deficiencies in the IEP or its implementation.⁵¹ If the behavior is a manifestation of the disability, the local education agency must observe the due process protections for the juvenile.

If the committee determines that the juvenile's behavior is not a manifestation of the disability, the disciplinary procedures applicable to juveniles without disabilities may be applied.⁵² However, the local education agency must continue to provide educational services to the extent required under section 300.121(d).⁵³

B. Expedited Appeal

Parents have the right to an expedited appeal of the manifestation determination and the placement of their child. In the case of drugs, weapons and in hearing officer placements, when the juvenile is placed in an alternative educational setting, the juvenile must remain in that interim setting until the time period expires, unless the parents and the public agency agree otherwise. After this time expires, the juvenile has the right to return to his previous placement unless the hearing officer extends the placement. The only exception to this rule is if the school personnel feel that keeping the juvenile in the current placement is dangerous, the local education agency may request an expedited hearing to determine if it is proper to place the juvenile in the alternative educational setting or other appropriate placement while the due process procedures occur.⁵⁴

VIII. APPLICABILITY OF IDEA PROTECTIONS FOR JUVENILES NOT YET IDENTIFIED

Some juveniles may be eligible for special education services but have not been identified for one reason or another. These may be juveniles that have not been evaluated either because the parents have not requested it or the local education agency has declined to do an evaluation. If a local education agency has a sufficient “basis of knowledge” that the student had a disability before the behavior that precipitated the disciplinary action occurred, the juvenile is entitled to the protections under the IDEA regarding disciplinary due process.⁵⁵

The district is deemed to have such knowledge if the parents requested an evaluation or expressed in writing to local education agency personnel concerns that their child may need special education. The district is also deemed to have knowledge if the juvenile’s behavior or performance demonstrates the need for such services or a teacher or other local education agency

personnel have expressed concern to the special education director about the juvenile's performance or behavior.⁵⁶

IX. SPECIAL EDUCATION IN JUVENILE DETENTION FACILITIES AND JUVENILE HOLDING FACILITIES

The challenge of providing appropriate special education services to juveniles in juvenile detention and juvenile holding facilities is incumbent upon the Kentucky Department of Juvenile Justice. The state agency is mandated to provide education to juveniles in its care.⁵⁷ Local education agencies provide services to these facilities, and the Kentucky Department of Education is charged with monitoring all districts within the state for compliance with the provisions of IDEA.⁵⁸ Some of the most common problems include:

- Limited access to school records, thus making it difficult for detention personnel to determine if the child was previously identified. Often, a juvenile may leave the facility before the records from the school are even received.
- Identification and assessment can be hindered by inadequate staffing support, including school psychologists, social workers, special education administrators, and diagnosticians.
- Detention centers and holding facilities that serve multiple counties and school districts are often hindered by poor relationships and/or limited relationships with local school districts, and therefore are hindered in obtaining records, ensuring timely assessments, and adequately transitioning the juvenile back to the home school.
- The curriculum and service delivery systems used in juvenile facilities may vary, but they may be inadequate to meet the needs of a juvenile who is in special education classes.
- Staffing in juvenile detention centers and juvenile holding facilities must meet state requirements regarding staffing ratios and qualifications of teachers certified to teach juveniles with specific disabilities.
- Involvement of parents may be particularly difficult given the distance some parents may have to travel to a regional detention facility. Also, many parents choose not to be involved in educational services for their child.

- The timing involved for providing special education services may conflict with higher priority activities, such as meeting with attorneys, meeting with probation counselors, appearing in court, or attending other scheduled classes.
- Dormitory confinement and other security measures may be necessary and may interfere with the implementation of IEP goals and/or established service delivery methods.
- The provision of vocational services, when included in an IEP, as well as many related services, may be more difficult to implement.

While these problems can make compliance with special education requirements in detention facilities much more difficult, the benefits of a good special education program to juveniles in detention are unquestionable. For many juveniles who have had irregular and/or severely limited school attendance due to transience, repeated out of home placements, and/or discipline problems in school, it is an opportunity to regain lost ground. The correlation between academic success and lower recidivism rates cannot be ignored, and it should provide the incentive to work diligently with this population of juveniles at this critical point in their juvenile justice involvement.

It is not the intent of this publication to provide an extensive review of literature regarding best practices for education programs in detention facilities. A list of available resources, however, is found in Appendix A, which may provide detention center administrators and educators with additional assistance in serving this population effectively, and achieving compliance with special education laws and other mandates. Additionally, the National Juvenile Detention Association has published proposed standards for education programs in detention centers, a copy of which can be found in Appendix C.

X. TOP TEN LIST FOR PRACTITIONERS REGARDING JUVENILES WITH EDUCATION-RELATED DISABILITIES UNDER IDEA

The IDEA provides juvenile justice practitioners with the tools to ensure that disabled juveniles receive the appropriate services to achieve academic benefit, and as such, can be an important, yet neglected, part of the intervention process in juvenile court. The following “Top Ten List” suggests practical ways in which juvenile court judges, as well as others, can utilize special education laws on behalf of disabled juveniles in the juvenile justice system.⁵⁹

A. Determine the juvenile’s special education status.

Determine if the juvenile is in school, if the juvenile has previously been identified as needing special education, and if the juvenile had an Individual Education Plan (IEP) in the last educational placement.

B. Find a way to get the juvenile evaluated for special education eligibility

The parent or a probation officer can initiate the evaluation process, or a judge can refer the juvenile to school system personnel for a comprehensive evaluation if there is a reasonable belief that the juvenile may have a disability that is adversely affecting his educational progress.⁶⁰ The local education agency must perform this evaluation in all areas of suspected disability, without charge to the parent. As compared to a typical court evaluation, which is likely to be a forensic screening regarding competency, cognitive levels, or amenability to rehabilitation, a special education evaluation should also contain a complete psycho-educational, speech/language, hearing and vision testing, and may contain such items as an occupational and physical therapy evaluation, neurological and/or psycho/neurological, an evaluation of adaptive functioning and non-verbal intelligence, and a complete vocational evaluation. The information contained in these reports can provide enormous insight into the juvenile, which can aid the court

in making decisions regarding detention, culpability, transfers to adult court, or disposition planning.

C. Ensure that someone acquires and organizes the juvenile’s educational records for the court.

This is particularly important for disposition of delinquency or status offender cases, for sentencing of juveniles as adults, and in decisions to transfer juveniles to adult court. A review of such records by the court may reveal a failure to identify the juvenile, or failure to provide appropriate services for the juvenile’s individual needs.

D. Appoint an educational expert to advise the court.

Locate an educational psychologist or other professional with expertise in education related disabilities and special education services. An expert can review the juvenile’s educational history, including placement and IEPs, and help the court and the parties to find appropriate and comprehensive services for the juvenile.

E. Suggest that the parent or other representative find an education advocate.

A number of attorneys and other advocates are available throughout Kentucky who know and practice special education law. With some assistance, these advocates may be able to ensure services to the juvenile and assist the families in working with school systems to remedy the juvenile’s educational failures.

F. Understand what “special education,” “free appropriate public education,” “related services” and “transition services” are.

A list of these terms and others is found in Appendix D.

G. Ensure that the juvenile has a current, appropriate individualized education plan and appropriate placement.

Involvement of school personnel in the juvenile court proceedings can be facilitated if requested by a juvenile court judge, probation officer, juvenile’s attorney, and/or other

professional involved with the juvenile. Representatives from appropriate “linking” agencies, such as those who provide transitional services, may be vital to this involvement. Thus, the court can gain knowledge of the juvenile’s IEP and placement, as well as transitional services that are available and appropriate as part of the juvenile’s treatment plan.

H. The Court's authority can be used creatively to ensure that the juvenile gets needed services (special education, related services and transition services).

Judges can convene inter-agency meetings, bringing officials and administrators together to discuss collaboration between agencies (including pooling money), to coordinate services for juveniles under the IDEA and to avoid the ordinary tendency to push juveniles with disabilities out of school, onto the streets, and into the delinquency system.

Judges may also insist that parents, probation officers, and others responsible for the juvenile take necessary actions to obtain appropriate services for the juvenile. Summoning school officials to answer the court’s questions regarding services for the juvenile may be sufficient to expedite services for a juvenile otherwise not receiving adequate educational opportunities.

I. Ensure that a juvenile resides in the least restrictive environment that is consistent with both community safety and the juvenile’s education.

Comprehensive special education, related and transition services can substitute for harsh treatment of a juvenile in a delinquency or criminal incarceration setting. If a judge determines that a juvenile requires a placement that is not community-based, however, special education law may provide a residential treatment alternative that, as a practical matter, secures the community’s protection from the juvenile while ensuring that the juvenile receives special education related and transition services. If a juvenile with education-related disabilities needs 24-hour supervision to ensure educational progress, school system personnel may be required to

provide that level of care. Thus, a court may wish to have the school system initiate and complete this residential placement process prior to the court's disposition or sentencing date.

J. Recognize that, by ensuring that the juvenile receives education and treatment, you have advanced an outcome that ultimately is best not only for the juvenile and his family, but also for the court and for the community.

Ensuring that a juvenile has opportunities to become competent and productive and to fulfill legitimate aspirations is the best outcome for everyone involved. Education reduces recidivism. Courts can, where appropriate, maintain supervision of the juvenile and of the education/treatment process by making attendance and participation in the special education placement a condition of probation. Individualized Education Program's can and often do contain extensive behavior management programs, individual, group and family counseling, small teacher/student ratios (including one to one, when appropriate), recreational and therapeutic recreational activities, mentoring, tutoring, job coaching, and other services that are, in reality, not available in many incarceration settings.

¹ ORC 3321.01; ORC 3321.02.

² ORC 3321.03; ORC 3321.04

³ 20 USC 1400 et seq.

⁴ 29 USC 701 et seq.

⁵ 42 USC 12101 et seq.

⁶ See *Pennsylvania Department of Corrections, et al. v. Yeskey*, 524 U.S. 206, 118 S. Ct. 1952, 141 L.Ed.2d 215 (1998). (Holding that state prisons are “public entities” within the meaning of the ADA and that prisoners “benefit” from prison “services, programs, or activities”). See also Rehabilitation Act of 1973, § 504(b)(1)(A), 29 USC 794(b)(1)(A); Individuals with Disabilities Education Act, § 612(6), as amended, 20 USC 1412(6); 34 CFR 300.2(b)(4).

⁷ 20 USC 1412(a)(5); 34 CFR 300.550(b)(1).

⁸ 20 USC 1412(a)(5); 34 CFR 300.550(b)(2).

⁹ 20 USC 1412(a)(3)(A); 34 CFR 300.125.

¹⁰ ORC 3323.03; ORC 3323.04.

¹¹ 20 USC 1415(b)(3), 20 USC 1414(a)(1)(C) and (c)(3); 34 CFR 300.505.

¹² 20 USC 1412(a)(6)(B); 20 USC 1414(b)(2) and (3); 34 CFR 300.532.

¹³ 20 USC 1414(a)(2); 34 CFR 300.536; ORC 3323.04.

¹⁴ 20 USC 1414(d)(1); 34 CFR 300.344(a).

¹⁵ 20 USC 1414(d)(1)(B)(i); 34 CFR 300.345(b)(2).

¹⁶ 20 USC 1414(d)(2)(A); 34 CFR 300.342(a).

¹⁷ 20 USC 1414(d)(1)(A) and (d)(6)(A)(ii); 34 CFR 300.347.

¹⁸ 20 USC 1414(d)(1)(A)(vii); 34 CFR 300.347(b).

¹⁹ 20 USC 1401(30); 34 CFR 300.29.

²⁰ 20 USC 1401(30); 34 CFR 300.29.

²¹ 20 USC 1414(d)(3)(B); 34 CFR 300.346(a)(2).

²² 34 CFR 300.342(b)(ii), § 300.343(c).

²³ 20 USC 1401(25); 34 CFR 300.26(a)(1).

²⁴ 20 USC 1401(25)(A)-(B); 34 CFR 300.24(a)(1)(i)-(ii).

²⁵ 20 USC 1401(22); 34 CFR 300.24.

²⁶ 20 USC 1415(b); 34 CFR 300.501-300.5012.

²⁷ 20 USC 1415(b)(2); 34 CFR 300.515(c)(2).

²⁸ 20 USC 1415(m); 34 CFR 300.517.

²⁹ 20 USC 1415(e); 34 CFR 300.505(b).

³⁰ 20 USC 1415(e); 34 CFR 300.505(b)(1)(ii).

³¹ 20 USC 1415(e); 34 CFR 300.506.

³² 20 USC 1415(f); 34 CFR 300.507.

³³ OAC 3301-51-01(F)(1)(b).

³⁴ OAC 3301-51-02(G)(2)(b) and (f).

³⁵ OAC 3301-51-02(G)(2)(e).

³⁶ 20 USC 1415(h); 34 CFR 300.509.

³⁷ *Id.*

³⁸ 20 USC 1415(g); 34 CFR 300.510.

³⁹ 20 USC 1415(i)(2); 34 CFR 300.512.

⁴⁰ 20 USC 1415(i)(3); 34 CFR 300.513.

⁴¹ 34 CFR 300.660-300.662.

⁴² *Id.*

⁴³ 34 CFR 300.660(b).

⁴⁴ 20 USC 1415(j); 34 CFR 300.514.

⁴⁵ 20 USC 1415(k)(1) and (10); 34 CFR 300.520(b).

⁴⁶ 20 USC 1415(k); 34 CFR 300.519.

⁴⁷ 20 USC 1415(k)(2) and (10); 34 CFR 300.521.

⁴⁸ 20 USC 1415 (k)(2); 34 CFR 300.521.

⁴⁹ *Id.*

⁵⁰ 28 USC 1415(1c)(4); 34 CFR 300.523.

⁵¹ 20 USC 1415(k)(1)(B); 34 CFR 300.520 (b).

⁵² 20 USC 1415(k)(5); 34 CFR 300.524.

⁵³ 20 USC 1312(a)(1)(A); 34 CFR 300.121(d).

⁵⁴ 20 USC 1415(k)(2), 20 USC 1415(k)(7); 34 CFR 300.525, 300.526, 300.528.

⁵⁵ 20 USC 1415(k)(8)(A); 34 CFR 300.527(a).

⁵⁶ 20 USC 1415(k)(8)(B); 34 CFR 300.527(b).

⁵⁷ KRS 15A.065.

⁵⁸ KRS 157.224.

⁵⁹ Developed by Joe Tulman, Professor of Law at the University of District of Columbia, David A. Clarke School of Law.

⁶⁰ See e.g. 34 CFR 300.532.

DEFINITIONS

Admitted to a department of youth services facility: *effective 1/1/02:* includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.¹

Chronic truant: Any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one month, or fifteen or more school days in a school year.²

Commit: To vest custody as ordered by the court.³

Delinquent Child:

- *Effective through 12/31/01:* Includes any of the following: any child who violates any law of this state or the United States, or any ordinance or regulation of a political subdivision of the state, that would be a crime if committed by an adult, except as provided in Section 2151.021 of the Revised Code; any child who violates any lawful order of the court made under this chapter other than an order issued under section 2151.87 of the Revised Code; any child who violates Division (A) of Section 2923.211 of the Revised Code; any child who violates Division (A)(1) or (2) of Section 3730.07 of the Revised Code; any child is an habitual truant and who previously has been adjudicated an unruly child for being an habitual truant; or any child is a chronic truant.⁴
- *Effective beginning 1/1/02:* Includes any of the following: any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult; any child who violates any lawful order of the court made under this chapter or under Chapter 2151 of the Revised Code; any child who violates Division (A) of Section 2923.211 of the Revised Code; any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant; any child who is a chronic truant.⁵

Detention: The temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.⁶

Discretionary Serious Youthful Offender: *effective 1/1/02:* a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.⁷

Discretionary SYO: *effective 1/1/02:* A case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under Section 2152.13 of the Revised Code.⁸

Discretionary Transfer: the juvenile court has discretion to transfer a case for criminal prosecution under Division (B) of Section 2152.12 of the Revised Code.⁹

Juvenile Court:

- *Effective through 12/31/01:* The division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under this chapter.¹⁰
- *Effective beginning 1/1/02:* Whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152 of the Revised Code: The division of the court of common pleas specified in Section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152 of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions; the juvenile court of Cuyahoga County or Hamilton County that is separately and independently created by Section 2151.08 or Chapter 2153 of the Revised Code and that has jurisdiction under this chapter and 2152 of the Revised Code; but if neither of these apply, then the probate division of the court of common pleas.¹¹

Juvenile Traffic Offender: Any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521 of the Revised Code, shall be designated as a "juvenile traffic offender."¹²

Mandatory Serious Youthful Offender: *effective 1/1/02:* a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.¹³

Mandatory SYO: *effective 1/1/02:* a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under Section 2152.13 of the Revised Code.¹⁴

Mandatory Transfer: *effective 1/1/02:* a case is required to be transferred for criminal prosecution under Division (A) of Section 2152.12 of the Revised Code.¹⁵

Nonsecure care, supervision, or training: Care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.¹⁶

Out-of-home care: Detention facilities, shelter facilities, foster homes, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organization, certified organizations, child day-care center, type A family day-care homes, child day-care provided by type B family day-care home providers and by in-home aides, group home

providers, group homes, institutions, state institutions, residential facilities, residential camps, day camps, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.¹⁷

Probation: *effective through 12/31/01:* A legal status created by court order following an adjudication that a child is a delinquent child, a juvenile traffic offender, or an unruly child, where the child is permitted to remain in the parent's, guardian's, or custodian's home subject to supervision, or under the supervision of any agency designated by the court and returned to the court for violation of probation at any time during the period of probation.¹⁸

Sanction, service, or condition:¹⁹ *effective beginning 1/1/02:* Sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in Division (A)(3) of Section 2152.19 of the Revised Code.²⁰

Protective Supervision:

- *Effective through 12/31/01:* An order of disposition pursuant to which the court permits an abused, neglected, dependent, unruly, or delinquent child or a juvenile traffic offender to remain in custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.²¹
- *Effective beginning 1/1/02:* An order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.²²

Secure correctional facility: A facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.²³

Serious Youthful Offender: *effective 1/1/02:* a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.²⁴

Shelter: The temporary care of children in physically unrestricted facilities pending adjudication or disposition.²⁵

Traditional Juvenile: *effective 1/1/02:* a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under Sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152 of the Revised Code.²⁶

Transfer: *effective 1/1/02:* the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.²⁷

Unruly child:

- *Effective through 12/31/01:* Includes any of the following: any child who does not subject the child's self to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient; any child who is persistently truant from home; any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant; any child who so departs the child's self as to injure or endanger the child's own health or morals or the health or morals of others; any child who attempts to enter the marriage relation without the consent of the child's parents, custodian or legal guardian or other legal authority; any child who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons; any child who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to the child's own health or morals or the health or morals of others; any child who violates a law, other than Division (A) of Section 2923.211 or Section 2151.87 of the Revised Code, that is applicable only to a child.²⁸
- *Beginning 1/1/02:* Includes any of the following: Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient; any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant; any child who behaves in a manner as to injure or endanger the child's own health or moral or the health or morals of another; or any child who violates a law, other than Division (A) of Section 2923.211 of the Revised Code, that is applicable only to a child.²⁹

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- ¹ ORC 2152.02(B).
- ² Effective until 12/31/01, ORC 2151.011(B)(9): effective beginning 1/1/02 ORC 2152.02(D).
- ³ Effective until 12/31/01, ORC 2151.011(B)(8): effective beginning 1/1/02, ORC 2151.011(B)(9).
- ⁴ ORC 2151.02(A-F).
- ⁵ ORC 2152.02(F).
- ⁶ Effective through 12/31/01, ORC 2151.011(B)(11): effective beginning 1/1/02, ORC 2151.011(B)(13).
- ⁷ ORC 2152.02(G).
- ⁸ ORC 2152.02(H).
- ⁹ ORC 2152.02(I).
- ¹⁰ ORC 2151.011(A)(1).
- ¹¹ ORC 2151.011(A)(1).
- ¹² Effective through 12/31/01, ORC 2151.021; effective beginning 1/1/02, ORC 2152.02(N).
- ¹³ ORC 2152.02(P).
- ¹⁴ ORC 2152.02(Q).
- ¹⁵ ORC 2152.02(R).
- ¹⁶ Effective through 12/31/01, ORC 2151.011(B)(18): effective beginning 1/1/02, ORC 2151.011(B)(24).
- ¹⁷ Effective through 12/31/01, ORC 2151.011(B)(20): effective beginning 1/1/02, ORC 2151.011(B)(27).
- ¹⁸ ORC 2151.011(31).
- ¹⁹ The term phrase “sanction, service, or condition” replaces the term “probation” beginning 1/1/02.
- ²⁰ ORC 2151.011(B)(38).
- ²¹ ORC 2151.011(B)(32).
- ²² ORC 2151.011(B)(39).
- ²³ Effective through 12/31/01, ORC 2151.011(B)(39): effective beginning 1/1/02, ORC 2151.011(B)(48).
- ²⁴ ORC 2152.02(X).
- ²⁵ Effective through 12/31/01, ORC 2151.011(B)(42): effective beginning 1/1/02, ORC 2151.011(50).
- ²⁶ ORC 2152.02(Z).
- ²⁷ ORC 2152.02(AA).
- ²⁸ ORC 2151.02.2(A-H).
- ²⁹ ORC 2151.022.