

[ORC Ann. 2151.31](#)

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 105 (SB 81), except for file 96 (HB 87).

Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile (Chs. 2101 — 2153) > Chapter 2151: Juvenile Court (§§ 2151.01 — 2151.99) > Procedure in Children's Cases (§§ 2151.25 — 2151.331)

§ 2151.31 Apprehension, custody, and detention.

(A) A child may be taken into custody in any of the following ways:

(1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of [section 2930.05 of the Revised Code](#);

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in [section 2151.03 of the Revised Code](#), and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

(4) By an enforcement official, as defined in [section 4109.01 of the Revised Code](#), under the circumstances set forth in [section 4109.08 of the Revised Code](#);

(5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

(a) 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.

(b) A complaint has been filed with respect to the child under [section 2151.27](#) or [2152.021 of the Revised Code](#) or the child has been indicted under division (A) of [section 2152.13 of the Revised Code](#) or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.

(c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

(d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

(B)

(1) The taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.

(2) Except as provided in division (C) of [section 2151.311 of the Revised Code](#), a child taken into custody shall not be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held.

(C)

(1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under [section 2152.04 of the Revised Code](#) or if the child is alleged to be a serious youthful offender under [section 2152.13 of the Revised Code](#) and is not released on bond.

(D) Upon receipt of notice from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of the child into custody if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after the judge or referee determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.

(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than seventy-two hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, it shall order the child released to the custody of the

child's parents, guardian, or custodian. If the court determines at the hearing that there is probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

- (1) Ensure that a complaint is filed or has been filed;
- (2) Comply with [section 2151.419 of the Revised Code](#);
- (3) Hold a hearing pursuant to [section 2151.314 of the Revised Code](#) to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of [section 2151.031 of the Revised Code](#), the court may do any of the following:

- (1) Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;
- (2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;
- (3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

History

133 v H 320 (Eff 11-19-69); 137 v H 883 (Eff 1-12-79); 142 v S 89 (Eff 1-1-89); 143 v H 166 (Eff 2-14-90); [145 v H 571](#) (Eff 10-6-94); [147 v H 408](#) (Eff 10-1-97); [147 v H 484](#) (Eff 3-18-99); [148 v H 176](#) (Eff 10-29-99); [148 v H 3](#) (Eff 11-22-99); [148 v S 179](#), § 3 (Eff 1-1-2002); [149 v H 180](#). Eff 5-16-2002.

Annotations

Notes

Editor's Notes

See provisions, § 3 of HB 180 (149 v —), following RC § [2151.28](#).

Notes to Decisions

Constitutionality

Authority of police officer

Bail

Contempt**Emergency custody****False imprisonment****Habeas corpus****Immunity****Parole violation****Probable cause hearing****Reasonable efforts to reunify family****Constitutionality**

Pretrial detention of juveniles presenting a serious risk of committing an offense was constitutional: [*Schall v. Martin*, 467 US 253, 104 S. 81 L. Ed. 2d 207 \(Ct 1984\)](#).

Authority of police officer

A police officer may take a child into protective custody without process where he has reasonable grounds to believe said child to be a delinquent, neglected or dependent child, and it is not necessary that the child be committing a misdemeanor in the officer's presence or that probable cause exist for the officer to believe that the child has been involved in the commission of a felony: [*In re L---*, 25 Ohio Op. 2d 369, 194 N.E.2d 797, 92 Ohio Law Abs. 475, 1963 Ohio Misc. LEXIS 240 \(Ohio Juv. Ct. 1963\)](#).

Bail

A juvenile court may admit a juvenile to bail in a case where the state has moved for a bindover. [*R.C. 2151.31*](#) and [*JuvR 7*](#), taken together, amount to a presumption against detention: [*In re K.G.*, 89 Ohio Misc. 2d 16, 693 N.E.2d 1186, 1998 Ohio Misc. LEXIS 1 \(Ohio C.P. 1998\)](#).

Contempt

Trial court erred in holding a social worker and assistant prosecutor in contempt for failing to carry out an order requiring the immediate removal of a child if either of two events occurred; the order for summary removal of the child without a fair hearing was without authority and contrary to the statutory requirements of R.C. Chapter 2151, and thus, the order could not support a contempt finding. [*In re Brewster*, 2015-Ohio-4984, 2015 Ohio App. LEXIS 4817 \(Ohio Ct. App., Cuyahoga County 2015\)](#).

Emergency custody

Trial court erred in ordering a mother's children into immediate emergency custody contingent upon an unexcused absence or tardiness at school, or the moving of the family from the maternal grandmother's home because

emergency removal required more than the threat of future harm, required consideration of the factors that existed at the time of removal, and, therefore, such orders could not be preadjudicated; the trial court's order also violated the guarantee of due process. [In re B.W., 2015-Ohio-2768, 2015 Ohio App. LEXIS 2691 \(Ohio Ct. App., Cuyahoga County 2015\)](#).

False imprisonment

In an action for damages for false imprisonment, the plaintiff has the burden to prove that the detention or restraint caused by the defendant was an unreasonable detention or restraint and was not accidental or incidental to the welfare of the plaintiff: [Garland v. Dustman, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153, 1969 Ohio App. LEXIS 585 \(Ohio Ct. App., Portage County 1969\)](#).

Habeas corpus

Habeas corpus relief was not available to a mother and a county department of children and family services with regard to an emergency custody order entered by a juvenile court regarding the mother's five children; inter alia, the juvenile court had jurisdiction to place the children into emergency temporary custody under [R.C. 2151.23\(A\)\(1\), 2151.31\(A\)](#) and [2151.353\(A\)\(2\)](#), and the exigent circumstances necessary to support the writ of habeas corpus were not present. [Williams v. O'Malley, 2010-Ohio-3897, 2010 Ohio App. LEXIS 3301 \(Ohio Ct. App., Cuyahoga County 2010\)](#).

Immunity

A police officer was not entitled to summary judgment based on immunity where an arrest may not have been objectively reasonable: [Hicks v. Leffler, 119 Ohio App. 3d 424, 695 N.E.2d 777, 1997 Ohio App. LEXIS 1677 \(Ohio Ct. App., Franklin County 1997\)](#).

A juvenile judge and the quasi-judicial officers of a juvenile court are immune from liability for causing the detention of juveniles when they are acting within the scope of their jurisdiction, and public policy will not justify or sanction liability in damages for false imprisonment against enforcement officers acting in good faith under the direct orders of such juvenile authorities: [Garland v. Dustman, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153, 1969 Ohio App. LEXIS 585 \(Ohio Ct. App., Portage County 1969\)](#).

Under the provisions of [R.C. 2151.14](#) and [2151.31](#), it is the manifest duty of enforcement officers to co-operate with and assist the juvenile authorities in the performance of their duties when such officers are specifically requested to do so by the juvenile authorities; and such officers may avoid liability in an action for false imprisonment by showing that they were justified in the detention or restraint of the juvenile made under the specific direction and order of the juvenile authorities: [Garland v. Dustman, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153, 1969 Ohio App. LEXIS 585 \(Ohio Ct. App., Portage County 1969\)](#).

Parole violation

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful: [In re Gillespie, 2002-Ohio-7025, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio App. LEXIS 6847 \(Ohio Ct. App., Franklin County 2002\)](#).

Probable cause hearing

Trial court complied with [R.C. 2151.31](#) after granting an ex-parte order giving the agency temporary emergency custody of three of her children; because the mother wished to be represented by counsel at the probable cause hearing, the juvenile court appointed counsel for her, and rescheduled the probable cause hearing for the next week. [In re Hammons, 2008-Ohio-3598, 2008 Ohio App. LEXIS 3030 \(Ohio Ct. App., Defiance County 2008\)](#).

Reasonable efforts to reunify family

Requirement in [R.C. 2151.419\(A\)\(1\)](#) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to [R.C. 2151.28](#), [2151.31\(E\)](#), [2151.314](#), [2151.33](#), and [2151.353](#), but it did not apply when permanent custody was sought pursuant to [R.C. 2151.413](#) or when such a motion was heard pursuant to [R.C. 2151.414](#), so it did not apply to an agency's motion for permanent custody of a father's children. [In re R.A.M., 2006-Ohio-3242, 2006 Ohio App. LEXIS 3149 \(Ohio Ct. App., Clermont County 2006\)](#).

In a dependency case, even though a complaint was not timely filed, any error relating to such was waived because an objection was not made. The plain error doctrine was not applied either because the untimely filing in no way seriously affected the basic fairness, integrity, or public reputation of the judicial process or challenged the legitimacy of the underlying judicial process itself. [In re M.R., 2011-Ohio-6528, 2011 Ohio App. LEXIS 5374 \(Ohio Ct. App., Defiance County 2011\)](#).

Opinion Notes

ATTORNEY GENERAL OPINIONS

Under Ohio law, unless matters of public safety are involved, a child alleged to be abused, neglected, or dependent may be removed from his home by court order only upon a judicial determination that continuation in the home would be contrary to the child's best interests: [1987 Ohio Op. Att'y Gen. No. 105](#).

If a peace officer determines that the detention or shelter care of a child appears to be required as provided in [R.C. 2151.31\(C\)](#) and JuvR 7(A), the peace officer is required by [R.C. 2151.311\(A\)](#) and JuvR 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child: [1996 Ohio Op. Att'y Gen. No. 061 \(1996\)](#).

Research References & Practice Aids

Cross-References to Related Sections

Apprehension of supervised release violators, RC § [5139.52](#).

Complaint against child, RC § [2151.27](#).

Definitions, RC § [2151.011](#).

Abused child, RC § [2151.031](#).

Child without proper parental care, RC § [2151.05](#).

Delinquent child, RC § [2152.02](#).

Dependent child, RC § [2151.04](#).

Juvenile traffic offender, RC § [2152.02](#).

Neglected child, RC § [2151.03](#).

Residence or legal settlement of child, RC § [2151.06](#).

Serious youthful offender, RC § [2152.02](#).

Unruly child, RC § [2151.022](#).

Detention or shelter care hearing, RC § [2151.314](#).

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § [2151.419](#).

Foster caregivers to receive information concerning certain delinquent children, RC § [2152.72](#).

Original jurisdiction of juvenile court, RC § [2151.23](#).

Procedure upon apprehension, RC § [2151.311](#).

Temporary custody orders, RC § [2151.33](#).

Ohio Rules

Custody and detention, JuvR 6, 7.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: ex parte emergency order. [OAC 5101:2-1-01](#).

Substitute care: information to be provided to caregivers, etc., and to be included in individual child care agreement. [OAC 5101:2-42-90](#).