

42nd Annual InterCourt Conference



Session 1F: Legislative and
Case Law Update

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Columbus, OH

FACULTY BIOGRAPHIES

DAVID A. HEJMANOWSKI has served as the Judge of the Probate/Juvenile Division of the Delaware County Court of Common Pleas since February of 2015 and was previously a Magistrate at that Court from January of 2003 to February of 2015 and Juvenile Court Administrator from 2004-15. Prior to this, he served as an assistant prosecuting attorney for Delaware County. He graduated as a Public Service Fellow from the Ohio State University Moritz College of Law in 1999 where he also received the Joseph M. Harter Memorial Award for Trial Advocacy. He received his B.S. in political science from Hiram College in 1996. Currently a member of the board of the Supreme Court's Judicial College, he is also a past chair of the Supreme Court's Advisory Committee on Language Services, a past chair of the Ohio State Bar Association Juvenile Justice Committee and current chair of the Ohio State Bar Association's Content Advisory Committee. From 2008 to 2011 he served a three year term on the Ohio State Bar Association Board of Governors. During 2023 he served as President of the Ohio State Bar Foundation and he is currently President of the Delaware County Bar Foundation. In 2020 he began a ten-year term as an officer of the Ohio Judicial Conference. He is a member of the Governor's Council on Juvenile Justice. From 2019-2022 he served on the Federal Advisory Committee on Juvenile Justice, which advises Congress and the White House on juvenile justice policy matters. He is a member of the Boards of the National Council of Juvenile and Family Court Judges and Chair of the Advisory Committee of the National Center for Juvenile Justice. He is currently chairing the Supreme Court of Ohio's Task Force on Juvenile Diversion. He is a frequent presenter for the Ohio Judicial College and the Ohio State Bar Association. Locally, he has served as President of the Delaware County Historical Society and on the boards of the Central Ohio Symphony, the Strand Cultural Arts Society, the Andrews House and the Arena Fair Theater Company.

Legislative and Case Law Update

Hon. David A. Hejmanowski
Delaware County Probate/Juvenile Court



Legislative Update

Judge David A. Hejmanowski
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Outline:

- I. Amendments to Delinquency & Unruly Law**
 - 1. Senate Bill 288 (134th) - Criminal Omnibus**

- II. Amendments to Traffic Law**
 - 1. (None)**

- III. Amendments to A/N/D Cases**
 - 1. House Bill 4 (134th) - Child Abuse Reporting**
 - 2. Senate Bill 202 (134th) - Disability**

- IV. Probate Amendments**
 - 1. House Bill 5 (135th) – Adoption Modernization**
 - 2. Senate Bill 202 (134th) - Disability (see above)**

- V. Amendments to Court Rules**
 - 1. (None)**

- VI. Other Legislation of Note**
 - 1. House Bill 567 (134th) - Online Dockets**

I. Amendments to Delinquency & Unruly Law

Bill Document: Senate Bill 288 (Criminal Omnibus)

Sponsor: Sen. Manning

Effective Date: April 4, 2023

O.R.C. §§ Amended: Various

O.R.C. §§ Created: Various

This criminal omnibus bill makes several changes to juvenile law or to criminal and traffic law that affect juveniles, including:

1. New 2152.022 that provides that if a court transfers a delinquency complaint to the General Division is should transfer all counts in that complaint, and that any counts not so transferred remain within the jurisdiction of the juvenile division.

2. Creates a strangulation and suffocation offense that is a felony (degree varies based on several aggravating factors). 2903.18

3. Provides that if a juvenile commits a Prohibition offense (4301.69) while driving a motor vehicle, then the juvenile court must suspend the person's license or permit for a minimum of six months, or if the person does not have a license or permit, must suspend their ability to get one for a minimum of six months.

4. Amends 4511.204 to create the primary offense of using a wireless device while driving. The offense is a minor misdemeanor, two point offense on the first violation. The offense does not apply to using the device at a stoplight, holding the device to an ear for phone use, or using a speakerphone so long as the person is not holding the device to do so, using the device hands-free for navigation, using a bluetooth-enabled accessory, or using voice commands. Some penalties may be waived if the person attends a distracted-driver safety course.

II. Amendments to Traffic Law

III. Amendments to A/N/D Cases

Bill Document: House Bill 4 (Child Abuse Reporting)

Sponsor: Reps. Plummer & Manchester

Effective Date: May 30, 2022

O.R.C. §§ Amended: **Various**

O.R.C. §§ Created: **2151.4220 & 2151.4234**

1. Creates the 'Youth and Family Ombudsman Office' to investigate complaints about agencies and organizations involved in the child welfare, foster care and adoption realm and provides that the records of that office are not public records.

2. Creates an entirely new section for the MOU that is biennially signed by law enforcement, JFS and the Juvenile Court to determine practices in the county for investigating child abuse cases. Addresses requirements of the MOU, including information as to how information will be shared between organizations. Provides procedures for how the status of an investigation will be provided back to the initial reporter.

3. Adds, to existing law, that the following persons may conduct adoption home studies: (1) a current or former PCSA caseworker, (2) a current or former PCSA caseworker supervisor, and (3) an individual with at least a bachelor's degree in any of the specified human services fields and has at least one year of experience working with families and children.

Bill Document: **Senate Bill 202 (Disability)**

Sponsor: **Sens. Hackett and Antonio**

Effective Date: **April 3, 2023**

O.R.C. §§ Amended: **None**

O.R.C. §§ Created: **2131.031 to 2131.036**

Provides that no court, public children services agency, private child placing agency, or private noncustodial agency shall deny or limit a person from any of the following solely on the basis that the person has a disability:

1. Exercising custody, parenting time, or visitation rights with a minor;
2. Adopting a minor;
3. Serving as a foster caregiver for a minor;
4. Appointment as a guardian for a minor.

Further provides that this is not a guarantee that these things will be granted, but requires agencies and courts to consider whether modifications or supportive services should be granted, to provide its reasoning, and if a court proceeding, to document the decision in writing.

The act also permits a person to initiate an action for court review of a disability determination, but does not specify which court should hear the action or any procedures for such a hearing.

VI. Probate Amendments

Bill Document: House Bill 5 (Adoption Modernization)

Sponsor: Reps. Ray, Baker

Effective Date: March 20, 2025

O.R.C. §§ Amended: Much of R.C. 3107

O.R.C. §§ Created: 3107.051, 3107.20

Substantial modernization of language and procedure in adoption cases that, among many other things, does the following:

1. Provides clear definitions for ‘date of placement’ and ‘party’;
2. Clarifies that amount of time in kinship or foster home counts toward six months of placement;
3. Applies 5103.16 placement requirements to adoption petitions;
4. Removes ‘abandoned’ language from consent statute and inserts ‘meaningful and regular’ before support requirement;
5. Clarifies that a parent who is incarcerated beyond the child’s minority or who caused the death of the other parent need not consent;
6. Rewords mandatory notice to noncustodial biological parent, notes that certain dismissals should result in automatic referral to the juvenile court;
7. Provides a procedure to reconsider and vacate adoption orders if human trafficking is discovered;
8. Prohibits the court from considering the age of the petitioner;
9. Provides for automatic validity of foreign adoptions if certain conditions are met
10. Mandates notification of a finalized adoption to CSEA.

VII. Rule Changes

VIII. Other Legislation of Note

Bill Document: House Bill 567 (Online Dockets)

Sponsor: Reps. Stewart, Brown

Effective Date: April 6, 2023

O.R.C. §§ Amended: 2303.081, 2303.901

O.R.C. §§ Created: None

Requires the Clerk of the 'Common Pleas Court' to make all civil cases on the 'general docket' available electronically no later than 18 months after the effective date of the bill (October 6, 2024). The act specifically excludes the general docket of domestic relations, juvenile and probate courts.

Pending legislation in 136th General Assembly:

- House Bill 3 would make a 2nd violation of passing a stopped school bus within five years a four point offense and mandate a fine of \$250-\$1000 on a 1st offense and \$350-\$2000 on a 2nd within five years. *(Passed House on June 11th.)*
- House Bill 7 would make foster and kinship caregivers eligible for publicly funded child care.
- House Bill 13 would designate November 5th as Roy Rogers Day. *(Awaiting conference committee report)*
- House Bill 19 would change the standard for allowing minors to remain on the premises of an establishment with alcohol from knowing to reckless.
- House Bill 25 would establish a foster to college scholarship program.
- House Bill 26 would prohibit any state or local agency from adopting any rule or policy against compliance with federal immigration enforcement.
- House Bill 47 would enhance penalties for kidnapping and trafficking and change the trafficking mental state from knowing to reckless. *(Passed House on June 10th)*
- House Bill 68 would permit firearms in a building that is not a courthouse but in which courtrooms are located.
- House Bill 79 would increase the penalty for assault if the victim is a sports official.
- House Bill 82 would increase penalties for certain traffic offenses if committed in a construction zone.
- House Bill 84 would require age verification for adult websites and would create an offense of using a person's likeness in AI adult images.
- House Bill 111 would mandate an additional \$200 fine for speeding more than 30 miles over posted limit, but contains indigency waiver.
- House Bill 146 would make all juvenile probation officers unclassified.
- House Bill 208 would increase penalties for assault against a court official or prosecutor.
- House Bill 236 would create enhanced penalties for committing certain offenses while masked.
- House Bill 256 would eliminate the presumption that an unwed mother is the sole residential parent of a child and replace that with a rebuttable presumption.
- House Bill 270 would make Superman the official state superhero.

- House Bill 343 would mandate a DYS commitment on a third adjudication for felony theft or vandalism.
- House Bill 352 would expand domestic violence statutes to cover persons in a dating relationship.
- House Bill 359 would create the Joshua alert system for missing children with developmental disabilities. *Passed the House and assigned to committee in the Senate on November 18th.*
- House Bill 403 would establish a Toledo Mud Hens license plate.
- House Bill 411 would make several changes to juvenile licensing, including codifying traffic diversion and extending the permit period to 12 months.
- House Bill 418 would correct the Latin name of the Buckeye tree, which is **misspelled in the ORC** section that designates it the state tree.
- House Bill 460 would authorize certain elected officials, including legislators and judges (as well as magistrates) to carry a concealed weapon in a government building if they have a valid CCW.
- House Bill 469 would legally declare AI system to be non-sentient and deny them personhood.
- House Bill 491 would make several substantive changes to guardianship law.
- House Bill 518 would permit courts to maintain jurisdiction over a truant child during the next school year and clarify contributing provisions.
- House Bill 571 would repeal 2151.271 (transfer).
- Senate Bill 13 mirrors House Bill 25.
- Senate Bill 21 would make October 4th Rutherford B. Hayes Day. *Passed! Effective August 27th.*
- Senate Bill 24 would make the Wright Flyer III the State Airplane. *Passed! Effective July 7th.*
- Senate Bill 35 would create certain presumptions around Supported Decision Making plans. *Passed House and assigned to committee in Senate on October 21st.*
- Senate Bill 58 would expand caretaker affidavits to family caregivers other than grandparents.
- Senate Bill 64 would increase penalties for companion animal and animal cruelty offenses.
- Senate Bill 97 would double fines for failing to yield to a funeral procession.
- Senate Bill 133 would abolish the death penalty in Ohio.
- Senate Bill 158 would prohibit student cell phone use in public schools.
- Senate Bill 163 would add AI created images to the child porn prohibitions.
- Senate Bill 247 would designate the Buckeye as the state candy. *Passed the Senate and assigned to committee in the House.*

Delinquency/Traffic

In re K.J., 2025-Ohio-1424 (10th Dist.) – R.C. 2152.203 is not unconstitutional even though it does not consider a juvenile’s age or ability to pay restitution. Restitution is compensatory and not punitive.

In re K.C., 2025-Ohio-1203 (2nd Dist.) – Adjudication of a child for child endangering under R.C. 2919.22(B)(5) is supportable because the statute does not require the endangering to be done by a parent, and the definition of ‘person’ is broad enough that the offense can be committed by a juvenile.

In re D.L.M., 2025-Ohio-988 (2nd Dist.) – Although Marsy’s Law references certain mandatory court costs, those costs can still be waived if a juvenile is indigent, and it is error for a court to refuse to conduct the indigency analysis under a belief that the cost is mandatory.

State ex rel, Cincinnati Enquirer v. Bloom, 2024-Ohio-5029 (Supreme Court) – Ohio’s system of automatically sealing dismissed juvenile charges is unconstitutional as it violates the Open Courts provision of the Ohio Constitution. Sealing may only be untaken after the court has made an individualized determination of the facts of each case and given opposing parties an opportunity to object.

In re Application for Correction of Birth Record of Adelaide, 2024-Ohio-5393 (Supreme Court) – In this probate matter brought to determine whether gender marker changes in birth certificates may be undertaken via the birth correction statute, the Supreme Court failed to reach a decision when three Justices determined that appellate courts may not decide matters in which there is no opposing party and appeals courts (in fact, *all* courts, according to the decision) have authority to act only in those situations in which there is an adverse interest.

In re J.B., 2024-Ohio-2407 (11th Dist.) – It is not error for a juvenile court to proceed to a formal court process without first screening the case for possible diversion since doing so ‘implicitly declines’ the court’s discretion to proceed informally.

In re P.V., 2024-Ohio-2324 (11th Dist.) – Juveniles have no right to have charges considered by a grand jury and their equal protection rights are not violated by Ohio’s direct charge process for juvenile delinquency complaints.

In re T.I., 2024-Ohio-224 (10th Dist.) – It was not error for the juvenile court to deny a motion to suppress statements made to a detective when the juvenile was in his mother’s home, with his mother present, as those circumstances indicated that he was not in custody and Miranda warnings were not necessary.

In re A.J., 2024-Ohio-953 (8th Dist.) – Where a court overrules an objection to a magistrate’s decision before a transcript has been filed, an abuse of discretion has occurred.

In re J.C., 2024-Ohio-1839 (12th Dist.) – Statements made by a grandfather to an investigating officer about the state of his home following a sword-swinging attack by his grandson, were not hearsay, as they were non-testimonial statements in furtherance of the police investigation of an emergency situation.

In re A.C., 2024-Ohio-1661 (1st Dist.) – Where the parties agree in plea negotiations that a juvenile may not seek judicial release, the juvenile court may still grant judicial release so long as it does not adopt that term as part of disposition, since the court is not party to plea negotiations.

State v. Williams 2024-Ohio-1433 (Supreme Court) – A prosecutor may indict a juvenile on charges that were not originally filed in juvenile court if those charges are related to other acts that the juvenile court has bound over to the adult court for prosecution. (Upholding *State v. Burns*, 170 Ohio St.3d 57 (2022))

State v. Grim, 2023-Ohio-4474 (3rd Dist.) – The juvenile’s confrontation clause rights were not violated by the court’s permitting a detective to testify about co-defendant’s statements at a bindover probable cause hearing, because probable cause is not a trial and confrontation clause rights are ‘trial rights’.

In re J.A., 2023-Ohio-4388 (1st Dist.) – The ‘position of authority’ basis for a rape adjudication is inapplicable where both victim and offender are under the age of 13, pursuant to *In re D.B.*

In re D.T., 2023-Ohio-4382 (9th Dist.) – Denial of a motion to suppress is overturned when a juvenile was in custody was read his Miranda rights, but never asked whether he understood them or wished to waive them.

In re A.U., 2023-Ohio-4341 (6th Dist.) – A juvenile court need not give a juvenile confinement credit for time spent a treatment facility that is not locked and secure as it does not protect the public nor restrict the juvenile’s freedom of movement to a degree that dictates such credit being applied.

In re J.M.D., 2023-Ohio-4158 (2nd Dist.) – A denial of a motion for judicial release is not a final, appealable order.

In re S.J., 2023-Ohio-3441 (1st Dist.) – Adjudication for Obstruction of Justice for recording arrest of another juvenile was in violation of First Amendment where arresting officer failed to comply with department policy and did not request juvenile was who recording to move to a position where safety risk was lessened.

In re M.L., 2023-Ohio-2515 (5th Dist.) – It is improper for a juvenile court to adjudicate a child dependent when the only pending matter is a delinquency complaint. However, many dependency-related court orders can be imposed as terms of disposition in a delinquency matter.

In re H.D., 2023-Ohio-1849 (12th Dist.) – The fact that a child is in the permanent custody of a children’s services agency in county A does not preclude prosecution of that child in county B for a delinquency offense if the offense occurred in county B.

In re Z.P., 2023-Ohio-3767 (5th Dist.) – It is not inappropriate, under Juv.R. 17, for a court to assess subpoena costs to a prosecutor’s office where the prosecutor files a late amendment, on the day of the adjudicatory hearing.

In re A.B., 2023-Ohio-1047 (8th Dist.) – While courts generally have leeway to apply sex offender classification criteria, the misapplication of specific facts in that process (here, stating that the juvenile had not been involved in sex offender therapy when he had) results in reversible error by the trial court.

State v. McBride, 2023-Ohio-161 (1st Dist.) – In a discretionary bindover, the State need not provide affirmative evidence of a lack of amenability to overcome expert opinion that the juvenile is amenable, so long as the Court provides objective reasons for not accepting the experts’ opinions based on a higher risk for reoffending.

In re R.S., 2023-Ohio-45 (12th Dist.) – On an adjudication of theft, the Court’s order for restitution of \$50,167.49 is not in error where there is no evidence of insurance reimbursement, and no evidence that the amount exceeded the victim’s loss.

Abuse, Neglect and Dependency

In re C/W Children, 2026-Ohio-138 (1st Dist.) – Adjudication of children as neglected is not supported by a showing that mother phoned a suicide hotline and that she was briefly hospitalized for a mental health evaluation, as those facts do not establish abandonment.

In re J.H., 2026-Ohio-4 (2nd Dist.) – Denial of a continuance is not error where the court attempted to permit the parents to participate in a permanent custody proceeding via Zoom, but technical issues prevented their participation. The claim by parents’ counsel that they would have called their clients to testify is not persuasive where they failed to proffer evidence.

In re I.M., 2025-Ohio-2154 (8th Dist.) – Permanent custody award reversed where certified mail receipts to mother had signatures that were not hers and at least one was shown to have been delivered when she was at work.

In re T.S., 2025-Ohio-2149 (9th Dist.) – Permanent custody award reversed where court did not wait for results of ICPC home study for potential placement with mother and aunts out of state. Further, appellate court holds that R.C. 2151.353(G) permits temporary custody to continue as long as the permanent custody is pending, even if beyond two year period.

In re C.H., 2025-Ohio-1838 (8th Dist.) – Permanent custody award is reversed where father objected to the Magistrate’s decision granting PC and the trial court adopted the decision without waiting for father to timely file transcript of proceedings.

In re B.R., 2025-Ohio-599 (3rd Dist.) – It is error for a trial court to rely on a report filed by a CPS agency *after* the conclusion of a permanency trial, since the parent has not had any opportunity to respond to or challenge the assertions in that report.

In re A.P., 2024-Ohio-5985 (3rd Dist.) – Prenatal drug use should be filed under the 2151.031(E) section of the abuse statute (harm or threat of harm from act of parent) and is not proper under 2151.031(C) (referencing the criminal child endangering section), citing *State v. Gray*, 62 Ohio St.3d 514 (1992).

In re J.M., 2024-Ohio-5586 (9th Dist.) – Permanent custody award to grandparents is upheld where the mother failed to comply with case plan terms or participate in ongoing substance abuse treatment and the father, although fully compliant with case plan, continued to live with mother.

In re L.M., 2024-Ohio-5549 (12th Dist.) – It is error for a juvenile court to fail to inquire (at some stage of the proceedings) whether an abused, neglected, or dependent child has Native American heritage such that ICWA would apply. The fact that no party raised the issue does not forgive an eventual ICWA violation. See, also, *In re A.G.*, 2024-Ohio-2136 (10th Dist.) holding that a court must ask each participant at a permanent custody hearing whether the child has Native American heritage. (Compare with *In re N.W.*, 2024-Ohio-6092 (9th Dist.), holding that because an inquiry was made at adjudication, no further inquiry is necessary at PC stage.)

In re R.G.M., 2024-Ohio-2737 – Supreme Court finds that R.C. 2151.35(B)(2) permits a court to admit a psychologist’s report in a child welfare case even where the report is hearsay and the psychologist is not subpoenaed, though notes that it would be inadmissible hearsay in a permanent custody matter.

In re C.M., 2024-Ohio-2713 (8th Dist.) – A dependency adjudication is reversed and remanded where the entry contains no conclusions of law, no findings of danger to the children, and no underlying findings about family issues that caused dependency.

In re A.A., 2024-Ohio-224 (10th Dist.) – Adjudication of a child as dependent was proper despite G.A.L.’s failure to observe mother and child together in violation of Sup.R. 48.03(D), as that rule is ‘a general guideline that lacks the force of law.’

In re I.C., S.C., 2023-Ohio-4707 (3rd Dist.) – Permanent custody was not improper in case where parents had successfully completed all case plan terms but, in part due to cognitive limitations, were unable to provide safe and stable home for children, and there was evidence that home was unsafe or inappropriate.

In re K.A., 2023-Ohio-4401 (9th Dist.) – Failure to hold a dispositional hearing on a permanent custody motion with 120 days is not dispositive and does not divest the trial court of jurisdiction as the legislature has specifically authorized the court to exceed that time ‘for good cause’.

In re D.D., 2023-Ohio-4147 (10th Dist.) – Awarding permanent custody to the agency is in error where a father completed many of his case plan terms but was precluded from completing family counseling because the agency case worked failed to make the necessary referral.

In re C.G., 2023-Ohio-3853 (5th Dist.) – Award of permanent custody was in error where parents completed all case plan terms, maintained sobriety and employment, completed counseling, and completed parenting classes as case plan should have allowed for sufficient time for parents to demonstrate that success could be maintained.

In re R.S., 2023-Ohio-3323 (1st Dist.) – Adjudication of children as dependent, based on mother’s mental incapacity, was overturned where mother had ensured that children were cared for appropriately by grandparent, contacted police to report her own mental health issues, and sought mental health treatment.

In re M.L., 2023-Ohio-2515 (5th Dist.) – It is improper for a juvenile court to adjudicate a child dependent when the only pending matter is a delinquency complaint. However, many dependency-related court orders can be imposed as terms of disposition in a delinquency matter.

In re J.M., 2023-Ohio-1390 (5th Dist.) – Where a relative makes an oral motion for custody in a P.C. case and signs a statement of legal understanding, but never files a motion for custody, it is not error for the trial court to grant permanent custody to the department.

In re C.P., 2023-Ohio-1350 (9th Dist.) – In an award of legal custody of dependent child to aunt, an order that biological father have only remote/video visitation cannot be supported absent evidence of why in-person visitation was unsafe or otherwise inappropriate.

In re J.L., 2023-Ohio-1127 (9th Dist.) – An adjudication of dependent is in error where the only evidence is that the children and mother have had to stay at friends’ houses, but where the children are regularly attending school, their basic needs are being met, and the temporary housing is adequate and safe. The lack of a permanent address does not, *per se*, equate to homelessness.

In re A.C., 2023-Ohio-722 (4th Dist.) – Where an agency dismisses and refiles a case, a parent’s counsel withdraws, and the parent does not appear in the new case and make a request for counsel, it is still error for the court not to appoint subsequent counsel for the parent, as the parent may reasonably be relying on the fact that they are represented, and the Court has not been able to obtain a valid waiver of counsel from the absent parent.

In re J.S., 2023-Ohio-591 (9th) – A parent may waive the right to contest a permanent custody motion specific to an outcome (here, permanent custody being awarded to the department) and absent that outcome, the waiver is not valid.

