

# JUVENILE DELINQUENCY

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

## RIGHT TO COUNSEL

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

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

## WAIVER [Juv.R. 3]



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

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

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

## Waiver Prohibited [Juv.R. 3]

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

## APPOINTMENT OF GUARDIAN AD LITEM

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

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

## CUSTODY, DETENTION, SHACKLING, AND TRANSFER TO ANOTHER COUNTY

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

### NOTE

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

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

### **Findings**

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

### **Hearing Required**

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

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

### **Standard**

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

### **Hearing**

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

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

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



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

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

### **When Required**

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

### **When Permitted**

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

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

### **Presumption**

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

### **Competency Evaluator**

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

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

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

### **Competency Hearing**

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

### **Proceedings on Determination**

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

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

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

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

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

### Competency Attainment

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

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

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

*See Youth in Adult Court Bench Card*

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

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

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

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

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

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

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

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

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

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

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

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

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

### **HEARING PROCEDURE**

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

### **Judgment**

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

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

### **DISPOSITIONAL ORDERS** [R.C. 2152.19]

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

*See Probation Bench Card.*

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

### **License Suspension Limitations**

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

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

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

### **Victim Impact Statement**

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

### **Notices after Hearing**

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

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

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

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

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

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

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

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

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

<sup>3</sup> Excluding carrying concealed weapon

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

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

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

## **PROBATION REVOCATION PROCEEDINGS**

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

### **Jurisdiction Invoked by Motion**

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

### **Revocation of Probation**

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

#### *See Right to Counsel Bench Card*

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

### **Findings**

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

### **Detention**

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

### **Confinement Credit**

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

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

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

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



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

### **Definitions**

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

### **Notice and Duty of Court to Journalize Supervised Release**

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

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

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

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

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

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

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

### **Release During First Half of Prescribed Minimum Commitment**

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

### **Release During Second Half of Prescribed Minimum Commitment**

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

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

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

### **Release after Expiration of Prescribed Minimum Commitment or Specification**

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

## **SEX OFFENDER CLASSIFICATION HEARING**

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

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

### **Mandatory Registrants**

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

### Discretionary Registrants

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

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

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

### Children Ineligible for Classification

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

### Tier Level Determination

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



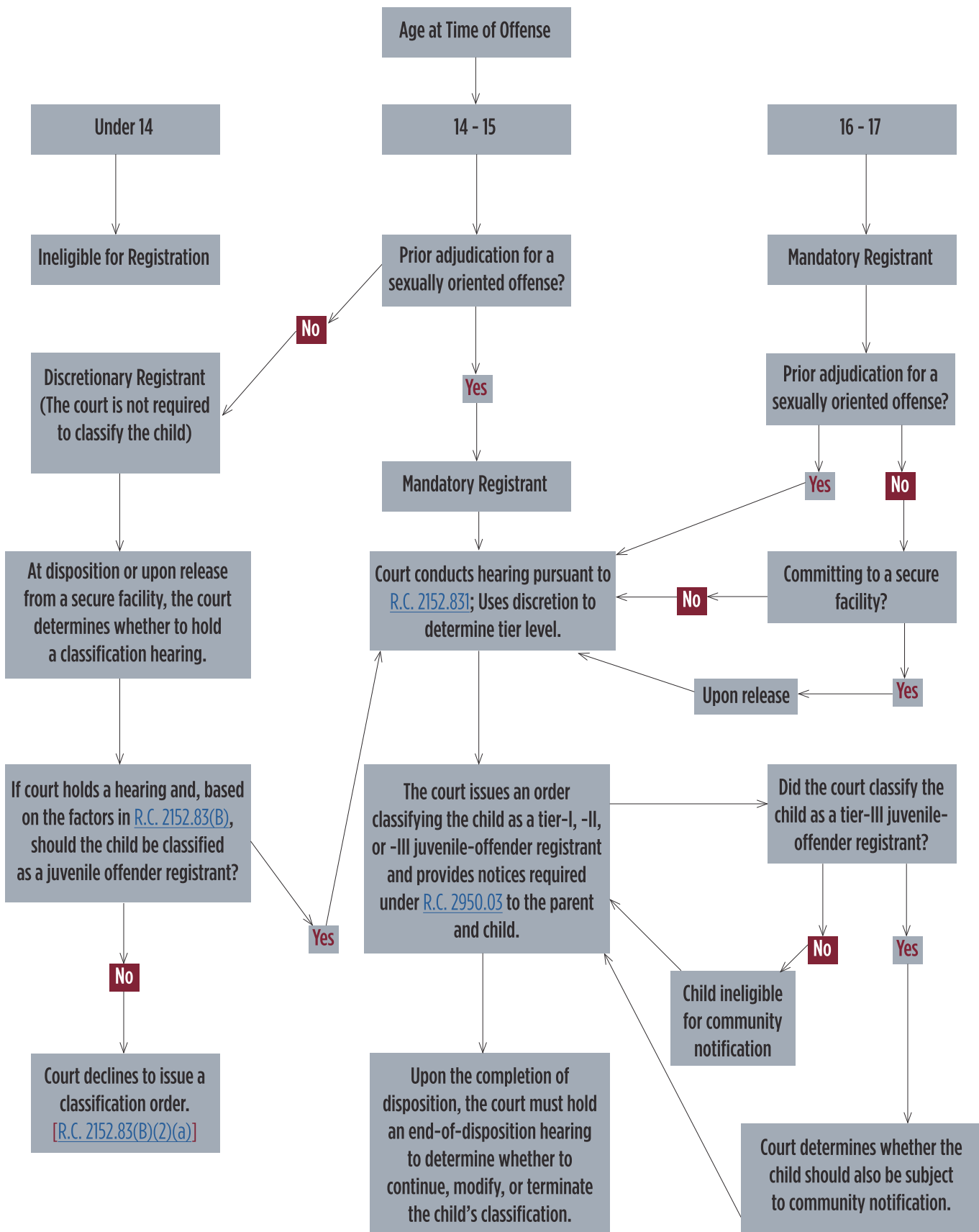
No statutory factors are outlined for court to make this determination. [\[R.C. 2152.381\]](#) However, the Attorney General has advised that the factors in [R.C. 2152.83\(D\)](#) are equally applicable to the tier determination.<sup>7</sup>

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

### Tiers Levels, Frequency, and Duration of Registration

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

## JUVENILE SEX OFFENDER REGISTRATION FLOW CHART



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

### **End-of-Disposition Review Hearing**

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

### **Factors for Consideration**

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

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

### **Findings and Orders**

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

### **Petition for Reclassification or Declassification**

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

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

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

### **Factors for Consideration**

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

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

### **Findings and Orders**

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



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

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

### Definitions and Eligibility

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

### Notice

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

### Records Subject to Immediate Sealing

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

charge.

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

### Records Subject to Discretionary Sealing

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

### **Procedure Following Application for Sealing of Records**

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

### **Response Respecting Sealed Records**

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

### **Procedure Following Application for Expunging of Records**

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

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

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

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