As Introduced

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H. B. No. 728

Representatives Odioso, Plummer

To amend sections 2151.35 and 2152.11 of the Revised Code to eliminate informal hearings and dismissals in the best interest of the child in certain juvenile delinquency cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2151.35 and 2152.11 of the Revised Code be amended to read as follows:

Sec. 2151.35. (A)(1) Except as otherwise provided by division (A)(3) or (4) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed.

Except cases involving children who are alleged to be

unruly children for being habitual truants or alleged to be delinquent children for violating court orders regarding their prior adjudication as unruly children for being habitual truants, and except as otherwise provided in section 2152.13 of the Revised Code, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except cases involving serious youthful offenders under section 2152.13 of the Revised Code.

If a complaint alleges a child to be a delinquent child, unruly child, or juvenile traffic offender, the court shall require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

If the court finds from clear and convincing evidence that the child violated section 2151.87 of the Revised Code, the court shall proceed in accordance with divisions (F) and (G) of that section.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed

hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 or Chapter 2152. of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (C)(1) of section 2151.354 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent child for violating a court order regarding the child's prior adjudication as an unruly child for being an habitual truant, and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (A)(7)(a) of section 2152.19 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (A)(7)(b) of section 2152.19 of the Revised Code.

If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction

theretofore ordered.

(2) A record of all testimony and other oral proceedings in juvenile court shall be made in all proceedings that are held pursuant to section 2151.414 of the Revised Code or in which an order of disposition may be made pursuant to division (A)(4) of section 2151.353 of the Revised Code, and shall be made upon request in any other proceedings. The record shall be made as provided in section 2301.20 of the Revised Code.

(3) The authority of a juvenile court to exclude the general public from its hearings that is provided by division (A)(1) of this section does not limit or affect any right of a victim of a crime or delinquent act, or of a victim's representative, under Chapter 2930. of the Revised Code.

(4) The authority of a juvenile court to conduct its hearings in an informal manner does not apply to an offense that would be a felony, including any specifications, or an offense of violence if committed by an adult.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed except that, for good cause shown, the court, on its own motion or on the motion

of any party or the child's guardian ad litem, may continue the dispositional hearing for a reasonable period of time beyond the ninety-day deadline. This extension beyond the ninety-day deadline shall not exceed forty-five days and shall not be available for any case in which the complaint was dismissed and subsequently refiled.

If the dispositional hearing is not held within the period of time required by this division, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

(2) The dispositional hearing shall be conducted in accordance with all of the following:

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(3) After the conclusion of the dispositional hearing, the court shall enter an appropriate judgment within seven days and shall schedule the date for the hearing to be held pursuant to section 2151.415 of the Revised Code. The court may make any

order of disposition that is set forth in section 2151.353 of the Revised Code. A copy of the judgment shall be given to each party and to the child's guardian ad litem. If the judgment is conditional, the order shall state the conditions of the judgment. If the child is not returned to the child's own home, the court shall determine which school district shall bear the cost of the child's education and shall comply with section 2151.36 of the Revised Code.

(4) As part of its dispositional order, the court may issue any order described in division (B) of section 2151.33 of the Revised Code.

(C) The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules.

(D) If the court issues an order pursuant to division (A)(4) of section 2151.353 of the Revised Code committing a child to the permanent custody of a public children services agency or a private child placing agency, the parents of the child whose parental rights were terminated cease to be parties to the action upon the issuance of the order. This division is not intended to eliminate or restrict any right of the parents to appeal the permanent custody order issued pursuant to division (A)(4) of section 2151.353 of the Revised Code.

(E) Each juvenile court shall schedule its hearings in accordance with the time requirements of this chapter.

(F) In cases regarding abused, neglected, or dependent children, the court may admit any statement of a child that the court determines to be excluded by the hearsay rule if the proponent of the statement informs the adverse party of the

proponent's intention to offer the statement and of the particulars of the statement, including the name of the declarant, sufficiently in advance of the hearing to provide the party with a fair opportunity to prepare to challenge, respond to, or defend against the statement, and the court determines all of the following:

(1) The statement has circumstantial guarantees of trustworthiness;

(2) The statement is offered as evidence of a material fact;

(3) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts;

(4) The general purposes of the evidence rules and the interests of justice will best be served by the admission of the statement into evidence.

(G) If a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition. On motion of the prosecuting attorney, guardian ad litem, or any party, or in its own discretion, the court may order that the deposition be videotaped. Any deposition taken under this division shall be taken with a judge or referee present.

If a deposition taken under this division is intended to be offered as evidence at the hearing, it shall be filed with the court. Part or all of the deposition is admissible in evidence if counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination

and the judge determines that there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of participating at the hearing.

Sec. 2152.11. (A) A child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under this section if the child's case was not transferred under section 2152.12 of the Revised Code. If a child is adjudicated a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the juvenile court shall not dismiss the case or any specifications without disposition, even if the court determines that dismissal would be in the best interest of the child. If the complaint, indictment, or information charging the act includes one or more of the following factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition under this section;

(1) The act charged against the child would be an offense of violence if committed by an adult.

(2) During the commission of the act charged, the child used a firearm, displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm.

(3) The child previously was admitted to a department of youth services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult.

(B) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (B)(1) and (2) of this section do not apply.

(C) If a child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (C)(1) and (2) of this section do not apply.

(D) If a child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was sixteen or seventeen years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section;

(2) Discretionary SYO, if any of the following applies:

(a) The act was committed when the child was sixteen or seventeen years of age, and division (D)(1) of this section does not apply.

(b) The act was committed when the child was fourteen or fifteen years of age.

(c) The act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section.

(d) The act was committed when the child was ten or eleven years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section.

(3) Traditional juvenile, if divisions (D)(1) and (2) of this section do not apply.

(E) If a child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was fourteen, fifteen, sixteen, or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (E)(1) and (2) of this section do not apply.

(F) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was fourteen or fifteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (F)(1) and (2) of this section do not apply.

(G) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for whichever of the following dispositions is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(2) Traditional juvenile, if division (G)(1) of this section does not apply.

(H) The following table describes the dispositions that a juvenile court may impose on a delinquent child:

	1	2	3	4	5
A	OFFENSE CATEGORY	AGE	AGE	AGE	AGE

B	(Enhancement factors)	16 & 17	14 & 15	12 & 13	10 & 11
C	Murder/aggravated murder	N/A	MSYO, TJ	DSYO, TJ	DSYO, TJ
D	Attempted murder/attempted aggravated murder	N/A	MSYO, TJ	DSYO, TJ	DSYO, TJ
E	F1 (Enhanced by offense of violence factor and either disposition firearm factor or previous DYS admission factor)	MSYO, TJ	DSYO, TJ	DSYO, TJ	DSYO, TJ
F	F1 (Enhanced by any single or other combination of enhancement factors)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ
G	F1 (Not enhanced)	DSYO, TJ	DSYO, TJ	TJ	TJ
H	F2 (Enhanced by any enhancement factor)	DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ
I	F2 (Not enhanced)	DSYO, TJ	DSYO, TJ	TJ	TJ
J	F3 (Enhanced by any enhancement factor)	DSYO, TJ	DSYO, TJ	TJ	TJ
K	F3 (Not enhanced)	DSYO, TJ	TJ	TJ	TJ
L	F4 (Enhanced by any enhancement factor)	DSYO, TJ	TJ	TJ	TJ

M	F4 (Not enhanced)	TJ	TJ	TJ	TJ
N	F5 (Enhanced by any enhancement factor)	DSYO, TJ	TJ	TJ	TJ
O	F5 (Not enhanced)	TJ	TJ	TJ	TJ

(I) The table in division (H) of this section is for illustrative purposes only. If the table conflicts with any provision of divisions (A) to (G) of this section, divisions (A) to (G) of this section shall control.

(J) Key for table in division (H) of this section:

(1) "Any enhancement factor" applies when the criteria described in division (A)(1), (2), or (3) of this section apply.

(2) The "disposition firearm factor" applies when the criteria described in division (A)(2) of this section apply.

(3) "DSYO" refers to discretionary serious youthful offender disposition.

(4) "F1" refers to an act that would be a felony of the first degree if committed by an adult.

(5) "F2" refers to an act that would be a felony of the second degree if committed by an adult.

(6) "F3" refers to an act that would be a felony of the third degree if committed by an adult.

(7) "F4" refers to an act that would be a felony of the fourth degree if committed by an adult.

(8) "F5" refers to an act that would be a felony of the fifth degree if committed by an adult.

(9) "MSYO" refers to mandatory serious youthful offender disposition.

(10) The "offense of violence factor" applies when the criteria described in division (A)(1) of this section apply.

(11) The "previous DYS admission factor" applies when the criteria described in division (A)(3) of this section apply.

(12) "TJ" refers to traditional juvenile.

Section 2. That existing sections 2151.35 and 2152.11 of the Revised Code are hereby repealed.