

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

v.

ALEXANDER QUARTERMAN

Appellant

Case No. 2013-1591

On Appeal from the  
County Court of Appeals  
Ninth Appellate District

C.A. Case No. 26400

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**BRIEF OF *AMICUS CURIAE* CHILDREN'S LAW CENTER, INC., ET. AL.  
IN SUPPORT OF APPELLANT ALEXANDER QUARTERMAN**

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## STATEMENT OF INTEREST OF *AMICI CURIAE*

The **Children's Law Center, Inc. (CLC)** is a non-profit organization committed to the protection and enhancement of the legal rights of children. CLC strives to accomplish this mission through various means, including providing legal representation for youth and advocating for systemic and societal change. For over 20 years, CLC has worked in many settings, including the fields of special education, custody, and juvenile justice, to ensure that youth are treated humanely, can access services, and are represented by counsel. For the past two years, CLC has worked on issues facing Ohio youth prosecuted in adult court and placed in adult facilities, including collecting data and issuing several reports on this topic and conducting interviews of youth in the adult court and their families as well as juvenile justice stakeholders and decision-makers. Based on this research and national research, CLC supports the elimination of mandatory bindover.

The **First Baptist Church of Dayton** is a Baptist Church in the heart of downtown Dayton and is affiliated with the American Baptist Churches U.S.A. (ABC USA). The national ABC USA's policy statement on criminal justice provides that specific programs should be developed to meet the needs of youthful offenders, who have special needs that are unique from adults. It also recognizes that an individual's background or circumstances into which they are born or life events can increase the likelihood of criminal justice system involvement. As Christians, we believe that the criminal justice system must be humane and just and that each person is unique. Therefore, we support the position taken in this brief of opposing the use of mandatory bindover for Ohio youth.

Amicus curiae, **The Franklin County Public Defender Office** is a countywide agency that provides comprehensive legal representation to indigent clients in criminal and juvenile

proceedings in Franklin County so as to fulfill the constitutional mandate of “equal justice under the law.”

The **Justice for Children Project** at The Ohio State University Moritz College of Law combines legal education with zealous advocacy for the rights of children across a variety of systems. A key part of the Project, the Justice for Children Clinic provides law students with the opportunity to represent children in neglect and dependency proceedings, delinquency cases, immigration adjustments and educational issues. The students and faculty in the Clinic work to ensure that the expressed desires of their clients are heard, that juvenile rights are taken seriously, and that the juvenile system maintains its commitment to rehabilitating children and reunifying families. The Justice for Children Project hosts symposia and participates in the national discourse regarding children who may be directly and adversely affected by the unconstitutional application of R.C. 2152.10 and 2152.12, and recognizes their contrary effects on the rehabilitative purpose of the juvenile system. It is critically important to the due process rights of our youth and the credibility of the juvenile justice system that the inherent differences between youths and adults be given sufficient weight under the law.

The **Juvenile Justice Coalition (JJC)** is a membership organization, established in 1993, with members (organizations, families and individuals) throughout Ohio. The mission of the JJC is to promote effective programs, equitable treatment of youth, and public policy that will reduce juvenile delinquency in Ohio. JJC supports the appellant Andrew Quarterman because we believe that mandatory bindover does not allow for consideration of a youth’s individual characteristics, background, or involvement in the offense. We believe that mandatory bindover should be eliminated for juveniles in Ohio. This position is derived from our mission to promote equitable treatment of youth.

The **Law Office of the Montgomery County, Ohio, Public Defender** represents youth in juvenile proceedings in Montgomery County. Representing these clients, we have seen firsthand that each youth's circumstances, background, and alleged involvement in the offense differs significantly. Therefore, we support the premise in this brief that the juvenile court should make an individualized decision before transferring a youth to adult court.

The **League of Women Voters of Ohio** (LWV of Ohio), a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The LWV of Ohio has adopted several policy positions on juvenile justice relevant to this case, including that youth under the age of 18 are not adults and their treatment within the juvenile justice system should relate to their stage of development, that children should not be held in adult prisons or detention facilities, and – most importantly – that each case should receive individual evaluation before the court and judges should use their discretion to find the best resolution of each case. Therefore, the LWV of Ohio supports the elimination of mandatory bindover.

**MLK Dayton, Inc.** works to inspire citizens and act on the vision of social justice influenced by the legacy of Dr. Martin Luther King, Jr. Each year we coordinate Martin Luther King, Jr. day events and host year round educational events. We are signing on as amici to this brief because we support the premise that youth's individual characteristics must be taken into consideration to fulfill the basic premise of justice.

The National Alliance on Mental Illness (“NAMI”) is the nation's largest grassroots mental health organization. **NAMI Ohio** is dedicated to improving the quality of life, dignity and respect for persons with serious mental health issues and to offering support to their families

and close friends. NAMI Ohio represents the interests of individuals with serious mental illness, including youth. These individuals are among those affected by mandatory bindover. Mandatory bindover does not allow the juvenile court system to take into account the individual characteristics of youth, including their mental health history or treatment needs.

The **National Center for Adoption Law & Policy** at Capital University Law School works everyday toward the goal that all children -- especially those who have been abused or neglected or are dependent on the state for their care -- have safe, healthy, permanent homes. The National Center for Adoption Law & Policy seeks to improve the law, policies, and practices associated with child protection, adoption, and juvenile justice systems through education, advocacy, and research. The Center works closely with state and local juvenile courts, state agencies and juvenile justice stakeholders to ensure that young persons who are involved with Ohio's juvenile justice systems are afforded access to legal services and fair and equal treatment under the law. Under the auspices of our Youth Advocacy Center, we provide legal representation and counseling on a range of civil matters to systems-involved youth to help them upon emancipation from foster care or re-entry from the juvenile justice system. We have a special interest in the outcome of this case, which we hope will eliminate Ohio's mandatory bind over law.

The **Office of the Hamilton County Public Defender** is constituted pursuant to R.C. Chapter 120. The Public Defender strives "[t]o defend the life and liberty of our clients and to protect their statutory and constitutional rights, by providing zealous, effective, and ethical representation." Hamilton County Public Defender, Mission/History, <http://www.hamiltoncountypd.org/index.php?page=mission-history> (accessed Mar. 4, 2014). The Juvenile Division of the Public Defender's office represents children charged with delinquency

offenses in Hamilton County. The Juvenile Division has represented and currently represents a significant number of children who are subject to transfer for adult criminal prosecution. In 2012, the Hamilton County Juvenile Court transferred 35 children for adult criminal prosecution. Hamilton County Juvenile Court, *Annual Report*, p. 14, available at [http://www.hamilton-co.org/juvenilecourt/Annual\\_Report/2012\\_Annual\\_Report.pdf](http://www.hamilton-co.org/juvenilecourt/Annual_Report/2012_Annual_Report.pdf) (accessed Mar. 4, 2014). Of these, 19 were subjected to mandatory transfer. *Id.* The Public Defender's office represented 13 of these children, who were subjected mandatory transfer, in 2012. The Public Defender's office represented 8 such children, in 2013. Thus, a significant number of the Public Defender's clients would be directly impacted by the outcome of the present litigation. The Hamilton County Public Defender seeks the fairest treatment and best outcomes for these children.

Founded in 1973, the **Ohio Association of Child Caring Agencies** (OACCA) is a statewide association of child and family service providers that are united together to develop the best care possible for Ohio's children and families. OACCA strives to ensure that Ohio's evolving public policies result in a system that is integrated, efficient, cost effective, and beneficial to those that matter most – children and families. This case directly impacts the mission of our organization, which includes improving the provision of services to young adults. Ohio can strengthen its communities by ensuring youthful offenders are provided cost-effective opportunities to rehabilitate. Ohio's county juvenile courts are qualified and capable of making decisions in the best interest of children and young adults and have proven to be successful in guiding youthful offenders to become responsible citizens. When state law requires juvenile courts to mandatorily bind young adults over to adult court, it blocks the juvenile court's ability to serve the youth in ways that are developmentally appropriate and responsive to their unique needs. The growing funding and service array available to juvenile courts enables them to

develop or purchase a range of community-based options to meet the needs of each juvenile offender. In fact, more youth today are being served locally where families can participate more fully in their treatment. This progress must continue. Ending mandatory bindovers will be a major step in the right direction.

The **Ohio Association of Criminal Defense Lawyers** is a group of approximately 700 dues-paying members dedicated to defending the rights secured by law of persons accused of the commission of criminal and juvenile offense; educating and promoting research in the field of criminal defense law; fostering the integrity, independence and expertise of criminal defense lawyers through the presentation of accredited Continuing Legal Education programs; and educating the public as to the role of the criminal defense lawyer in the justice system, especially as it relates to the protection of the Bill of Rights and individual liberties.

The **Ohio Disability Rights Law and Policy Center, Inc.** (d.b.a. Disability Rights Ohio) is the system to protect and advocate for the rights of people with disabilities in Ohio. See, e.g., R.C. 5123.60; 42 U.S.C. § 10801 et seq.; 42 U.S.C. § 15041 et seq.; 29 U.S.C. § 794e. Disability Rights Ohio is a 501(c)(3) not for profit corporation chartered under the laws of Ohio. The mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. In accordance with that mission, Disability Rights Ohio has advocated for juvenile justice policies in Ohio that account for the unique circumstances of juveniles with disabilities who are charged with delinquency offenses. Disability Rights Ohio is participating in this case as *amicus curiae* because juveniles with disabilities are negatively impacted by mandatory bindover laws that prohibit juvenile courts from considering the juvenile's disability in deciding whether to transfer a case to adult court.



The **Ohio Justice & Policy Center** (OJPC) is a non-profit law office working to create fair, intelligent, and redemptive criminal justice systems. OJPC seeks to address root causes of crime, decrease recidivism, address unconstitutional conditions of confinement, and promote successful community reentry of formerly incarcerated individuals. OJPC performs this work through zealous client-centered advocacy, innovative policy reform, and cross-sector community education. Given the stark racial disparities in bindover rates, this case implicates the fairness concerns at the heart of OJPC's mission. This case is of particular concern because of the serious consequences that result from a youth's bindover to adult court.

Organized in 1901, **Ohio PTA** has been a longtime supporter of policies advocating for the rights of children and youth involved in the justice system. PTA continues its efforts to assure the extension of juvenile courts and probation systems in order to protect the rights of children and youth in all phases of the judicial process. Mandatory bind over abbreviates the hearing process and therefore does not safeguard the well-being and rights of child offenders throughout the trial process. Representing 65,000 members, Ohio PTA stands in support of this brief, and in doing so, adheres to our PTA purpose to secure adequate laws for the protection and well-being of children and youth. We continue to strive for a strengthened juvenile justice system and for the opportunity for every child to reach his/her potential by ensuring that his/her constitutional rights are protected and that the unique characteristics of child offenders are recognized by the court system.

The **Schubert Center for Child Studies** (Schubert Center) is an academic center in the College of Arts and Sciences at Case Western Reserve University (CWRU) which bridges research, practice, policy and education for the well-being of children and adolescents. The Schubert Center Faculty Associates includes a group of approximately 70 researchers from

various disciplines across CWRU with a shared interest in child-related research and connecting research with practice and policy to improve child well-being and to create knowledge and approaches that are generalizable to a larger population of children. The Schubert Center is interested in ensuring that public policies and legal determinations impacting children are informed by reliable research, aligned with principles of child and adolescent development and consistent with professional practice promoting child well-being. Toward this end, the Schubert Center has been engaged in state level policy reforms including recent changes to enhance judicial discretion and modify mandatory bindover of juveniles. As these issues are directly addressed by this case, the implications of this decision are of particular concern to the Schubert Center.

The **Victory Project** is a faith-based non profit organization in Dayton, Ohio that specializes in mentoring court-involved and disadvantaged young men. In this role, we work to expose youth to the potential of a positive socioeconomic standing and turn youth away from systems that enable potentially destructive lifestyles. We have seen first-hand the transformations that youth can experience with positive guidance. Therefore, we support this brief, which would ensure that courts have the opportunity to give each youth a chance to stay in the juvenile court system.

#### **STATEMENT OF THE CASE AND FACTS**

Amici curiae hereby adopts the Statement of the Case and Facts set forth in Appellant's merit brief.

## ARGUMENT

### AMICI CURIAE'S PROPOSITION OF LAW: OHIO'S MANDATORY BINDOVER PROVISIONS SHOULD BE ELIMINATED.

Being incarcerated as a juvenile in a juvenile facility wasn't great. But being bound over as a juvenile in an adult prison is torment. I wouldn't want any juvenile to ever experience the pain and suffering I experienced. \* \* \* I was left with no choice but to fend for myself and fight for my belongings at a young age. – *D.N.*<sup>1</sup>

The hardest thing for me has been watching [my nephew] take blow after blow in his life and still not get any grace or mercy or compassion or empathy from the system. None of what he's been through is even considered. – *L.S.*

“Since its origin, the juvenile justice system has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society.” *State v. Hanning*, 89 Ohio St.3d 86, 88-89, 728 N.E.2d 1059 (2000). These unique characteristics of the juvenile court reflect the firmly established notion that youth are different than adults and the importance of making individualized decisions for youth – even youth who commit serious offenses and who are deeply involved in the adult criminal justice system. *See e.g., Roper v. Simmons*, 543 U.S. 551, 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting the death penalty for individuals under the age of 18); *Graham v. Florida*, 560 U.S. 48, 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (prohibiting youth from receiving life without the possibility of parole for non-homicide offenses); *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 2457-2459, 183 L.Ed.2d 407 (2012) (finding mandatory life without parole sentences unconstitutional for youth under age 18 without consideration of the youth's age and family and home environment, the circumstances of the offense, and potential for rehabilitation); *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 38-62 (finding that mandatory lifetime sex offender

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<sup>1</sup> These quotes and the quotes throughout this brief were taken from the Children's Law Center's bindover story collection project from stories of youth who were mandatory bindovers to adult court and their family members. These stories and others can be found at <http://ohiobindover.wordpress.com/> (accessed March 2, 2014).

registration does not allow courts to take into account the relative culpability of youth and ability to be rehabilitated, the nature of the offense, and the relative severity of the punishment, including the increased proportion of the youth's life that a sentence would affect).

Ohio's mandatory bindover law should be eliminated based on constitutional challenges as outlined in Alexander's merit brief. This amicus brief provides additional evidence supporting these constitutional challenges, including further support of a national and Ohio consensus against the mandatory transfer of youth to adult court, including by juvenile justice system stakeholders, youth-focused organizations, and the public.

Mandatory bindover does not comport with the widely accepted constitutional premise, based in case law and research, that the hallmark features of youth require an individualized analysis when determining whether a youth should be transferred to adult court. However, despite efforts over the years to limit the use of mandatory bindover in Ohio by creating less harsh alternatives, including the passage of Ohio's Serious Youthful Offender laws in 2000 and reverse waiver laws in 2011, mandatory bindover continues to be used at a relatively high rate and these alternatives have been underutilized, resulting in hundreds of youth being transferred to adult court without an individualized decision-making process. Finally, Ohio's mandatory bindover law is not meeting its intended goals and goes against the fundamental purpose of Ohio's juvenile code.

To be clear, in particular mandatory bindover cases – such as the case at bar – juvenile court judges can only decide whether probable cause exists that the youth committed the offense. R.C. 2152.12(A)(1)(a)(i). This analysis does not require any examination of the specific circumstances of the particular case, including the youth's individual characteristics or role in the offense. Instead, it is a minimal “yes or no” determination, which leaves the essential question of whether to bindover a youth in the hands of the prosecutor, a party to the proceedings, rather

than a juvenile court judge. Therefore, in mandatory bindovers discretion rests with the prosecutor, who is not guided by a set of factors to consider and whose decisions are not subject to appellate review. U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (2011) 2, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> (accessed March 3, 2014).

**I. Mandatory bindover does not align with the original policy goals that mandatory bindover was designed to address or the fundamental goals of Ohio's juvenile court system.**

A review of the effects of mandatory bindover in Ohio indicates that mandatory bindover is not serving the hypothetical goals it was designed to meet, including reducing recidivism, deterring youth from committing offenses, providing more consistent responses to youth, and increasing a youth's adult prison sentence. In addition, mandatory bindover goes against the express purpose of Ohio's juvenile justice code.

**A. Myth 1: Binding a youth over to adult court will reduce recidivism and serve as a specific deterrent.**

People get killed or raped. They become victims in prison. It's tough, especially at a young age because the older prisoners try to take advantage of you. And when you're doing \* \* \* 15 or 30 years, you don't know how to live on the streets and all you know in prison is becoming institutionalized. – M.M.

Research has shown that binding youth over to adult court actually increases the likelihood that a youth will recidivate. See, e.g., Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010) 6, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf> (accessed March 9, 2014). This research has been bolstered by a recent analysis by Washington State, which has similar mandatory transfer laws to Ohio, finding that youth who are automatically transferred to adult court are more likely to recidivate than youth who were not transferred to adult court. Washington State Inst. for Pub.

Policy, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youth* (Dec. 2013) 6, available at [http://www.wsipp.wa.gov/ReportFile/1544/Wsipp\\_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth\\_Final-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1544/Wsipp_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth_Final-Report.pdf) (accessed March 3, 2014). In addition, the study found that overall, this increase in recidivism cost a total of over \$10,000 per youth to taxpayers and crime victims. *Id.* at 11-12.

**B. Myth 2: Mandatory bindover will serve as a general deterrent for youth.**

At first I didn't know that I could go to adult court. I didn't know they did that to people. I didn't know a whole lot about the law and I didn't realize what was happening until about a week before my bindover hearing \* \* \* When we got to the courtroom, the judge said I was a mandatory bindover. We were in court for two hours and it just seemed pointless. It was a really tough situation. — *L.T.*

I didn't know I could get sent to the adult court. Other people at the juvenile detention center had to explain to me what bindover was. Even during my case, I didn't think I would get bound over no matter what \* \* \* After I found out I could get bound over, I cried for a whole week. — *M.K.*

Like many criminal justice laws, Ohio's mandatory bindover laws were likely enacted in part to create such a harsh punishment that youth will be prevented, or deterred from, engaging in criminal activity. This theory is "based on a rational choice model of decision-making: that is, prior to commission of a crime, an individual consciously weighs the risks and rewards of commission." Karen Miner-Romanoff, *Juveniles Sentenced and Incarcerated as Adults: Findings from a Qualitative Analysis of Their Knowledge, Understanding, and Perceptions of Their Sentences*, 9:1 Just.Pol.J. 1, 5 (2012), available at [http://www.cjcj.org/uploads/cjcj/documents/Juveniles\\_Sentenced.pdf](http://www.cjcj.org/uploads/cjcj/documents/Juveniles_Sentenced.pdf) (accessed March 3, 2014). This model also "assumes that youths' perceptions and understandings of such punishment must be thorough enough and abhorrent enough to them to deter them from committing the crime. Research suggests, however, that young people may not engage in such a deliberate cost/benefit

analysis” due in no small part to the developmental differences between adolescents and adults. *Id.* at 12.

Several studies, including one study conducted exclusively in Ohio, have found that overwhelming majorities of youth do not know or believe that they could be transferred to adult court. *Id.* at 7-8. In Ohio, interviews with youth who had been bound over to adult court and sentenced to adult prison showed that youth “had no knowledge of juvenile bindover, and all reported they did not understand it...and no certainty of application to their offenses[, making it] impossible for a law to act as a deterrent if the offending population does not know of the law, understand the law, or perceive that the law can be applied to them.” *Id.* at 21.

**C. Myth 3: Mandatory bindover will result in a more fair application of juvenile court laws to certain youth.**

When I was fighting my cases in adult court I really could not understand what my attorney was talking about, and ended up getting 15 years on lesser charges. I believe that the juvenile court does not sit down and try to understand kids['] situations. – *R.H.*

Mandatory bindover could be perceived as fairer because the law should apply equally to all youth who are a certain age and charged with a certain category offense or with particular prior offenses. However, an analysis of bindover trends by county in Ohio over the past 10 years shows that different counties have very different ways of utilizing bindover, meaning youth who commit the same offense in different counties may be charged differently and therefore be more likely to be bound over in certain counties. Children’s Law Ctr., *Falling Through the Cracks: Update* [hereinafter *Falling: Update*] (Dec. 2013) 8, available at <http://www.childrenslawky.org/wp-content/uploads/2013/12/Falling-Through-the-Cracks-Update-Report-12.12.13.pdf> (accessed March 4, 2014). For example, the likelihood that a youth will be bound over for a felony offense ranges from 0% in certain counties to over 60% in others.

*Id.* While this data does not distinguish between discretionary and mandatory bindovers, it still indicates that bindover is utilized inconsistently between counties. This differing use of bindover was verified in county interviews, where different prosecutors' offices took varied approaches to binding youth over. *Id.* at 12-13.

**D. Myth 4: Mandatory bindover cases will result in harsher adult court sentences and longer incapacitation of certain youth offenders.**

This place is not built for a young man my age. I've seen other dudes get beat up just because they're too weak. – *D.H.*

The mandatory bindover provisions of the Ohio code are based on the notion that certain youth have committed such serious offenses that it is not necessary or appropriate for juvenile courts to make an individualized assessment of those youth. Under this assumption, it would be expected that youth subject to mandatory bindovers would receive longer adult court sentences and be incapacitated or removed from society for longer than youth bound over on discretionary bindover charges or youth in the juvenile justice system.

With regard to discretionary bindovers, a survey of recent bindover sentencing patterns reveals that there is no significant difference between the sentences imposed on mandatory and discretionary bindovers. For example, in Fiscal Year 2012 (FY12), mandatory bindovers whose highest conviction was a first-degree felony (not including murder or aggravated murder) were sentenced to an average mandatory minimum term of 9.7 years, while discretionary bindovers in the same category were sentenced to an average mandatory minimum term of 10.2 years.<sup>2</sup> And mandatory bindovers whose highest conviction was a second-degree felony were sentenced to an

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<sup>2</sup> Among bindover populations convicted of murder or aggravated murder in FY 2012, mandatory bindovers were sentenced to an average mandatory minimum term of 36.0 years, while discretionary bindovers were sentenced to an average mandatory minimum term of 22.6 years. In calculating these estimates, it is assumed that the two mandatory bindovers sentenced to life without parole in FY 2012 will each live another 57.1 years, based on the relevant CDC data for their populations. Given the dramatic reduction in life at life expectancy is dramatically reduced in prison, however, this is most likely a liberal estimate.



average mandatory minimum sentence of 6.8 years, while discretionary bindovers in the same category were sentenced to an average mandatory minimum sentence of 6.1 years. This data shows that mandatorily binding over a youth at the “front end” of their juvenile court case does not result in higher sentences, meaning that certain youth are irrationally deprived of an individualized assessment afforded to nearly identical other youth.

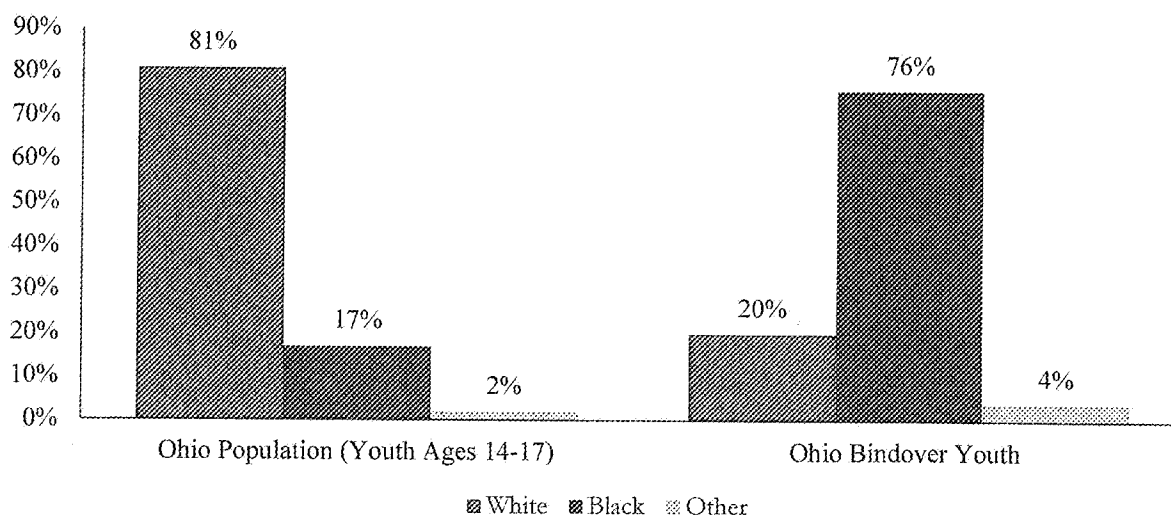
Additionally, analyses of youth bound over in FY10 and FY12 shows that over half of youth bound over and sentenced in Ohio’s adult criminal justice system received sentences of five years or less. Children’s Law Ctr., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (May 2012) 10 [hereinafter *Falling*], available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf> (accessed March 3, 2014) and *Falling Update* at 3. In FY10, 67% of youth bound over to adult court received sentences of five years or less and 14% received community control; in FY12 55% of bound over youth received sentences of five years or less and 17% received community control. *Id.* Further analysis of the FY12 youth showed that over a quarter of the youth sentenced to five years or less were originally charged with a mandatory bindover offense. Given Ohio’s extended juvenile court jurisdiction up to age 21, these youth could serve their full sentence or nearly their full sentence in a DYS facility; for example a youth convicted as a 16-year old could serve five years in a DYS facility up to age 21.

In addition to the myths laid out above, mandatory bindover goes against the express purpose of the Ohio juvenile justice system. Ohio Revised Code section 2152.01 lays out the purpose of juvenile dispositions, which “shall be achieved by a system of graduated sanctions and services” and requires that dispositions should be “consistent with dispositions for similar acts committed

by similar delinquent children \* \* \* [and courts should] not base the disposition on the race, ethnic background, gender.”

Unfortunately, mandatory bindover does not meet any of these goals as it can prohibit youth – even first time offenders – from accessing a graduated response from the juvenile court system. Additionally, mandatory bindover creates a bright artificial and arbitrary line between youth who commit the same offense but whose birthdays may be one day apart. Finally, Ohio’s bindover policies have an extreme disproportionate effect on non-White Ohio youth. *Falling*, at 8. The vast majority of youth bound over to adult court are Black and Other non-White youth, who made up nearly 80% of bindover cases in FY10 and 86% of bindovers cases in FY12. Ohio Dep’t of Youth Servs., *Profile of Youth Transferred to Adult Court: Fiscal Year 2010* (Feb. 2011) 3, available at <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=TvYoEX0%2fpok%3d&tabid=117&mid=890> (accessed March 3, 2014); Ohio Dep’t of Youth Servs., *Profile of Youth Transferred to Adult Court: Fiscal Year 2012* (March 2013) [hereinafter *Adult Court Youth FY12*] 3, available at <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=DiDFTwCMV44%3d&tabid=117&mid=890> (accessed March 3, 2014). As the chart below shows, this percentage is particularly disproportionate given the population of non-White Youth in Ohio:

### FY10: Racial Composition of Ohio Bindover Youth



*Falling*, at 8.

## II. Attempts to reduce the use of mandatory bindover, including the adoption of Ohio's Serious Youthful Offender and reverse waiver laws, have not been successful.

My mom was and still is a heroin addict. She never put me in a good situation. She was always bringing me around people and things I shouldn't be around as a child. By the time I was ten, I was more grown up than my mom. — *L.T.*

Originally, all bindovers in Ohio were discretionary and based on an individualized assessment of each youth's case, including the youth's personal characteristics and particular circumstances of the offense. *See* Sub. H.B. No. 499, 117th Gen. Assemb. (Ohio 1987); *see also* Legislative Serv. Comm'n, *Final Analysis: Am. Sub. H.B. 1, 121st General Assembly* (Sept. 1, 1995) 4. Beginning in the 1980s and continuing through 2000, Ohio's laws changed several times to require an increasing number of youth under the age of 18 to be automatically subject to the adult court's jurisdiction. Legislative Serv. Comm'n, *Final Analysis: Am. Sub. H.B. 1, 121st General Assembly* (Sept. 1, 1995) 4; Legislative Serv. Comm'n., *Members Only: Ohio's Juvenile Bindover Law*, Volume 122, Issue 12 (Nov. 30, 1998).

These changes dramatically affected the use of mandatory bindover. In 1987, a 16 year old could have only been mandatorily bound over if he was charged with murder and had previously been adjudicated delinquent for murder. By 1995, a 16 year old had to be mandatorily bound over on his first offense if the court found probable cause that the youth can be charged with aggravated robbery and possessed a gun in the commission of the offense. See R.C. 2152.10(A)(2)(a); R.C. 2152.12(A)(1)(b)(i).

Since 1995, Ohio has made two attempts to reduce the use of mandatory bindover by adopting Serious Youthful Offender and reverse waiver laws. Legislative Serv. Comm'n., *Final Analysis: Am. Sub. S.B. 179 - 123rd General Assembly (As Passed by the General Assembly)* [hereinafter LSC SB 179] (2000) 3-5, available at <http://www.lsc.state.oh.us/analyses/00-sb179.pdf> (accessed March 3, 2014); R.C. 2152.121(B).

#### **A. SYO: A failed alternative to mandatory bindover.**

I'm worried about what is happening and what might happen to my son in jail. I'm afraid of rapes, assaults, and the suicide and mental health risks of being away from his family. You see your child in the prison system as a boy, expect him to come back out as a boy, but things happen in the meantime. \* \* \* He's scared, because instead of being taken out of the system he gets put into a harder institution. – S.W.

In 1999, Ohio's bindover laws were examined in a report by the Ohio Criminal Sentencing Commission. Ohio Sentencing Comm'n., *A Plan for Juvenile Sentencing in Ohio: A Report of the Ohio Criminal Sentencing Commission* (Fall 1999) 23-28, available at [http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/publications/juvenile\\_\\_sentencing.pdf](http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/publications/juvenile__sentencing.pdf) (accessed March 3, 2014). The report recognized that juvenile crime was decreasing and, as such, recommended that Ohio's juvenile court should be given "more tools to deal with serious offenders" to reduce the number of mandatory bindovers used in juvenile court. *Id.* at

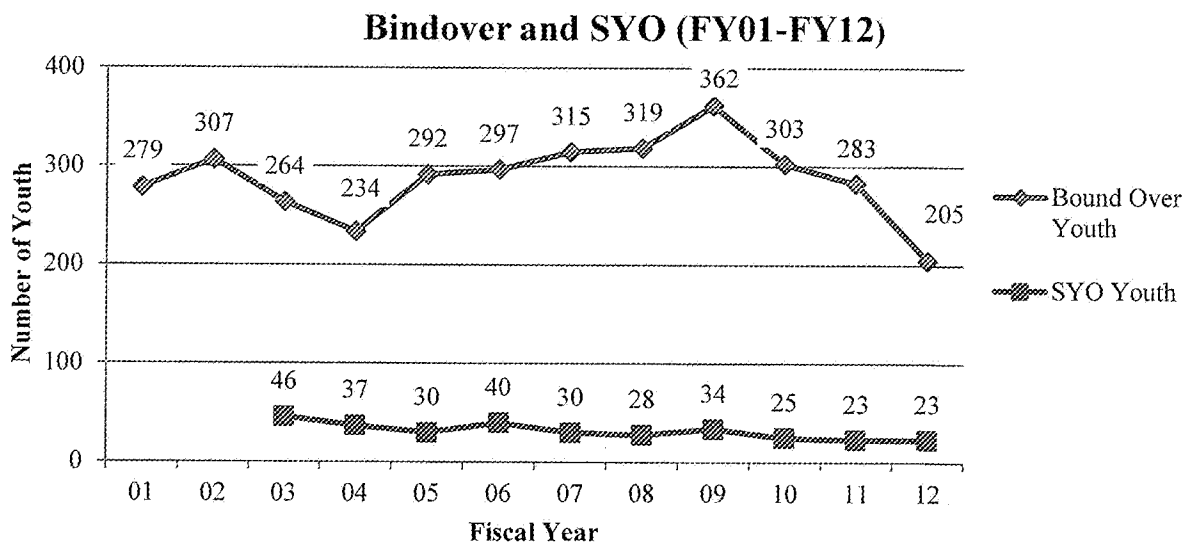
18. To achieve this goal, the Commission recommended introducing a “presumptive” bindover category between mandatory and discretionary bindovers. *Id.* at 25. In addition, the Commission recognized that juvenile courts needed “greater flexibility in dealing with \* \* \* serious juvenile offenders [and that \* \* \* b]indover is not the best option for all serious offenders”; the Commission recommended creating a blended sentencing structure for youth in juvenile court and extending the juvenile court’s age of jurisdiction. *Id.* at 28.

In response to the Commission’s report, the Ohio legislature enacted a bill intended to implement many of the Commission’s suggested reforms. LSC SB 179 at 3-5. However, against the Commission’s recommendations, the bill did not limit the use of mandatory bindover. *Id.* at 34-35. Additionally, the bill created Ohio’s blended sentencing – or Serious Youthful Offender (SYO) – laws for youth ages 10 and older. *Id.* at 41-47. Therefore, instead of creating alternatives to mandatory bindover as recommended by the Commission, S.B. 179 actually widened the net of Ohio youth subject to adult court by not limiting mandatory bindover, but also by creating an entirely new track for children as young as 10 years of age to be subject to adult court sanctions.

In its Judicial Impact Statement on the 2000 changes, the Ohio Judicial Conference (OJC) expressed its concerns about the legislation as follows: “Many judges and prosecuting attorneys have stated that mandatory transfers under \* \* \* [the 1995 changes] result in inappropriate transfer to adult court and the adult penal system.” Ohio Judicial Conference, *Judicial Impact Statement: Senate Bill 179* (May 15, 2000) 3. In particular, the judges expressed concern that mandatory bindover “could include transfer of a case that is not appropriate for the adult court (based on a review of all of the facts of the case). Worse, it also can include inappropriate placement of a young, unsophisticated person in a penal institution with older, stronger, and

more worldly adult inmates.” *Id.* Finally, the judges expressed that “[r]etaining and expanding the current mandatory bindover statute nullifies most benefits of the proposed Serious Youthful Offender law, and therefore diminishes the Ohio court system’s ability to best address the problems presented by juveniles to the court.” *Id.* at 4.

Unfortunately, the judges’ predictions held true. Data since the enactment of Ohio’s SYO laws clearly shows that SYO is not serving as an alternative to bindover. *Falling: Update* at 4. The chart below shows the number of youth bound over to adult court versus the number of youth who are convicted under SYO laws in Ohio:



*Id.*

As the chart indicates, the introduction of SYO laws has had very little impact on the number of youth bound over to adult court. Interviews with juvenile court stakeholders in key counties throughout the state indicated that the SYO process is not used for a variety of reasons, including that the process is technical, confusing, and unfamiliar to juvenile courts, that the higher procedural requirements of SYO would clog the juvenile court system and are too much to implement for a speculative adult sentence, that juries have not convicted youth of SYO

offenses, and that the relatively high age of SYO youth means they would spend less time in the juvenile justice system. *Id.* at 15. Interestingly, these concerns were mirrored in a Sentencing Commission report issued in 2007, which stated that juvenile courts “have been deterred from blended sentences by the adult safeguards and related practicalities (the right to bond, a jury trial, and a speedy trial; a dearth of places to hold hearings; *etc.*). Some prosecutors complain that, after all the work, the judge can still opt for a traditional juvenile disposition rather than a blended sentence.” David Diroll, *A Decade of Sentencing Reform: A Sentencing Commission Staff Report Number Seven* (March 2007), 27, available at <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/Publications/sentencingReform.pdf> (accessed March 3, 2014).

**B. Reverse waiver: Potential unintended consequences.**

The difference between the juvenile and adult system is the juvenile system protects you. The juvenile system makes sure you have everything you need such as clothing and hygiene. They escort you everywhere you go. They make you go to school and recreation. In the adult system you are forced to take care of yourself. – *M.C.*

After the enactment of the 2000 changes, Ohio’s bindover law remained relatively untouched until 2011, when the Ohio legislature adopted H.B. 86, which created Ohio’s reverse waiver provisions and gave some mandatory bindover youth a chance to return to the juvenile court’s jurisdiction. Legislative Serv. Comm’n, *Final Analysis: Am. Sub. H.B. 86 – 129<sup>th</sup> General Assembly (As Passed by the General Assembly)* (2011) 15-16, available at <http://www.lsc.state.oh.us/analyses129/11-hb86-129.pdf> (accessed March 3, 2014); R.C. 2152.121.

Although it is too early to know the long-term effects of Ohio’s reverse waiver provisions, an analysis of FY12 data revealed a disconcerting trend. Since the reverse waiver provisions went

into effect, youth charged with mandatory bindover offenses increasingly have been convicted in adult court for mandatory bindover offenses as opposed to lesser included offenses, meaning fewer youth are being offered plea deals that would make them eligible for reverse waiver. *Falling Update* at 6. This trend was corroborated in interviews conducted with Ohio juvenile court stakeholders, some of whom stated that the plea bargaining process was “handcuffed” by reverse waiver. *Id.* at 13. Therefore, reverse waiver may be causing an unintended consequence of youth being convicted of higher level offenses in adult court and receiving longer sentences because they are not receiving plea deals previously offered.

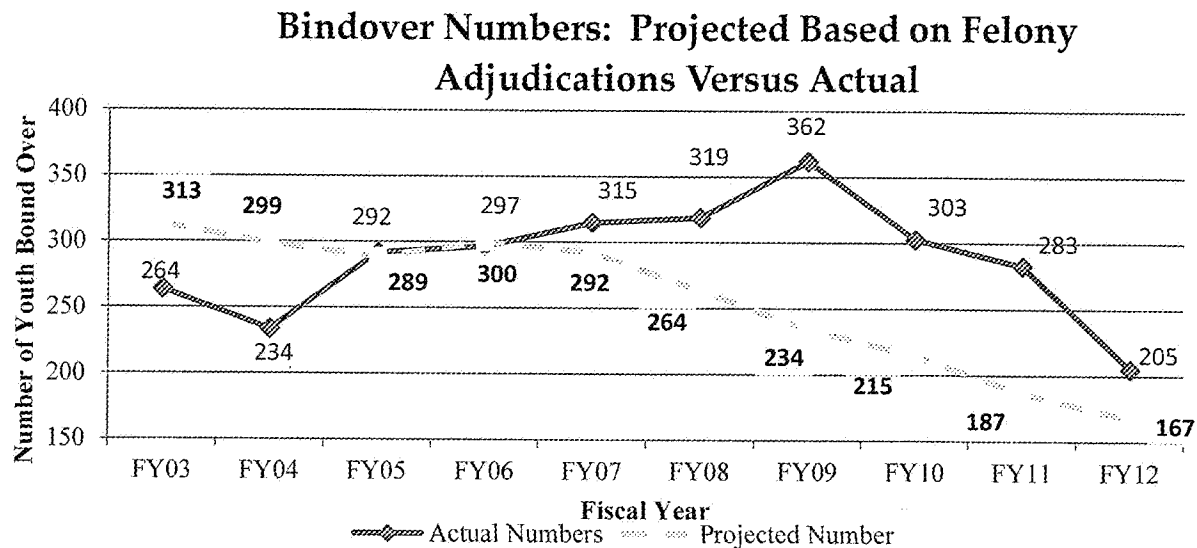
This data indicates that – despite the legislature’s attempt to shift discretion in bindover cases back to juvenile court judges through reverse waiver – prosecutors are retaining discretion through the plea bargaining process. This shift of discretion from judge to prosecutor was highlighted by the Ohio Judicial Conference in 2000, which noted that mandatory bindover allows the prosecutor “to wield full discretion in seeking or not seeking charges with or without the mandatory transfer...requirements. The prosecutor continues to have plea negotiating authority, which may or may not result in the reduction of charges or the deletion of enhancement language from the complaint. While the prosecuting authority has a legitimate role in attempting to seek an appropriate disposition/sentence, this role is properly and primarily the responsibility of the judge.” Ohio Judicial Conference, *Judicial Impact Statement: Senate Bill 179* (May 15, 2000) 3.

Although SYO and reverse waiver were implemented with the goal of reducing the use of mandatory bindover, the data above indicates that these changes have not had their intended impact. Additionally, although the Ohio Department of Youth Services historically has not tracked the number of mandatory versus discretionary bindovers, two analyses of bindover data



in FY10 and FY12 show that mandatory and discretionary bindover continue to be used equally to transfer Ohio youth to adult court, even after the passage of Ohio's reverse waiver law in 2011. *Falling* at 10; *Falling: Update* at 6.

This equal use of mandatory and discretionary bindovers held true even as bindover numbers dropped significantly over the past four years. *Id.* Although this overall drop in bindover numbers is important and certainly a move in the right direction, it is critical to note that the reduction in the use of bindover generally follows similar reductions in both general youth crime and felony level adjudications in the state. *See, e.g.* Office of Juvenile Justice & Delinquency Prevention, *Juvenile Offenders and Victims National Report Series: Bulletin – Juvenile Arrests 2011* (Dec. 2013) 1 (finding “juvenile arrest rates for many crimes are at their lowest levels in more than 30 years”), available at <http://www.ojjdp.gov/pubs/244476.pdf> (accessed on March 4, 2014); Dep't of Youth Servs., *Profile of Youth Adjudicated or Committed for Felony Offenses: Fiscal Year 2013* (Jan. 2014) 1-2, available at <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=qax9NI7e6QI%3d&tabid=117&mid=873> (accessed March 10, 2014). Indeed, as the chart below shows, bindover numbers in Ohio should actually be lower if they had been declining at the same rate as felony juvenile



Therefore, the data above indicates that – despite efforts to the contrary – use of mandatory bindover persists, leaving juvenile courts’ hands tied when it comes to making individualized determinations about whether youth should proceed in juvenile or adult court.

### **III. The elimination of mandatory bindover is supported by a wide range of national and Ohio stakeholders.**

In conjunction with the research in recent years and the recent decisions by the U.S. Supreme Court, a wide variety of organizations and the public have weighed in at both the national and state level against the use of mandatory bindover.

#### **A. National stakeholders, including juvenile court stakeholder groups, county organizations, and medical and mental health organizations, and national polls support eliminating mandatory bindover.**

My mom and dad got divorced when I was 5 years old. He used to come home drunk and beat up my mom real bad. Since he left he hasn’t been in my life \* \* \* My mom got married again, but I knew he wasn’t right for her. She would be downstairs doing drugs. I told her to leave him alone, but she didn’t listen. – *M.M.*

Nationally, a panoply of organizations with very different perspectives have taken a stance against mandatory bindover. Several national juvenile court stakeholder associations have

specific policies against mandatory bindover, including the National Council of Juvenile and Family Court Judges (NCJFCJ) and the Council of Juvenile Correctional Administrators (CJCA). The NCJFCJ addresses mandatory bindover both in its guidelines and in a separate policy statement. The NCJFCJ guidelines establish that “transfer of juveniles to adult court should be rare and only after a thoroughly considered process” and that “transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and...that the decision should be made by the juvenile delinquency court judge.” Natl. Council of Juvenile & Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, (2005) 102, available at [http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed\[1\].pdf](http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed[1].pdf) (accessed March 3, 2014). In addition, the NCJFCJ policy position on bindover states that the decision whether to transfer a youth to an adult court should be made by a juvenile court judge after a hearing and after:

“the varied circumstances of each case and the distinct characteristics of each youth are closely examined by an experienced judge who hears from all parties. The judge evaluates the important personal and community factors related to the choice of jurisdiction and determines whether to retain the case in juvenile delinquency court or transfer the case to the criminal court. Accordingly, prosecutorial waiver, mandatory transfers, and automatic exclusions are not recommended. Such practices can place juvenile delinquency judges in positions where they are statutorily required to take actions that they do not believe will be most effective in changing the youth’s behavior, or in the best interest of the community.”

Nat’l Council of Juvenile & Family Court Judges, *Resolution in Support of the Best Practices and Principles of the “Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases”* (2005) 2, available at [http://www.ncjfcj.org/sites/default/files/JDG\\_Policy.pdf](http://www.ncjfcj.org/sites/default/files/JDG_Policy.pdf) (accessed March 4, 2014). This sentiment is echoed in a statement from the Council of Juvenile Correctional Administrators

(CJCA), a membership organization of juvenile corrections officials from across the country and of which the Ohio Department of Youth Services is a member. Council of Juvenile Corr. Administrators, *About Us*, <http://ejca.net/index.php/aboutus/aboutus> (accessed Feb. 24, 2014). The CJCA statement states that transferring a youth to adult court “should be accomplished through a process that maintains judicial decision-making to determine the appropriateness of transferring young offenders into the adult correctional system. CJCA opposes all policies that result in the automatic transfer of young people to the adult system without judicial review, as well as policies that grant the prosecutor full discretion.” Council of Juvenile Corr. Administrators, *Position Statement: Waiver and Transfer of Youths to Adult Systems* (Adoption Date: Oct. 2, 2009) 1, available at [http://www.campaignforyouthjustice.org/documents/CJCA%20Waiver%20and%20Transfer%20\(2009\).pdf](http://www.campaignforyouthjustice.org/documents/CJCA%20Waiver%20and%20Transfer%20(2009).pdf) (accessed March 3, 2014).

In addition to juvenile court stakeholders, the National Association of Counties (NACo), which represents the interests of counties at the national level, has a policy against mandatory bindover. This policy states that NACo “supports the reform of state laws that inappropriately send far too many youth under the age of 18, including first-time and non-violent offenders into the adult criminal justice system” and “supports that the decision to transfer a juvenile to adult court should be made by a juvenile court judge or jury.” Nat’l Assoc. of Counties, *The American County Platform and Resolutions 2012-2013: Justice and Public Safety* (2012) 106, available at [http://www.naco.org/legislation/Documents/American-County%20-Platform-and-Resolutions-2012-2013.pdf?Mobile=1&Source=%2Flegislation%2F\\_layouts%2Fmobile%2Fview.aspx%3FList%3](http://www.naco.org/legislation/Documents/American-County%20-Platform-and-Resolutions-2012-2013.pdf?Mobile=1&Source=%2Flegislation%2F_layouts%2Fmobile%2Fview.aspx%3FList%3)

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Finally, several medical and mental health organizations have taken positions against mandatory bindover. The American Academy of Child and Adolescent Psychiatry's position states that "transfer to adult court should not be automatic or a presumption" and "any transfer to criminal court should consider the individual case and the community, and not be based solely on the type of the offense. Consideration of the case should include the mental health of the youth and its bearing on the charges." American Acad. of Child & Adolescent Psychiatry, *Recommendations for Juvenile Justice Reform: Second Edition* (Oct. 2005) 15, available at [https://www.aacap.org/App\\_Themes/AACAP/docs/Advocacy/policy\\_resources/JJmonograph1005.pdf](https://www.aacap.org/App_Themes/AACAP/docs/Advocacy/policy_resources/JJmonograph1005.pdf) (accessed March 3, 2014). The American Psychiatric Association "opposes statutes which permit or require juvenile suspects to be transferred or waived into adult court without judicial review." American Psychiatric Assoc., *Position Statement on Legal Proceedings and Access to Psychiatric Care for Juvenile Offenders* (July 2013), available at <http://www.psychiatry.org/advocacy--newsroom> (accessed March 3, 2014). This position is in place specifically because the Association "supports the principle that juveniles with mental illness and neurodevelopmental disorders should have the opportunity to obtain appropriate psychiatric assessment and treatment" and that courts should explicitly consider youths' "level of development, the nature and impact of mental disorder, and the impact of legal decisions on the offender's access to appropriate care." *Id.* This point is particularly salient for youth in the adult criminal justice system, who recent research indicates "may manifest some of the most substantial mental health treatment needs among all juveniles involved in the justice system." Daniel C. Murrie, *Psychiatric Symptoms Among Juveniles Incarcerated in Adult Prison*, 60:8

Psychiatric Servs., 1092, 1096 (Aug. 2009), available at <http://journals.psychiatryonline.org/article.aspx?articleid=100682> (accessed March 3, 2014).

Beyond policy statements, public polling also indicates support for eliminating mandatory bindover. A national poll conducted in 2011 shows that over 80% of people trust judges, not prosecutors, to make the decision about whether a youth should be bound over to adult court. GBA Strategies, *National Poll on Public View of Youth in the Adult Criminal Justice System: Polling Memo* (Oct. 2011) 1, available at [http://www.gbastrategies.com/public\\_files/cfyj101111m1.pdf](http://www.gbastrategies.com/public_files/cfyj101111m1.pdf) (accessed March 3, 2014). Additionally, over 70% of individuals surveyed wanted decisions regarding transfer to be made on a case-by-case basis that considers the particular facts and circumstances of the case. *Id.* at 1-2.

**B. Ohio stakeholders, including juvenile court stakeholders, organizations, and the public, also support eliminating mandatory bindover.**

When [my son] got bound over to the adult court, we went through a lot and it hurt me real bad. I didn't know he could be tried as an adult and I couldn't believe it. I still can't believe it. It tore my whole family apart—everyone was crying and upset about it. – *S.G.*

Various stakeholders in Ohio also support the elimination of mandatory bindover. As shown throughout this brief, the Ohio Judicial Conference has repeatedly indicated its desire to have discretion over which youths' cases are sent to adult court, including during the 2000 expansion of mandatory bindover and during consideration of HB 86 in 2012, when the OJC stated that it favors “additional judicial discretion to do what they think is best based on the individual circumstances of each case.” Ohio Judicial Conference, *Judicial Impact Statement: Felony Sentencing and Juvenile Justice Reform – 129<sup>th</sup> General Assembly* (June 3, 2011), 16, available at <http://www.ohiojudges.org/Document.ashx?DocGuid=d71deb56-9a3e-4ada-94fe->

527b9600e340 (accessed March 3, 2014). Most recently, this position was reiterated by judges in county level interviews conducted in 2012-2013. *Falling: Update* at 14. In the interviews, several juvenile court judges from Ohio counties recommended eliminating mandatory bindover. *Id.* The judges cited various reasons for this recommendation, including that 1) eliminating mandatory bindover would get rid of the reverse waiver process, which some judges indicated adult courts may not be familiar with and therefore are not sending youth back to juvenile court and 2) juvenile court judges are best trained to make a bindover decision and are used to making individualized decisions about youth that take into account youths' developmental characteristics. *Id.*

Ohio organizations have also shown their support for reducing the use of bindover in Ohio. In 2013, 31 Ohio organizations signed onto a resolution in support of changing Ohio's laws and policies to reduce the number of youth bound over to adult court and to recognize developmental differences between youth and adults. Children's Law Ctr., *Resolution Opposing the Placement of Ohio Youth in Adult Court and Adult Facilities* (2013), available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/Signed-Resolution-on-Ohio-Adult-Court-Youth-.pdf> (accessed March 5, 2014). This resolution was signed by a variety of organizations, including the National Alliance of Mental Illness of Ohio, the Ohio Association of Child Caring Organizations, the Ohio PTA, the Ohio Psychological Association, the League of Women Voters of Ohio, the Ohio Domestic Violence Network, and the Ohio Chapter, American Academy of Pediatrics. *Id.*

Finally, a poll recently showed that Ohioans support making individualized decisions with regard to youth and keeping youth in juvenile court. The polling data shows that the vast majority of Ohioans support the use of judicial discretion instead of prosecutors making

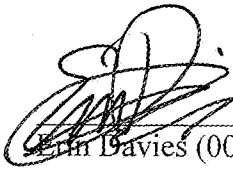
decisions about youth (74% of respondents). *Falling at 12*. The poll also shows that Ohioans believe that youth who come to the attention of the court system should be treated differently than adults (60% of respondents) and overwhelmingly support removing youth from adult facilities (84% of respondents). *Id.*

## CONCLUSION


Ohio's mandatory bindover laws have become particularly unjustifiable for recent years given new developments in research on the efficacy of mandatory transfer, case law on adolescent development, and a broad consensus of support for eliminating these policies by juvenile court stakeholders, mental health experts, and the public. Despite attempts to reduce the use of mandatory bindovers in Ohio, these efforts have been met with little success. We respectfully request that this court recognize that Ohio's mandatory bindover laws are unconstitutional and instead allow all bindover decisions to be made by juvenile court judges specifically trained to make these decisions after a careful individualized analysis of the youth's characteristics and background as well as the circumstances of the particular case before the court.



Respectfully submitted,



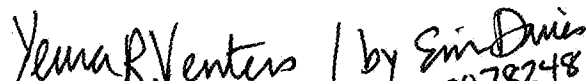
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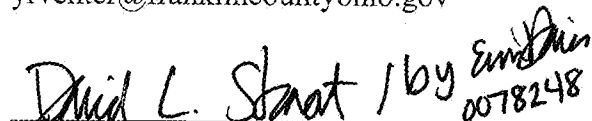
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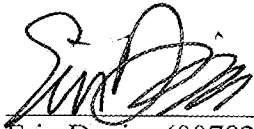
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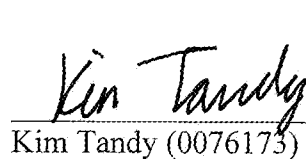
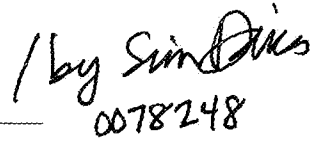
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been filed with the Clerk of Court on the 10th day of March, 2014 and served upon the following counsel of record: Richard Kasay, Assistant Summit County Prosecutor, Summit County Prosecutor's Office, 53 University Avenue, 7th Floor, Safety Building, Akron, Ohio 44308 and Amanda J. Powell, Assistant State Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 by depositing it in the U.S. Mail with postage prepaid and addressed to their offices on this 10th day of March, 2014.

Respectfully submitted,



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

v.

ALEXANDER QUARTERMAN

Appellant

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Case No. 2013-1591

On Appeal from the  
County Court of Appeals  
Ninth Appellate District

C.A. Case No. 26400

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APPENDIX TO

BRIEF OF *AMICUS CURIAE* CHILDREN'S LAW CENTER, INC., ET. AL.

IN SUPPORT OF APPELLANT ALEXANDER QUARTERMAN

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### **2152.01 Purpose of juvenile dispositions.**

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

Effective Date: 01-01-2002

## **2152.10 Mandatory and discretionary transfers.**

(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section 2152.12 of the Revised Code in any of the following circumstances:

(1) The child is charged with a category one offense and either of the following apply:

(a) The child was sixteen years of age or older at the time of the act charged.

(b) The child was fourteen or fifteen years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category one or category two offense and was committed to the legal custody of the department of youth services upon the basis of that adjudication.

(2) The child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age or older at the time of the commission of the act charged, and either or both of the following apply:

(a) The child previously was adjudicated a delinquent child for committing an act that is a category one or a category two offense and was committed to the legal custody of the department of youth services on the basis of that adjudication.

(b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) Division (A)(2) of section 2152.12 of the Revised Code applies.

(B) Unless the child is subject to mandatory transfer, if a child is fourteen years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for discretionary transfer to the appropriate court for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court shall follow the procedures in section 2152.12 of the Revised Code. If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court shall issue an order of disposition in accordance with section 2152.11 of the Revised Code.

Effective Date: 07-05-2002

## **2152.12 Transfer of cases.**

(A) (1) (a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

(ii) The child was fourteen or fifteen years of age at the time of the act charged, section 2152.10 of the Revised Code provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:

(i) Division (A)(2)(a) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of section 2152.02 of the Revised Code or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under section 2152.10 of the Revised Code and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with section 2152.121 of the Revised Code.



(B) Except as provided in division (A) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

- (1) The child was fourteen years of age or older at the time of the act charged.
- (2) There is probable cause to believe that the child committed the act charged.
- (3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
- (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- (3) The child's relationship with the victim facilitated the act charged.
- (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
- (5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or

cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person

had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No.29, HB 86, §1, eff. 9/30/2011.

Effective Date: 01-01-2002

**2152.121 Retention of jurisdiction for purposes of making disposition.**

(A) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, the juvenile court that transferred the case shall retain jurisdiction for purposes of making disposition of the child when required under division (B) of this section.

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(1) The court in which the child is convicted of or pleads guilty to the offense shall determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case. The court shall not consider the factor specified in division (B)(3) of section 2152.12 of the Revised Code in making its determination under this division.

(2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under sections 2152.19 and 2152.20 of the Revised Code.

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. In no case may the child waive a right to a hearing of the type described in

division (B)(3)(b) of this section, regarding a motion filed as described in that division by the prosecuting attorney in the case. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

(a) Except as otherwise provided in division (B)(3)(b) of this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child under division (D)(1) of section 2152.13 of the Revised Code. In imposing the adult portion of that sentence, the juvenile court shall consider and give preference to the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense. Upon imposing a serious youthful offender dispositional sentence upon the child as described in this division, the juvenile court shall notify the court in which the child was convicted of or pleaded guilty to the offense, the sentence imposed upon the child by that court shall terminate, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, and the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child.

(b) Within fourteen days after the filing of the journal entry regarding the transfer, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense be invoked. Upon the filing of a motion under this division, the juvenile court shall hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, the court shall grant the motion. Absent such a finding, the juvenile court shall deny the motion. In making its decision under this division, the juvenile court shall consider the factors listed in division (D) of section 2152.12 of the Revised Code as factors indicating that the motion should be granted, shall consider the factors listed in division (E) of that section as factors indicating that the motion should not be granted, and shall consider whether the applicable factors listed in division (D) of that section outweigh the applicable factors listed in division (E) of that section.

If the juvenile court grants the motion of the prosecuting attorney under this division, the juvenile court shall transfer jurisdiction of the case back to the court in which the child was convicted of or pleaded guilty to the offense, and the sentence imposed by that court shall be invoked. If the juvenile court denies the motion of the prosecuting attorney under this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child in accordance with division (B)(3)(a) of this section.

(4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory

transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Added by 129th General Assembly File No.29, HB 86, §1, eff. 9/30/2011.

## AN ACT

To amend section 2151.26 of the Revised Code to require a juvenile court, in determining whether to transfer a juvenile delinquency case for criminal prosecution, to consider in favor of the transfer the fact that the act alleged would be an offense of violence if committed by an adult and to require the transfer of a child's delinquency case for criminal prosecution if the child is charged with, and previously has been adjudicated delinquent for, an act that would be aggravated murder or murder if committed by an adult.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 2151.26 of the Revised Code be amended to read as follows:

Sec. 2151.26. (A) ~~After~~ (1) EXCEPT AS PROVIDED IN DIVISION (A)(2) OF THIS SECTION, AFTER a complaint has been filed alleging that a child is delinquent by reason of having committed an act that would constitute a felony if committed by an adult, the court at a hearing may transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, after making the following determinations:

(1)(a) The child was fifteen or more years of age at the time of the conduct charged;

(2)(b) There is probable cause to believe that the child committed the act alleged;

(3)(c) After an investigation, including a mental and physical examination of the child made by a public or private agency, or a person qualified to make the examination, that there are reasonable grounds to believe that:



(a)(i) He is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children;

(b)(ii) The safety of the community may require that he be placed under legal restraint, including, if necessary, for the period extending beyond his majority.

(2) AFTER A COMPLAINT HAS BEEN FILED ALLEGING THAT A CHILD IS DELINQUENT BY REASON OF HAVING COMMITTED AN ACT THAT WOULD CONSTITUTE AGGRAVATED MURDER OR MURDER IF COMMITTED BY AN ADULT, THE COURT AT A HEARING SHALL TRANSFER THE CASE FOR CRIMINAL PROSECUTION TO THE APPROPRIATE COURT HAVING JURISDICTION OF THE OFFENSE, IF THE COURT DETERMINES AT THE HEARING THAT BOTH OF THE FOLLOWING APPLY:

(a) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CHILD COMMITTED THE ALLEGED ACT;

(b) THE CHILD PREVIOUSLY HAS BEEN ADJUDICATED A DELINQUENT CHILD FOR THE COMMISSION OF AN ACT THAT WOULD CONSTITUTE AGGRAVATED MURDER OR MURDER IF COMMITTED BY AN ADULT.

(B) The court, when determining whether to transfer a case pursuant to division (A)(1) of this section, shall determine if the victim of the delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the act AND WHETHER THE ACT ALLEGED, IF ACTUALLY COMMITTED, WOULD BE AN OFFENSE OF VIOLENCE, AS DEFINED IN SECTION 2901.01 OF THE REVISED CODE, IF COMMITTED BY AN ADULT. Regardless of whether or not the child knew the age of the victim, ~~the~~ ~~fact~~ IF THE COURT DETERMINES that the victim was sixty-five years of age or older or permanently and totally disabled, THAT FACT shall be considered by the court in favor of transfer, but shall not control the decision of the court. ADDITIONALLY, IF THE COURT DETERMINES THAT THE ACT ALLEGED, IF ACTUALLY COMMITTED, WOULD BE AN OFFENSE OF VIOLENCE, AS DEFINED IN SECTION 2901.01 OF THE REVISED CODE, IF COMMITTED BY AN ADULT, THAT FACT SHALL BE CONSIDERED BY THE COURT IN FAVOR OF TRANSFER, BUT SHALL NOT CONTROL THE DECISION OF THE COURT.

(C) The child may waive the examination REQUIRED BY DIVISION (A)(1)(c) OF THIS SECTION, if the court finds the waiver competently and intelligently made. Refusal to submit to a mental and physical examination by the child constitutes waiver of the examination.

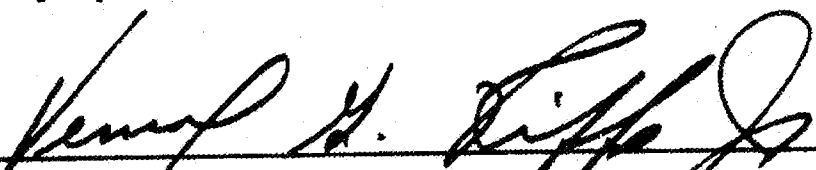
(D) Notice in writing of the time, place, and purpose of ~~such~~ ANY hearing HELD PURSUANT TO DIVISION (A) OF THIS SECTION shall be given to the child's parents, guardian, or other custodian and his counsel at least three days prior to the hearing.


(E) No child, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen, unless the child has been transferred as provided in this section. Any prosecution that is had in a criminal court on the mistaken belief that the child was over eighteen years of age at the time of the commission of the offense shall be deemed a nullity, and the child shall not be considered to have been in jeopardy on the offense.

(F) Upon such transfer, the juvenile court shall state the reasons for the transfer and order the child to enter into a recognizance with good and sufficient surety for his appearance before the appropriate court for any disposition that the court is authorized to make for a like act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint.

(G) Any child whose case is transferred for criminal prosecution pursuant to this section and who is subsequently convicted in that case shall thereafter be prosecuted as an adult in the appropriate court for any future act that he is alleged to have committed that if committed by an adult would constitute the offense of murder or aggravated murder, or would constitute an aggravated felony of the first or second degree or a felony of the first or second degree.

SECTION 2. That existing section 2151.26 of the Revised Code is hereby repealed.

  
Speaker \_\_\_\_\_ of the House of Representatives.

  
President \_\_\_\_\_ of the Senate.

**Am. Sub. H.B. 1**  
121st General Assembly  
09-01-95

**Reps. Thomas, Garcia, Bateman, Batchelder, Blessing, Brading, Buchy, Carey, Corbin, Core, Damschroder, Fox, Haines, Harris, Hodges, Hottinger, Jacobson, Johnson, Jordan, Krebs, Mason, Mead, Metzger, Myers, Nein, Netzley, O'Brien, Olman, Padgett, Perz, Salerno, Schuler, Schuring, Terwilliger, Thompson, Tiberi, Van Vyven, Vesper, White, Winkler, Wise, Womer Benjamin, Taylor, Hood, Kasputis, Reid, Doty, Suster, Mottl, Roman, Pringle, Weston, Maier, Lawrence, Colonna, Verich, Mottley, Grendell, Ford, Schuck.**

**Sens. B. Johnson, Greenwood, Vukovich, Howard, Dix, Schafrath, Cupp, Nein, Suhadolnik, Carnes, Kearns, Gaeth, Burch, Watts, Oelslager, Drake, Ray, Snyder, Gillmor, Horn.**

Defines a "Category One Offense" and a "Category Two Offense," creates a new mandatory bindover for criminal prosecution procedure for certain children who are at least 14 years of age and satisfy Category One Offense, Category Two Offense, and other criteria, and modifies aspects of existing law's permissive bindover for criminal prosecution procedure, including applying that procedure to children who are at least 14 years of age and expanding the list of factors that a juvenile court must consider in favor of a bindover for criminal prosecution; specifies that children who are bound over for criminal prosecution and who subsequently are convicted of or plead guilty to a felony in that case will be prosecuted for subsequent offenses as if they were an adult; modifies the provisions of the Juvenile Law pertaining to delinquent child orders of commitment to the Department of Youth Services (DYS) for the commission of certain acts that would be an aggravated felony of the first or second degree or a felony of the first or second degree if committed by an adult; permits a juvenile court that has committed a delinquent child to DYS for the commission of an act that would be a felony if committed by an adult to also commit the child to DYS for institutionalization in a secure facility for an additional, consecutive period if certain firearm conduct was involved; permits a juvenile court to order consecutive periods of commitment to DYS for juveniles who have committed two or more acts that would be felonies if committed by an adult; expands the definition of "public safety beds" that relates to the Felony Delinquent Care & Custody Program Law; permits the sealing under specified circumstances of the record of a juvenile traffic

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\* This final analysis is based on the enacted bill. It will differ from the digest, which will be based on the act.

offender; specifies that children who are at least 14 years of age and who are arrested for, adjudicated delinquent children for, or convicted of the commission of a Category One Offense or a Category Two Offense may be fingerprinted and photographed in the same manner as if they were adults who committed the same offense; requires a juvenile court that is making a disposition of a delinquent child that could result in the child being committed to DYS to consider any prior delinquency adjudication of the child as a "conviction" for purposes of determining the disposition; specifies that when a person is alleged to have committed a criminal offense, any prior delinquency or juvenile traffic offender adjudication of the person must be considered as a prior conviction in determining the offense with which he is to be charged and, if he is convicted, the sentence to be imposed upon him; provides a graduated schedule to determine the maximum fine that may be imposed upon a delinquent child or a juvenile traffic offender; clarifies that juvenile court commitments generally may last until the subject child attains 21 years of age unless a provision of law specifically provides otherwise; and specifies that 10% of the proceeds of forfeiture sales made under the Corrupt Activity Law, the Felony Drug Abuse Offense Forfeiture Law, the Contraband Seizure and Forfeiture Law, and the Abandoned and Forfeited Property Law must be used for certified drug and alcohol addiction treatment programs. (Effective: )

"Category One Offense" and "Category Two Offense"

The act defines the terms "Category One Offense" and "Category Two Offense" for several purposes relating to juveniles. A Category One Offense means any of the following:

- (1) Aggravated murder;
- (2) Murder;
- (3) Attempted aggravated murder or attempted murder.

A Category Two Offense means any of the following:

- (1) Voluntary manslaughter, kidnapping, rape, felonious sexual penetration, aggravated arson, aggravated robbery, or aggravated burglary;
- (2) Involuntary manslaughter that involves the causing of another person's death as a proximate result of the offender's committing or attempting to commit a felony.

Commission of an "offense" by a child--trial in juvenile court or bindover for criminal prosecution

Prior and continuing law

Definition of child and delinquent child. Under prior law, for purposes of the Juvenile Law (Chapter 2151. of the Revised Code), a "child" was any person under 18 years of age, except that any person who violated a federal or state law or municipal ordinance prior to attaining 18 years of age was deemed a "child" irrespective of his age at the time a complaint was filed or a hearing was held on a complaint and except that any person whose case was transferred for criminal prosecution under the then existing "bindover" law and who subsequently was convicted in that case was deemed after the transfer not to be a child in any case in which he was alleged to have committed an act that if committed by an adult would be aggravated murder, murder, an aggravated felony of the first or second degree, or a felony of the first or second degree. Under continuing law, for purposes of the Juvenile Law, a "delinquent child" includes any child who violates: any law of Ohio or the United States or any ordinance or regulation of an Ohio political subdivision, if the violation would be a crime if committed by an adult and if the law, ordinance, or regulation was not a traffic law, ordinance, or regulation; or any lawful order of a juvenile court made under the Juvenile Law.

Generally exclusive jurisdiction of juvenile court. Under continuing law, modified by the act, when a child is arrested under any charge, complaint, affidavit, or indictment for a felony or misdemeanor, proceedings regarding the child initially must be brought in the juvenile court in accordance with the Juvenile Law. If the child is taken before a county court or municipal court judge, a judge of a court of common pleas other than a juvenile judge, or a mayor, the judge or mayor must transfer the case to the juvenile court, and, upon the transfer, the proceedings must be in accordance with the Juvenile Law, all proceedings under the charge, complaint, information, or indictment must be discontinued in the court of the judge or mayor who transferred the case, and the case relating to the child then is within the exclusive jurisdiction of the juvenile court.

Bindover provisions. Although they were not specifically mentioned or identified in the above-described requirement that a juvenile court hear all charges against a child, prior Juvenile Law provided three exceptions to that general requirement:

(1) The first exception specified that, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing could transfer the case for criminal prosecution to the appropriate court with jurisdiction over the offense if the court determined that: the child was 15 years of age or older at the time of the conduct charged; there was probable cause to believe that the child committed the act alleged; and, after an investigation, a

mental and physical examination, and consideration of all relevant information and factors, there were reasonable grounds to believe that the child was not amenable to care or rehabilitation or further care or rehabilitation in a facility for delinquent children and that the safety of the community required that he be placed under legal restraint, including, if necessary, beyond the age of majority. A child could competently and intelligently waive the above-described examination. Certain factors had to be considered in favor of a transfer under this provision, including, if applicable, the fact that: the victim of the alleged act was 65 years of age or older or permanently and totally disabled at the time of the commission of the act; the act alleged would be an offense of violence if committed by an adult; and the child was domiciled in a "foreign jurisdiction," and the law of that jurisdiction would subject him to criminal prosecution as an adult for the act alleged without the need for any transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(2) The second exception was a limited "permanent bindover" provision that provided that, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the juvenile court at a hearing was required to transfer the case for criminal prosecution to the appropriate court with jurisdiction over the offense if the juvenile court determined at the hearing that there was probable cause to believe that the child committed the alleged act and that the child previously had been adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult.

(3) The third exception was a limited "permanent bindover" provision that provided that any child whose case was transferred for criminal prosecution under either of the above-described bindover provisions and who subsequently was convicted in that case thereafter was required to be prosecuted as an adult in the appropriate court for any future act that he allegedly committed that, if committed by an adult, would be aggravated murder, murder, an aggravated felony of the first or second degree, or a felony of the first or second degree. This exception took effect on July 1, 1983. However, prior to the enactment of this exception, the Ohio Supreme Court, in its decision in *State v. Adams* (1982), 69 Ohio St. 2d 120, held that once a child is bound over in any county pursuant to section 2151.26 that child is bound over for all felonies committed in other Ohio counties as well as for future felonies he may commit. The interaction of the statutory provision and the court decision were unclear.

Continuing law specifies that no child, either before or after reaching 18 years of age, may be prosecuted as an adult for an offense committed prior to his attainment of 18 years of age unless the child has been transferred to an adult court as described above. Any prosecution that is undertaken in a criminal court on the mistaken belief that the child in the case was 18 years of age or older at the time of the commission of the act in

question is a nullity, and the child is not considered to have been in jeopardy regarding the act. Upon the transfer of a case, the juvenile court must state the reasons for the transfer and order the child to enter into a recognizance for his appearance before the appropriate court. The transfer abates all jurisdiction of the juvenile court with respect to the acts alleged in the complaint.

Operation of the act

Overview. The act enacts a new "mandatory" bindover procedure law and modifies prior law's "permissive" bindover procedure law as described below. The act repeals the two previously described limited permanent bindover provisions of existing law.

Mandatory bindover procedure. Under the act, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be an offense if committed by an adult, the juvenile court must conduct a hearing and must transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense if the child was 14 years of age or older at the time of the act charged, there is probable cause to believe that the child committed the act charged, and one or more of the following applies to the child:

(1) A complaint previously was filed in a juvenile court alleging that the child was a delinquent child for committing an act that would be an offense if committed by an adult, the juvenile court transferred the case pursuant to either the mandatory bindover procedure or the permissive bindover procedure for criminal prosecution to the appropriate court having jurisdiction of the offense, and the child pleaded guilty to or was convicted of a felony in that case.

(2) The child is domiciled in another state, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) The child is charged with an act that is a Category One Offense, and either or both of the following apply to the child:

(a) The child was 16 years of age or older at the time of the act charged.

(b) The child previously was adjudicated a delinquent child for committing an act that is a Category One Offense or a Category Two Offense and was committed to the legal custody of DYS upon the basis of that adjudication.

(4) The child is charged with an act, other than kidnapping, that is a Category Two Offense and was 16 years of age or older at the time of the act charged, and either or both of the following apply to the child:

(a) The child previously was adjudicated a delinquent child for committing an act that is a Category One Offense or a Category Two Offense and was committed to the legal custody of DYS upon the basis of that adjudication.

(b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

Permissive bindover procedure. The act revises aspects of prior law's permissive bindover procedure. It permits a juvenile court, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult and that is not covered by the mandatory bindover procedure, to order at a hearing a transfer of the case for criminal prosecution to the appropriate court having jurisdiction of the offense after considering the factors listed below and after making all of the following determinations:

(1) The child was 14 years of age or older at the time of the act charged.

(2) There is probable cause to believe that the child committed the act charged.

(3) After an investigation, including a mental examination, and after consideration of all relevant information and factors, there are reasonable grounds to believe that (a) the child is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children and (b) the safety of the community may require that the child be placed under legal restraint, including, if necessary, for the period extending beyond the child's majority.

The act requires a juvenile court that is determining whether to order a permissive bindover for criminal prosecution to consider all of the following factors in favor of ordering that bindover:

(1) A victim of the act charged was five years of age or younger, regardless of whether the child who is alleged to have committed that act knew the age of that victim.

(2) A victim of the act charged sustained physical harm to the victim's person during the commission of or otherwise as a result of the act charged.



(3) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged. The act charged may not be a violation of the prohibition against carrying a concealed weapon.

(4) The child who is alleged to have committed the act charged has a history indicating a failure to be rehabilitated following one or more commitments pursuant to section 2151.355 to the Department of Youth Services (DYS) or to a school, camp, institution, or other facility for delinquent children operated for the care of delinquent children by a county, a district, or a private agency or organization that is authorized and qualified to provide the care, treatment, or placement required.

(5) A victim of the act charged was 65 years of age or older or permanently and totally disabled at the time of the commission of the act charged, regardless of whether the child who is alleged to have committed that act knew the age of that victim.

Provisions applicable to either or both of the bindover procedures. The act continues to permit a child whose case is being considered for a permissive bindover to waive the generally required mental examination if the juvenile court finds the waiver is competently and intelligently made. The act also continues the requirement that a juvenile court give a written notice of the time, place, and purpose of a mandatory or permissive bindover hearing to a child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

Consequences of a permissive or mandatory bindover. The act specifies that, if a child who is charged with an act that would be an offense if committed by an adult was 14 years of age or older and under 18 years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to the mandatory bindover procedure or the permissive bindover procedure, the juvenile court involved does not have jurisdiction to hear or determine the case subsequent to the transfer, and all further proceedings pertaining to the act charged must be discontinued in the juvenile court. The act also specifies that the court to which the case is transferred for criminal prosecution has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different than the offense charged.

The act also states that in enacting the new provisions regarding permissive and mandatory bindover, the purpose of the General Assembly is to overrule the holding of *State v. Adams* (1982), 69 Ohio St. 2d 120, regarding the effect of binding a child over for trial as an adult.

The Department of Rehabilitation and Correction is required to house an inmate who is 14 years of age or older and under 18 years of age in a housing unit in a state correctional institution separate from inmates who are 18 years of age or older, if the inmate who is under 18 years of age observes the rules and regulations of the institution and does not otherwise create a security risk by being housed separately. When an inmate attains 18 years of age, the Department may house the inmate with the adult population of the state correctional institution. If the Department receives too few inmates who are under 18 years of age to fill a housing unit in the state correctional institution separate from inmates who are 18 years of age or older, the Department also may assign to the housing unit inmates who are 18 years of age or older and under 21 years of age.

Revised definition of a child. Under the act, the general definition of a "child" for purposes of the Juvenile Law continues to be a person who is under 18 years of age, and a "child" continues to include a person who violates a federal or state law or municipal ordinance prior to attaining 18 years of age irrespective of that person's age at the time the complaint is filed or the hearing on the complaint is held. However, consistent with the mandatory bindover procedure and the revised permissive bindover procedure, the act excludes a person whose case is transferred for criminal prosecution pursuant to the mandatory or permissive bindover procedure and who subsequently is convicted in that case is deemed not to be a child in any of the following cases:

- (1) The transferred case;
- (2) A case in which the person is alleged to have committed prior to the transfer an act that would be an offense if committed by an adult;
- (3) A case in which the person is alleged to have committed subsequent to the transfer an act that would be an offense if committed by an adult.

The act specifies that categories (2) and (3) above apply to a case regardless of whether the prior or subsequent act that is alleged in the case and that would be an offense if committed by an adult allegedly was committed in the same county in which the case was transferred or in another county and regardless of whether the complaint in the case involved was filed in the same county in which the case was transferred or in another county. Category (2) above applies to a case only when the prior act alleged in the case has not been disposed of by a juvenile court or trial court.

**Fingerprints and photographs of juveniles who commit certain acts**

**Criminal offenders**

Continuing law contains a number of provisions that the act modifies and that pertain to the taking and maintenance of fingerprints, photographs, and other identifying information regarding certain alleged or convicted criminal offenders. Among these provisions and the act's changes are:

- (1) A provision that requires the Superintendent of the Bureau of Criminal Identification and Investigation of the Attorney General's office (BCII) to procure and file for record photographs, pictures, fingerprints, measurements and other pertinent information of all persons who have been convicted of committing, within Ohio, a felony or a crime that is a misdemeanor on a first offense and a felony on subsequent offenses, and of all well-known and habitual criminals. The act expands this provision to apply to a child who is at least 14 years of age and less than 18 years of age and has been adjudicated a delinquent child for committing an act that is a Category One Offense or a Category Two Offense or has been convicted of or pleaded guilty to a Category One Offense or a Category Two Offense within Ohio.
- (2) A provision that requires the person in charge of any state correctional institution and the person in charge of any state institution with custody of a person suspected of having committed a felony or a crime that is a misdemeanor on a first offense and a felony on subsequent offenses to furnish such material to the BCII Superintendent upon request. The act expands this provision to apply to a child who is 14 years of age or older and less than 18 years of age, who is in custody, and with respect to whom there is probable cause to believe that the child may have committed an act that is a Category One Offense or a Category Two Offense.
- (3) A provision that prohibits the BCII Superintendent from procuring, and a person in charge of a state correctional institution from furnishing, any fingerprints, photographs, or other descriptive information regarding a child under 18 years of age, except as permitted in the Juvenile Law governing the fingerprinting and photographing of juveniles. The act limits this provision to apply only to children under 18 years of age who have not been arrested or otherwise taken into custody for committing an act that is a Category One Offense or a Category Two Offense, have not been adjudicated a delinquent child for committing an act that is a Category One Offense or a Category Two Offense, have not been convicted of or pleaded guilty to committing a Category One Offense or a Category Two Offense, and are not children with respect to whom there is probable cause to believe that they may have committed an act that is a Category One Offense or a Category Two Offense.

(4) A provision that requires each Ohio court of record to send to the BCII Superintendent a weekly report containing a summary of each case involving a felony or a crime that is a misdemeanor on a first offense and a felony on subsequent offenses. The act extends this provision to apply to children who are under 18 years of age and are adjudicated delinquent children for committing an act that is a Category One Offense or a Category Two Offense. It requires juvenile courts to provide the weekly reports.

(5) A provision requiring the BCII Superintendent to cooperate with and assist sheriffs, police chiefs, and other law "enforcement" (added by the act) officers in establishing a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested for a felony or a crime that is a misdemeanor on a first offense and a felony on subsequent offenses. Under the act, this provision also applies to children who are at least 14 years of age and not 18 years of age and who are arrested or otherwise taken into custody for committing an act that is a Category One Offense or a Category Two Offense.

(6) A provision requiring the BCII Superintendent to file for record the fingerprints of all persons confined in any workhouse, jail, or state correctional facility for the violation of a state law and any other information that he may receive from state or local law enforcement officials. The act makes this provision also apply to a child who is at least 14 years of age and not 18 years of age and who is in such a facility or a juvenile facility for committing an act that is a Category One Offense or a Category Two Offense.

(7) A provision permitting the BCII Superintendent to operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals, criminal activity, crime prevention, law enforcement, and criminal justice and permitting him to establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies. The act expands this provision to apply to children who are under 18 years of age and who are adjudicated delinquent children for committing an act that is a Category One Offense or a Category Two Offense. The act also provides that the Superintendent may gather, store, retrieve, and disseminate information, data, and statistics that pertain to children who are under 18 years of age and that are gathered pursuant to the above provisions together with information, data, and statistics that pertain to adults that are gathered pursuant to the above provisions.

(8) A provision requiring each sheriff and each city chief of police, immediately upon the arrest of any person for any felony, on suspicion of any felony, or for any crime that is a misdemeanor on a first offense and a felony on subsequent offenses, to take or cause to be taken the person's fingerprints and to forward them, together with any other descriptions that may be required and with the history of the offense, to BCII to be

classified and filed. The information must be returned to the person upon his request if he is found not guilty of the offense charged or a nolle prosequi is entered in the case. The Superintendent must compare the descriptions received with those already on file with BCII, and, if he finds that the person arrested has a criminal record, is a fugitive from justice, or is wanted for any offense in any jurisdiction, he immediately must inform the arresting officer of that fact and give appropriate notice to the proper authorities in the jurisdiction in which the person is wanted. The provision applies to municipal ordinance violations only in limited circumstances and does not apply to any child under 18 years of age, except as permitted in the Juvenile Law governing the fingerprinting and photographing of juveniles. The act expands this provision to apply to children who are at least 14 years of age but not 18 years of age and who are arrested or taken into custody for committing an act that is a Category One Offense or a Category Two Offense or upon probable cause to believe that the children may have committed an act of that nature.

(9) A provision requiring each sheriff and each police chief to furnish to BCII descriptions, fingerprints, photographs, and measurements of: (a) persons arrested who in that official's judgment are wanted for serious offenses, are fugitives from justice, or possessed when arrested goods or property reasonably believed to have been stolen, (b) persons who possess burglar materials or high power explosives reasonably believed to be intended for unlawful uses, (c) persons who possess infernal machines or other contrivances reasonably believed to be intended for unlawful uses, (d) persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes, and (e) persons who possess counterfeiting materials reasonably believed to be intended for unlawful uses. The act expands this provision to apply to children who are at least 14 years of age but not 18 years of age and who are arrested or otherwise taken into custody for committing an act that is a Category One Offense or a Category Two Offense.

### Juvenile offenders

Continuing Juvenile Law generally prohibits the fingerprinting or photographing of a child in the investigation of any violation of law without the consent of a juvenile court judge. However, it permits a law enforcement officer to fingerprint and photograph a child without the consent of a juvenile court judge when the child is arrested or otherwise taken into custody for the commission of an act that would be a felony if committed by an adult and there is probable cause to believe that the child may have been involved in the commission of the act. The Law generally limits the period of time for which fingerprints and photographs taken under either of the above-described provisions, and records of the arrest or custody of the child that was the basis of the taking of the fingerprints or photographs, may be retained, the uses that may be made of the fingerprints, photographs, and records, and the persons to whom they may be released.

The act specifies that the above provisions that regulate the taking and retention of fingerprints and photographs of a child do not apply to any child who is at least 14 years of age and less than 18 years of age and who has been arrested or otherwise taken into custody for committing an act that is a Category One Offense or a Category Two Offense, has been adjudicated a delinquent child for committing any such act, has been convicted of or pleaded guilty to any such offense, or is a child with respect to whom there is probable cause to believe that the child may have committed such an act.

**Consideration of prior delinquency adjudications in delinquency dispositions and in criminal cases**

**Continuing law**

Numerous existing Revised Code sections that set forth criminal offenses increase the classification of the offense if the person who commits the offense previously has been convicted of committing the same or another offense.

A continuing provision in section 2151.358(H) provides that, except in relation to the impeachment of the credibility of the child, the disposition of a child under a judgment rendered in a juvenile court and evidence given in a juvenile court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court "as to the matter of sentence or to the granting of probation." However, the Revised Code did not specifically address whether an adjudication that a child is a delinquent child may be considered a "conviction" for purposes of any of the existing criminal offenses that increase the classification of the offense if the person who commits the offense previously has been convicted of committing the same or another offense.

The Supreme Court, in *In Re Russell* (1984), 12 Ohio St. 3d 304, held that a prior delinquency adjudication predicated on a theft offense constitutes a "previous conviction of a theft offense" under section 2913.02 for the purposes of determining the allowable disposition that may be made of the child if he subsequently is adjudicated a delinquent child predicated on a subsequent theft offense.

**Operation of the act**

**Delinquency dispositions.** The act requires a juvenile court that is making a disposition of a delinquent child that could result in the child being committed to DYS to determine, prior to making the disposition, whether the child previously has been adjudicated a delinquent child based upon the child's violation of any law or ordinance. If it determines that the child has been so adjudicated, it must consider in entering an order of disposition for the child the previous adjudication as a conviction in determining the

degree of offense the current delinquent act would be had it been committed by an adult. The act states that the purpose of this provision is to recognize the holding in *Russell*.

Criminal cases. The act specifies that, if a person is alleged to have committed an offense and previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, the prior adjudication is a conviction of that law or ordinance for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person.

#### General duration of juvenile court commitments

##### Continuing and prior law

For certain dispositions by a juvenile court of a delinquent, unruly, abused, neglected, or dependent child or a juvenile traffic offender, continuing law specifies the duration of the disposition. When a juvenile court commits a delinquent child to the custody of DYS, the court's jurisdiction over the child generally ceases and terminates at the time of the commitment; one exception permits the court, upon DYS's motion, to terminate permanent custody at any time prior to the child's attainment of 18 years of age. DYS generally must retain the committed child in institutional care for a statutorily prescribed minimum period of time and, if the child has not been released prior to his attainment of 21 years of age, must release the child on his attainment of that age. Generally, a court that adjudicates a child an abused, neglected, or dependent child retains jurisdiction over the child until the child attains 18 years of age or, if he is mentally or physically handicapped, 21 years of age or until the child is adopted and a final decree of adoption is issued. Prior law did not include any general provision that specifies the maximum duration of commitments made by a juvenile court that are not governed by a specific provision.

##### Operation of the act

The act specifies that, subject to the specific existing provisions pertaining to DYS commitments and commitments of abused, neglected, and dependent children and subject to any other law that specifies a different duration for a juvenile court commitment, all commitments made by a juvenile court are temporary and continue for a period that is designated by the court in its order, until terminated or modified by the court, or until the child attains 21 years of age. Prior to January 1, 1989, Ohio law contained a statement similar to this proposed statement, but the statement was eliminated from the law in Am. Sub. S.B. 89 of the 117th General Assembly.

The act also provides that, before accepting from an alleged delinquent child a plea of guilty or no contest to the commission of an act that is a Category One Offense or a

Category Two Offense, the court must inform the child of the possible length of commitment to the legal custody of DYS to which the child could be subject.

**Delinquent child adjudications--DYS commitment periods**

**Continuing and prior law**

A juvenile court that adjudicates a child to be a delinquent child may enter one or more specified types of orders of disposition. A juvenile court previously was authorized to commit a child to the legal custody of DYS for institutionalization or institutionalization in a secure facility as follows:

(1) If the child was adjudicated a delinquent child for committing an act that would be an aggravated felony of the third degree or a felony of the third or fourth degree if committed by an adult, a juvenile court could have committed the child to the legal custody of DYS for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age. The act does not modify this provision.

(2) If the child was adjudicated a delinquent child for committing an act that would be an aggravated felony of the first or second degree or a felony of the first or second degree if committed by an adult, a juvenile court could have committed the child to the legal custody of DYS for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age. The act modifies this provision as described below.

(3) If the child was adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, a juvenile court could have committed the child to the legal custody of DYS for institutionalization in a secure facility until the child's attainment of 21 years of age. The act does not modify this provision.

Prior law required a juvenile court at a dispositional hearing pertaining to a delinquent child to determine (1) whether a victim of the child's delinquent act was 65 years of age or older or permanently and totally disabled at the time the delinquent act was committed, regardless of whether the child knew the victim's age, and (2) whether the delinquent act would have been an offense of violence if committed by an adult. If the victim was of that nature and if the act would have been an offense of violence if committed by an adult, the juvenile court was required to consider those facts in favor of entering an order committing the child to DYS as described above or to a school, camp, institution, or other facility for delinquent children operated for the care of delinquent



children by a county, a district, or a private agency or organization authorized and qualified to provide the care, treatment, or placement required.

Operation of the act

DYS commitments for certain delinquent acts. Under the act, if a child is adjudicated a delinquent child for committing an act that would be an aggravated felony of the first or second degree or a felony of the first or second degree, a juvenile court may commit the child to DYS for institutionalization in a secure facility only in the following manners:

(1) If the child was adjudicated a delinquent child for voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter when a death is caused as a proximate result of a child's committing or attempting to commit a felony, or rape or felonious sexual penetration (except when the sexual conduct, in the case of rape, or the insertion of a body part or an instrument, apparatus, or other object into a vaginal or anal cavity, in the case of felonious sexual penetration, was consensual and involved a victim (a) who was less than 13 years of age and (b) was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child), the juvenile court may commit the child to the legal custody of DYS for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age.

(2) If the child was adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder, the juvenile court may commit the child to DYS for institutionalization in a secure facility for an indefinite term consisting of a minimum period of six to seven years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age.

(3) If the child was adjudicated a delinquent child for committing an act that would be an aggravated felony of the first or second degree that is not listed in (1) or (2) above or a felony of the first or second degree if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age.

New DYS commitments relative to firearms. The act adds another type of potential commitment of a delinquent child to the legal custody of DYS by specifying that a juvenile court may enter an order of disposition as follows: if the child is adjudicated a delinquent child for committing an act, other than the offense of carrying a concealed weapon, that would be a felony if committed by an adult and is committed to the legal

custody of DYS and if the court determines that the child, if the child was an adult, would be guilty of a specification that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child, the juvenile court may commit the child to the legal custody of DYS for institutionalization in a secure facility for the period of time that is equal to the term of imprisonment that a court would impose for that specification upon an adult, except that the court may not commit the child to the legal custody of DYS for a period of time that exceeds three years. The period of commitment is in addition to, and is served consecutively with and prior to, the period of commitment ordered for the delinquent act.

New consecutive periods of DYS commitment authority. The act authorizes a juvenile court, if a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court enters an order of disposition committing the child to the legal custody of DYS for institutionalization or institutionalization in a secure facility to order that the periods of DYS commitment for each of those acts be served consecutively in the legal custody of DYS and, if applicable, be in addition to and commence immediately following the expiration of a period of commitment that the court imposes for a firearm-related specification. A juvenile court is prohibited from committing a delinquent child to the legal custody of DYS under the consecutive periods of commitment authority for a period that exceeds the child's attainment of 21 years of age.

Revised disposition hearing "factors consideration." The act requires a juvenile court to determine, prior to entering one or more orders of disposition in a delinquent child case, whether a victim of the delinquent act was 65 years of age or older or permanently and totally disabled at the time that act was committed, whether the delinquent act would have been an offense of violence if committed by an adult, whether a victim of the delinquent act was five years of age or younger at the time that act was committed, and whether a victim of the delinquent act sustained physical harm to the victim's person during the commission of or otherwise as a result of that act. A juvenile court is required to consider a combination of the offense of violence factor and any of the victim factors in favor of ordering the commitment of the delinquent child to DYS or to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children.

#### Delinquent child and juvenile traffic offender fine schedules

##### Prior law

Under prior law, when a child was adjudicated a delinquent child or a juvenile traffic offender, the juvenile court had numerous alternatives available to it in determining the disposition to make of the child. The alternatives available for a

delinquent child and for a juvenile traffic offender included the imposition of a fine not exceeding \$50 and costs.

Operation of the act

The act replaces the prior provisions that authorized the imposition of a fine of not more than \$50 plus costs as an order of disposition for a child who is adjudicated a delinquent child or a juvenile traffic offender with a graduated schedule, ranging from \$50 to \$1,000, that must be used in determining the maximum fine that could be imposed upon a delinquent child or a juvenile traffic offender.

Under the graduated schedule, the maximum fine that may be imposed as part of the disposition of a child adjudicated a delinquent child or a juvenile traffic offender is as follows:

(1) If the act upon which the adjudication was based would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not exceeding \$50 and costs;

(2) If the act upon which the adjudication was based would be a misdemeanor of the fourth degree if committed by an adult, a fine not exceeding \$75 and costs;

(3) If the act upon which the adjudication was based would be a misdemeanor of the third degree if committed by an adult, a fine not exceeding \$125 and costs;

(4) If the act upon which the adjudication was based would be a misdemeanor of the second degree if committed by an adult, a fine not exceeding \$175 and costs;

(5) If the act upon which the adjudication was based would be a misdemeanor of the first degree if committed by an adult, a fine not exceeding \$225 and costs;

(6) If the act upon which the adjudication was based would be a felony of the fourth degree or an unclassified felony if committed by an adult, a fine not exceeding \$300 and costs;

(7) If the act upon which the adjudication was based would be an aggravated felony of the third degree or a felony of the third degree if committed by an adult, a fine not exceeding \$400 and costs;

(8) If the act upon which the adjudication was based would be an aggravated felony of the second degree or a felony of the second degree if committed by an adult, a fine not exceeding \$550 and costs;

(9) If the act upon which the adjudication was based would be an aggravated felony of the first degree or a felony of the first degree if committed by an adult, a fine not exceeding \$750 and costs;

(10) If the act upon which the adjudication was based would be the offense of aggravated murder or murder if committed by an adult, a fine not exceeding \$1,000 and costs.

Sealing of the record of a juvenile traffic offender

Continuing law

Continuing law contains procedures pursuant to which the record of the case of an adjudicated unruly child is sealed, the record of the case of an adjudicated delinquent child may be sealed, and the record of the case of an alleged unruly child or an alleged delinquent child may be expunged when the child is not adjudicated an unruly child or a delinquent child. To "seal a record" means to remove the record from the main file of similar records and to secure it in a separate file that contains only sealed records and that is accessible only to the juvenile court involved. A sealed record must be destroyed by all persons and governmental bodies other than the juvenile court involved.

Operation of the act

Sealing. The act requires any institution or facility that unconditionally discharges an adjudicated juvenile traffic offender to immediately give notice of the discharge to the juvenile court that committed the child. Two years after the termination of any order made by a juvenile court in a juvenile traffic offender case or two years after the unconditional discharge of an adjudicated juvenile traffic offender from an institution or facility to which the child may have been committed, the juvenile court involved must (1) order the sealing of the record of the case of the juvenile traffic offender or (2) send him a specified notice of his right to have that record sealed. A notice of that nature must be sent within 90 days after the expiration of the previously described two-year period by certified mail, return receipt requested, to the juvenile traffic offender at his last known address.

Under the act, at any time after the previously-described two-year period has elapsed, an adjudicated juvenile traffic offender may apply to the juvenile court involved for an order to seal the record in his case. The juvenile court must hold a hearing on the application within 60 days after it is received, and notice of the hearing must be given to the prosecuting attorney and to any other public office or agency known to have a record of the prior adjudication. If the juvenile court finds that the juvenile traffic offender's rehabilitation has been attained to a satisfactory degree, the court may order the record of the juvenile traffic offender's case to be sealed. If an order of that nature is entered, the

proceedings in the case thereafter are deemed never to have occurred, and all index references to the case and the juvenile traffic offender must be deleted.

**Expungement.** Under the act, if a person is arrested and charged with being a juvenile traffic offender and is adjudicated not guilty of the charges in the case or the charges in the case are dismissed, the alleged juvenile traffic offender may apply to the juvenile court involved for the expungement of the record in the case. The application may be filed at any time after the person is adjudicated not guilty or the charges are dismissed. The juvenile court must give notice to the prosecuting attorney of any hearing on the application. Alternatively, a juvenile court may initiate expungement proceedings of this nature on its own motion.

If a juvenile court determines upon the filing of such an application or on its own motion that a person was adjudicated not guilty or the charges were dismissed in an alleged juvenile traffic offender case, it must order that the record of the case be expunged and that the proceedings in the case be deemed never to have occurred. Continuing law's post-expungement actions that the juvenile court must order or take then ensue.

**Retroactivity.** The act specifies that the proposed sealing and expungement provisions relative to adjudicated or alleged juvenile traffic offenders apply to persons who were adjudicated or charged with being juvenile traffic offenders prior to the act's effective date, regardless of their age on that date. Persons of those natures may file an application in accordance with section 2151.358(D) or (F) on or after the act's effective date for the sealing of the record of their adjudication as a juvenile traffic offender or the expungement of the record of the case in which they were adjudicated not guilty of being a juvenile traffic offender or the charges of being a juvenile traffic offender were dismissed, and the juvenile court involved must proceed with a hearing on the application in accordance with section 2151.358(D) or (F). Juvenile courts are not required to send the notice described in section 2151.358(C)(1)(b) to a person who was adjudicated a juvenile traffic offender prior to the act's effective date, if, on that date, more than 90 days has expired after the expiration of the two-year period described in section 2151.358(C)(1).

**Public safety beds**

The act revises the definition of "public safety beds" that applies to DYS's Felony Delinquent Care & Custody (FDCC) Program to include the following delinquent children:

(1) Felony delinquents committed to DYS for the commission of an act other than the offenses of aggravated burglary and aggravated robbery that is a Category One

Offense or a Category Two Offense (expanding prior law's aggravated murder, murder, or rape) and who are in the care and custody of a DYS institution or have been diverted from care and custody in a DYS institution and placed in a community corrections facility;

(2) Felony delinquents who, while committed to DYS and in the care and custody of a DYS institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or facility an act that if committed by an adult would be a felony or misdemeanor (continuing law);

(3) Children who are at least 12 but less than 18 years of age, who are adjudicated delinquent children for having committed an act that if committed by an adult would be a felony, who are committed to DYS by the juvenile court of a county that has had one-tenth of 1% or less of the statewide adjudications for felony delinquents as averaged for the past two fiscal years, and who are in the care and custody of a DYS institution or a community corrections facility (continuing law);

(4) Felony delinquents who, while committed to DYS and in the care and custody of a DYS institution, commit in that institution an act that if committed by an adult would be a felony, who are serving administrative time for having committed that act, and who have been institutionalized or institutionalized in a secure facility for the minimum period of time specified in section 2151.355(A)(4) or (5) (continuing law);

(5) Felony delinquents who are subject to and serving a three-year firearm-related specification consecutive period of commitment order imposed by a juvenile court for an act, other than the offense of aggravated burglary, that would be a Category One offense or a Category Two offense if committed by an adult.

**Forfeiture proceeds--use of portion for certified alcohol and drug treatment programs**

**Continuing law**

**Forfeiture provisions.** Continuing law, modified by the act, contains numerous provisions that require the forfeiture of a person's property if the person commits a specified offense or if the property has a specified type of relationship to an offense that the person committed. Among the provisions are:

(1) Provisions under the Corrupt Activity Law that specify that, if a person is convicted of committing the offense of engaging in a pattern of corrupt activity or is adjudicated a delinquent child for committing an act that would be that offense if committed by an adult, the involved court must order, in accordance with specified procedures, the forfeiture to the state of certain property in which the person has an interest and that was used in the course of or intended for use in the course of the violation or that was derived from or realized through the violation;

(2) Provisions under the Felony Drug Abuse Offense Forfeiture Law that specify that, if a person is convicted of any felony drug abuse offense or is adjudicated a delinquent child for committing an act that would be such an offense if committed by an adult, the involved court must order, in accordance with specified procedures, the forfeiture to the state of certain property in which the person has an interest and that either constitutes, or is derived from, any proceeds that the person obtained from the commission of the offense or act or was used or intended to be used in any manner to commit, or to facilitate the commission of, the offense or act;

(3) Provisions under the Contraband Seizure and Forfeiture Law that specify that, if a law enforcement officer seizes contraband, as defined in section 2901.01, from an adult or juvenile, the involved court must order, in accordance with specified procedures, the forfeiture to the seizing law enforcement agency or otherwise of the contraband;

(4) Provisions under the Abandoned and Forfeited Property Law that require the disposition, in accordance with specified procedures, of property, other than property that is subject to the provisions described in paragraphs (1) to (3) above or property that is subject to other specific forfeiture provisions, that has been lost, abandoned, stolen, or lawfully seized, that is in the custody of a law enforcement agency, that no longer is needed as evidence, and that cannot be returned, after a reasonable effort, to the person entitled to its possession.

#### Operation of the act

The act specifies, in relation to any property that is forfeited in a juvenile court under the Corrupt Activity Law, the Felony Drug Abuse Offense Forfeiture Law, the Contraband Seizure and Forfeiture Law, or the Abandoned and Forfeited Property Law that, if the property is sold, a specified percentage (see below) of the proceeds of the sale must be provided to one or more specified alcohol and drug treatment programs certified by the Department of Alcohol and Drug Addiction Services. A certified program generally may not receive money from a court under this provision unless it is located in the county in which the court is located or in a contiguous county; however, if there is no such program in any of those counties, the money may be provided to a certified program located anywhere in the state. Each program that receives any such forfeiture money must file an annual report with the Attorney General and the court of common pleas and board of county commissioners of the county in which the program is located and of any other county from which the program received forfeiture money. The report must be filed no later than March 1 of the year following the year in which the program received the money, include information on the number of persons served and the types of treatment services supplied, and include an accounting of how the program used the forfeiture money.

The percentage of the proceeds that would be required to be provided to the certified alcohol and drug treatment programs is as follows:

(1) Regarding proceeds from a sale under the Corrupt Activity Law (and, additionally, all fines and civil penalties imposed under that Law), 10% must be provided to the programs before any distribution may be made under the provisions of continuing law, and the remaining 90% must be distributed as under continuing law. Under continuing law, the proceeds are distributed in the following order: (a) first, to a civil plaintiff in an action brought under that Law, (b) second, the remaining proceeds to the payment of the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs, and (c) third, the remainder to the law enforcement trust fund of the prosecuting attorney and the law enforcement trust fund or similar fund serving the law enforcement agency that substantially conducted the investigation (if more than one such agency substantially conducted the investigation, this portion is equitably divided among those agencies).

(2) Regarding proceeds from a sale under the Felony Drug Abuse Offense Forfeiture Law, the proceeds must be disposed of in the following order: (a) first, to the payment of the costs incurred in connection with the seizure of, storage of, maintenance of, and provision of security for the property, the forfeiture proceeding or civil action, and, if any, the sale, (b) second, the remaining proceeds to the payment of the value of any legal right, title, or interest in the property that is possessed by a person who has established the validity of and consequently preserved that legal right, title, or interest, and (c) third, 10% of the remaining proceeds must be provided to the programs before any distribution may be made to a law enforcement trust fund or similar fund under the provisions of continuing law, and the remaining 90% must be distributed to law enforcement trust funds and similar funds as under continuing law.

(3) Regarding proceeds from a sale under the Contraband Seizure and Forfeiture Law, the proceeds must be disposed of in the following order: (a) first, to the payment of the costs incurred in connection with the seizure of, storage of, maintenance of, and provision of security for the contraband, the forfeiture proceeding, and, if any, the sale, (b) second, the remaining proceeds to the payment of the balance due on any preserved security interest, and (c) third, 10% of the remaining proceeds must be provided to the programs before any distribution may be made to a law enforcement trust fund or similar fund under the provisions of continuing law, and the remaining 90% must be distributed to law enforcement trust funds and similar funds as under continuing law.

(4) Regarding proceeds from a sale under the Abandoned and Forfeited Property Law, 10% of the proceeds must be provided to the programs before any distribution may be made to any state or political subdivision general fund under the provisions of



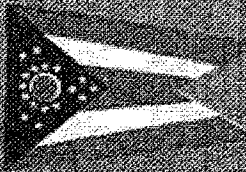
continuing law, and the remaining 90% must be distributed to state and political subdivision general funds and citizens' reward programs as under continuing law.

Effective date

The act has a delayed effective date of January 1, 1996.

Secs. 109.57, 109.60, 109.61, 2151.011, 2151.18, 2151.23, 2151.25, 2151.26, 2151.313, 2151.35, 2151.355, 2151.356, 2151.358, 2151.3512, 2151.38, 2901.08, 2923.35, 2925.44, 2933.41, 2933.43, 2933.44, 3301.121, 5139.01, 5139.05, 5139.06, 5139.20, and 5139.35.

\* \* \*



# Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

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## Ohio's Juvenile Bindover Law

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### Introduction

Ohio's Juvenile Bindover Procedure Law, section 2151.26 of the Revised Code, authorizes the juvenile court to transfer certain cases in which a child has been alleged to be a delinquent child to the appropriate court having jurisdiction over the offense for prosecution as an adult. The Juvenile Bindover Procedure Law creates a "mandatory" bindover procedure and a "permissive" bindover procedure.

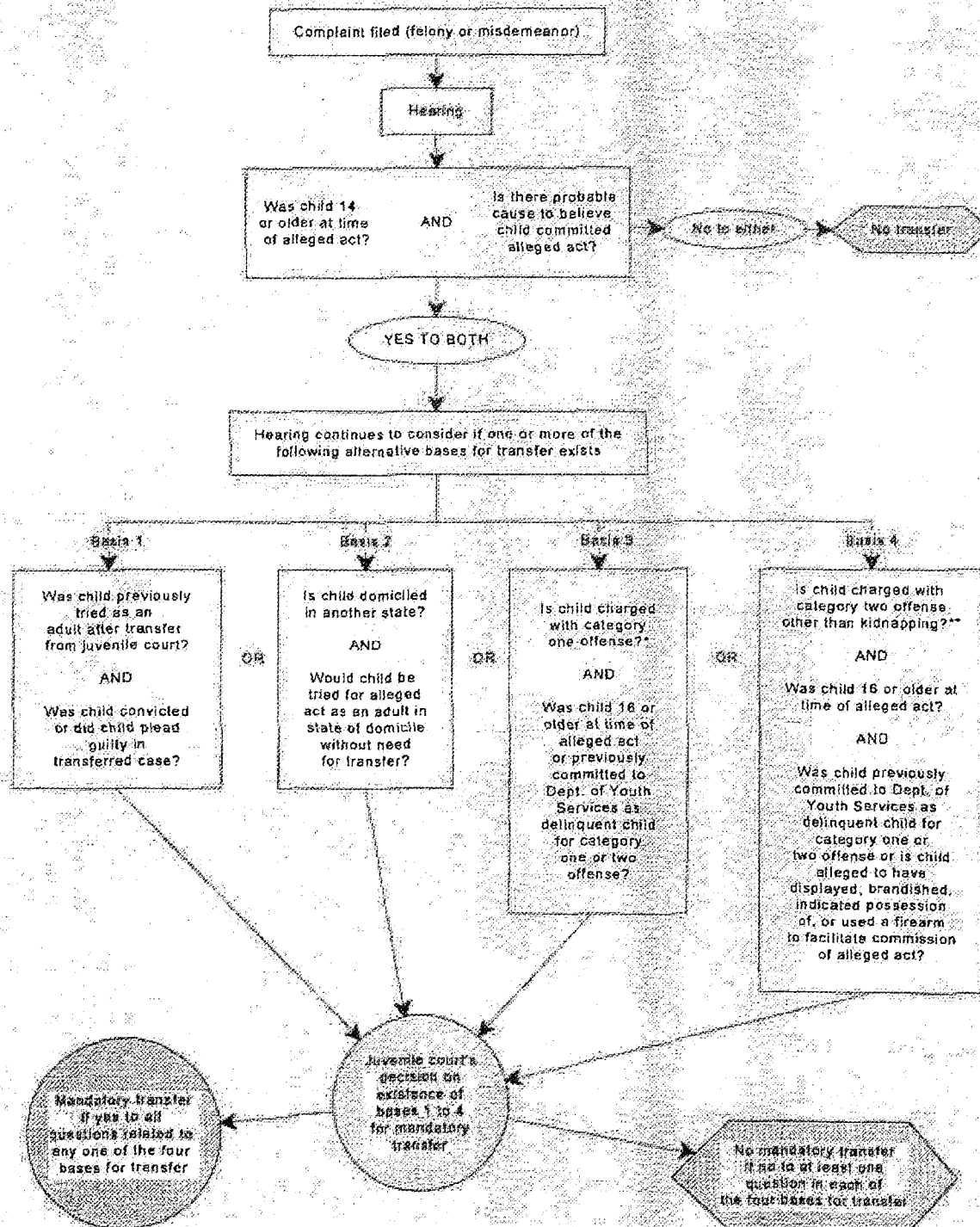
### Mandatory Bindover Procedure

After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be an offense if committed by an adult, the juvenile court at a hearing must transfer the case for criminal prosecution if the child was at least 14 years of age at the time of the commission of the act and certain circumstances exist. Chart 1 on page 2 of this Brief illustrates the mandatory bindover procedure.

### Permissive Bindover Procedure

Under the permissive bindover procedure, except when the mandatory bindover procedure applies, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case for criminal prosecution after considering specified statutory factors and

**Chart 1: Flowchart Illustrating the Mandatory Bindover Procedure**

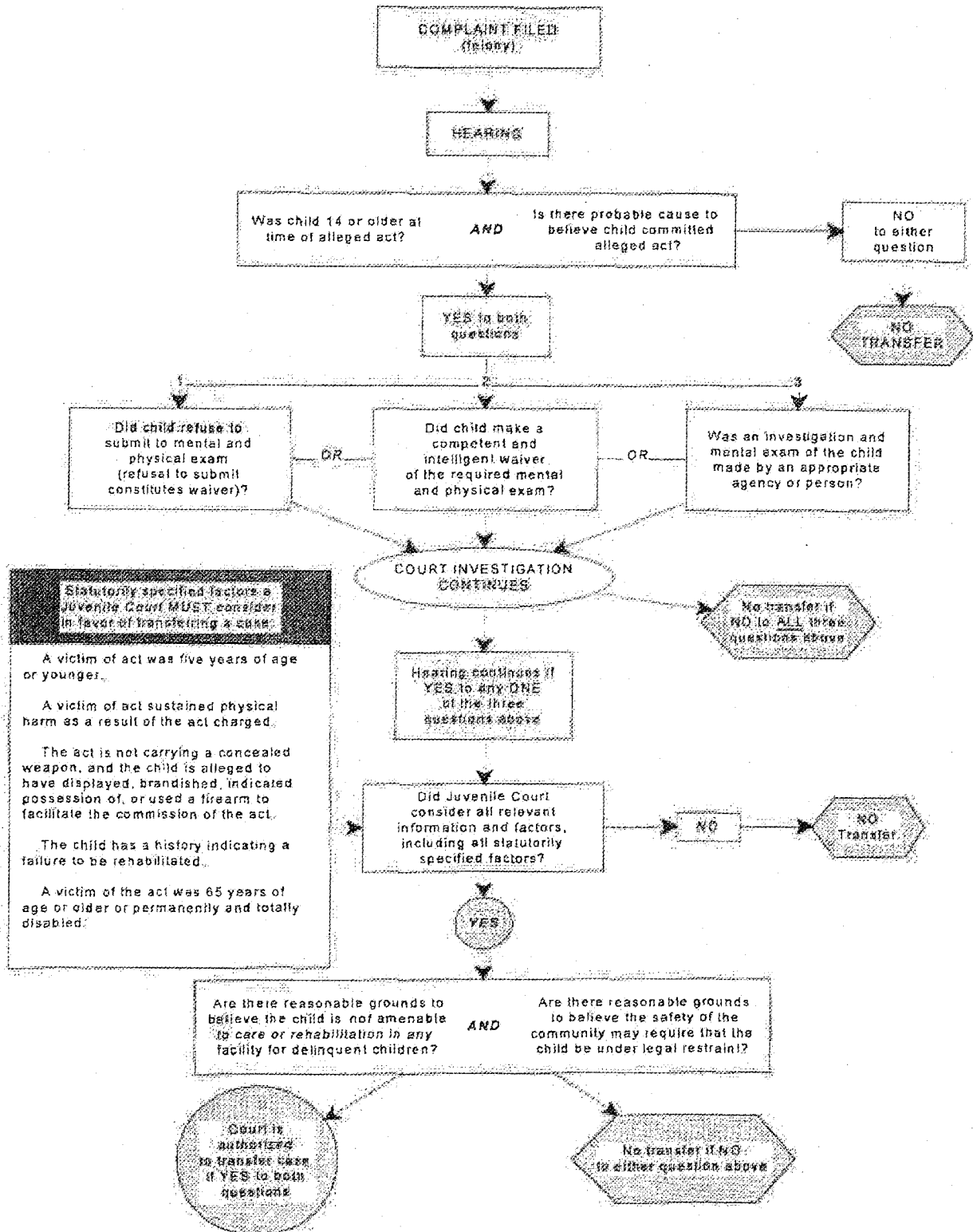


\* **Category One Offense** means aggravated murder, murder, attempted aggravated murder, or attempted murder (R.C. 2151.26(A)(1)).

\*\* **Category Two Offense** means voluntary manslaughter, kidnapping, rape, the former offense of felonious sexual penetration, aggravated arson, aggravated robbery, aggravated burglary, or involuntary manslaughter that involves causing another person's death as a proximate result of committing or attempting to commit a felony (R.C. 2151.26(A)(2)).

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Chart 2: Flowchart Illustrating the Permissive Bindover Procedure





making all of the determinations in Chart 2. Chart 2 on page 3 of this Brief illustrates the permissive bindover procedure.

### **Notice of Hearing**

The juvenile court must give written notice of the time, place, and purpose of any mandatory or permissive bindover hearing to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.<sup>1</sup>

### **Jurisdiction**

A juvenile court that transfers a case for criminal prosecution does not have jurisdiction to hear or determine the case subsequent to the transfer and must discontinue all further proceedings in the case. The court to which the case is transferred maintains jurisdiction as if the case originally had been commenced in that court.<sup>2</sup>

### **Detention**

A child whose case is transferred to a criminal court pursuant to either bindover procedure may be transferred for detention in a jail or other facility pending the criminal prosecution. The child must be confined in a manner that keeps the child

beyond the touch of all adult detainees and must be supervised at all times during the detention.<sup>3</sup>

### **Prosecution**

No child can be prosecuted in adult court for an act committed while the child was under 18 unless the juvenile bindover procedure is used, and any conviction in adult court on a mistaken belief of the child's age is void.<sup>4</sup> Any person whose case is properly transferred for criminal prosecution pursuant to the juvenile bindover procedure is not considered a child in the transferred case and, if the person is convicted of or pleads guilty to a felony in that case, is no longer considered a child in any pending case in which the person is alleged to have committed an act that would be an offense if committed by an adult. However, a person who is convicted of or pleads guilty to a felony after the person's case is transferred pursuant to the juvenile bindover procedure is considered a child solely for purposes of the filing of a complaint alleging that the child is a delinquent child and to determine whether the mandatory bindover procedure applies and requires that the case be transferred.<sup>5</sup>

If a person under 18 years of age allegedly commits a felony and is not taken into custody or apprehended until after the person attains 21 years of age, the juvenile court does not have jurisdiction of the case, and the

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juvenile bindover procedures do not apply. The case charging the person with committing the felony must be commenced and heard in an adult criminal court.<sup>6</sup>

### **Citations**

<sup>1</sup> R.C. 2151.26(D).

<sup>2</sup> R.C. 2151.23(H) and 2151.26(F).

<sup>3</sup> R.C. 2151.312(F).

<sup>4</sup> R.C. 2151.26(E).

<sup>5</sup> R.C. 2151.011(B)(6)(d), (e), and (f).

<sup>6</sup> R.C. 2151.23(I) and 2151.26(G).



# Judicial Impact Statement

May 15, 2000

Prepared by Janet Raup Gross

## Senate Bill 179

### Sponsor

Robert E. Latta

### Status

House Criminal Justice

### Version

As passed by the Senate

### TITLE

To implement, with significant modifications, "the recommendations of the Criminal Sentencing Commission pertaining to juvenile offender transfers of alleged delinquent children to criminal court for prosecution, dispositions of delinquent children and juvenile traffic offenders, and other changes to the Juvenile Court Law and the Juvenile Code."

### INTRODUCTION

Costs to implement SB 179 will be significant and must be addressed by the General Assembly. Impact of these costs has been detailed in documentation prepared by the Legislative Budget Office, the Criminal Sentencing Commission, the Department of Youth Services (DYS) and the County Commissioners Association of Ohio.

This Judicial Impact Statement focuses on matters of significance to judicial administration and court administration. Major areas of impact to courts and juvenile judges are presented in a narrative form, followed by a chart with code sections and bill line number citations for easy reference by the reader.

The impact of SB 179 As Passed by the Senate differs greatly from the impact of the bill as introduced. As introduced, the bill's impact on courts was to increase judicial discretion and the number of tools available to courts in making the most appropriate disposition for any given case.

The conclusions reached in this Judicial Impact Statement are based on correspondence and conversations with juvenile judges, court administrators and juvenile detention directors from throughout Ohio. These conclusions are also based on discussions that took place during several meetings of the Ohio Judicial Conference Juvenile Law and Procedure Committee and of the Ohio Association of Juvenile and Family Court Judges. The information gleaned in these communications is based on years of collective experience in and research about juvenile offenders.

### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

## BACKGROUND

The juvenile court system in America was created 100 years ago, recognizing that children differ from adults and should not be considered "miniature adults." The original role of the juvenile court system was to remove the taint of criminality from juvenile actions and to keep children out of the adult criminal and penal system. Under this system, if a child was committed to an institution for rehabilitation, that child was committed until he or she was reformed. There was no intent that the child serve a given term of time in the reformatory based on the court's adjudication of the child for a given offense.

More recently, because of the increase in the level of juvenile crime in the 1980s and early 1990s<sup>1</sup>, the trend has been to increase penalties for juveniles and to treat juveniles as adults. In Ohio, House Bill 1 of the 121<sup>st</sup> General Assembly enacted mandatory transfers to adult court for several felony-level violent offenses. Now, the Ohio General Assembly is considering a comprehensive re-write of the juvenile code, SB 179, initially developed by the Ohio Criminal Sentencing Commission Juvenile Subcommittee. The Sentencing Commission recommendations seek to create a "restorative justice" model in Ohio's juvenile code. This model includes not only rehabilitation of the offender, but also holds the offender accountable for his or her actions and seeks to restore the victim—all while giving the judges discretion in dispositions based on these restorative justice principles of accountability and restoration.

## OVERVIEW OF SB 179 JUDICIAL IMPACT

Senate Bill 179 As Passed by the Senate is significantly different from recommendations of the Sentencing Commission. The overarching impact of Senate Bill 179 As Passed by the Senate would further limit the discretion of the juvenile court to make decisions appropriate to the cases presented to it. Major items of impact are noted below:

### Purposes of the Juvenile Court (Chapter 2152)

Under SB 179, the juvenile court will have as its overriding purposes the restorative justice model, as follows: "\* \* \* To protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender." [Proposed R.C. 2152.01.] These purposes are a significant departure from the current purpose of the Juvenile Court at 2151.01(B), which are, "to protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation."

Putting "punishment" and "rehabilitation" on the same level requires that the issue of "**competency to stand trial**" be addressed. For the state to officially punish a child who is not competent to assist in the child's own defense is entirely inappropriate and prohibited under the Due Process clause of the United States Constitution. Therefore, along with the change of purpose, this bill should contain uniform provisions that meet procedural due process requirements of competency. In addition, it is absolutely necessary that an incompetent child who requires institutional care not be housed in the same facility as those adjudicated and committed to a penal institution such as the Department of Youth Services.

<sup>1</sup> Since 1994, violent juvenile crime has significantly decreased, according to cited research by Howard N. Snyder and Melissa Sickmund, "Juvenile Offenders and Victims: A National Report" (1999) Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.



**Mandatory Transfers for criminal prosecution**

*Background.* Under current law, after a complaint is filed alleging a child is a delinquent child for committing an act that would be a criminal offense if committed by an adult, the juvenile court must transfer the case for adult criminal prosecution if the child was 14 years old or older at the time the act charged allegedly occurred, if there is probable cause to believe that the child committed the act charged, and if one or more of the following applies:

1. The child previously had a case transferred to an adult court and was convicted of or pleaded guilty to a felony in that case;
2. The child is resident of another state, and if the act charged would have been committed in that state, the child would be subject to automatic criminal prosecution as an adult in that state;
3. The act charged is a category one offense (aggravated murder, murder, or attempted aggravated murder or murder) and either or both of the following apply: (a) the child was 16 years old or older at the time of the act charged, or (b) the child previously was adjudicated a delinquent child for committing an act that is a category one offense or a category two offense (voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a first degree felony, or the former offense of felonious sexual penetration) and the child was committed to the legal custody of DYS upon the basis of that adjudication;
4. The act charged is a category two offense other than kidnapping, the child was age 16 or older at time of the act charged, and either or both apply to the child: (a) the child previously was adjudicated a delinquent child for committing an act that is a category one offense or a category two offense and was committed to the legal custody of DYS upon the basis of that adjudication; or (b) the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed, brandished, indicated possession, or used the firearm to facilitate the commission of the act charged.

Many judges and prosecuting attorneys have stated that mandatory transfers under House Bill 1 result in inappropriate transfer to adult court and the adult penal system.

*Impact of SB 179 as Passed by the Senate.* In addition to retaining mandatory transfers in current law, Senate Passed SB 179 creates a classification for children age 14-17 of "presumed transfer" for certain alleged offenses, or certain alleged offenses with a prior commitment to the Department of Youth Services (DYS), or certain alleged offenses with enhancement factors. These transfers currently are discretionary with the court. [Proposed R.C. 2151.11 and 2152.12 (C).] The change from discretionary transfer to presumed transfer will result in transfers of more children to adult court and to adult corrections and will further limit the juvenile judge's discretion, increasing the probability of unintended negative consequences. These negative consequences could include transfer of a case that is not appropriate for the adult court (based on review of *all* of the facts of the case). Worse, it also can include inappropriate placement of a young, unsophisticated person in a penal institution with older, stronger, and more worldly adult inmates.

The bill also creates a classification of "mandatory serious youthful offender" for children as young as age 10, which requires that a judge impose and stay an adult sentence—further limiting the judge's discretion. [Proposed R.C. 2152.11(C) and 2153.13(E)(1)(c).]

This change further shifts discretion to the prosecutor and limits the courts' ability to apply the law to the unique facts in each case to reach a just conclusion. Note that in any circumstance where a judge's discretion is limited, the prosecuting authority continues to wield full discretion in seeking or not seeking charges with or without the mandatory transfer, presumed transfer, or mandatory sentencing requirements. The prosecutor continues to have plea negotiating authority, which may or may not result in the reduction of charges or the deletion of enhancement language from the complaint. While the prosecuting authority has a legitimate role in attempting to seek an appropriate disposition/sentence, this role is properly and primarily the responsibility of the judge.

While automatic and presumed transfers result in less work for the juvenile judge — as they are predetermined without consideration of the totality of facts in a given case — every limitation upon judicial discretion increases opportunities for inappropriate case outcomes and unintended negative consequences. At the heart of an effective juvenile justice system lies the ability of the judge to consider all facts of each individual case in order to deal with the case in a manner most likely to deter future misdeeds of the child and in a manner to protect society in general.

*An approach to treatment of these serious cases in a more effective manner was presented in the original Sentencing Commission recommendations, SB 179 As Introduced. These recommendations substituted options of Serious Youthful Offender status for most offenses which are currently considered mandatory transfer/bindover offenses, and Extended Juvenile Jurisdiction (EJJ) of the juvenile court to age 25 for other offenses. These tools would have allowed for a more comprehensive range of dispositions than are available under current law, including the option of transferring the case of certain youth over age 14 to the adult court. Retaining and expanding the current Mandatory Bindover statute nullifies most benefits of the proposed Serious Youthful Offender law, and therefore diminishes the Ohio court system's ability to best address the problems presented by juveniles to the court.*

**Judicial Authority to commit 10-year-olds to the Department of Youth Services (DYS) and to adult prison**

Assuming that a 10- to 12-year-old may be mature enough to understand the criminality of his or her behavior and that she or he is competent enough to understand the charges and assist counsel, SB 179 would permit children as young as 10 years old to be placed in the custody of the Department of Youth Services. Moreover, with mandatory SYO status for certain offenders, children as young as 10 years old will be subject to trial by jury and to sentences to the adult prison system.

Regardless of the entity to which the rare serious 10- or 11-year old offender is committed, it is critical that appropriate educational and treatment facilities be developed to deal with such children who have significant problems and needs.

Although the authority to commit 10-year-old children to DYS apparently was designed as an additional tool to be used in rare instances, there is concern that DYS as it is currently structured is ill-equipped to deal with this young population. The Department of Youth Service's expertise is in working with adolescents. It does not have staff trained to work with 10- and 11-year-old pre-adolescent children, nor facilities to house these children separate from older, more sophisticated youth as old as 18 or even 21.

With any additional responsibility to DYS for treatment, education, and caring for 10- and 11-year-old children must come resources with which to effectively meet the needs of these children. Only with adequate additional resources can DYS effectively treat and guide these children so that they might become productive members of society as adults.

#### **Dispositional Discretion for Serious Youthful Offenders (SYO)**

In SB 179 As Passed by the Senate, proposed R.C. 2152.19 (A) limits judicial discretion to commit children to the local Public Children's Services Agencies (PCSAs). In order to effectively address unique problems and issues presented by each juvenile who comes before the court, the judge needs the full array of dispositional options to be available throughout the life of the case.

*Background.* The stated purpose of 2152.19 is to prevent the placement of dangerous children aged 14 years and up in the care and custody of children's services. This section attempts to then define a dangerous child as one who is receiving a SYO disposition for an offense of violence. Note that:

1. "Offense of Violence" is **very broadly defined** in 2901.01 (A)(9) to include violations of sections: 2903.01 (Aggravated Murder); 2903.02 (Murder); 2903.03 (Voluntary Manslaughter); 2903.04 (Involuntary manslaughter); 2903.11 (Felony Assault); 2903.12 (Aggravated Assault); 2903.21 (Aggravated Menacing); 2903.211 (Menacing by stalking); 2905.01 (Kidnapping); 2905.02 (Abduction); 2905.11 (Extortion); 2907.02 (Rape); 2907.03 (Arson); 2911.01 (Aggravated Robbery); 2911.11 (Aggravated Burglary); 2917.01 (Incite to Violence); 2917.02 (Aggravated Riot); 2917.31 (Induce Panic); 2919.25 (Domestic Violence); 2921.03 (Intimidation); 2921.04 (Intimidation of Attorney, Victim, or Witness); 2921.34 (Escape); 2923.161 (Improper Discharge of Firearm into a Habitation or School Safety Zone); 2911.12 (A)(1)(2)(3) (Burglary, Trespass in an Occupied Structure or Separately Secured Portion Thereof to Commit any Criminal Offense); and that

2. Mandatory and discretionary SYO dispositional sentence is **very broadly defined** to include down to felonies of the fifth degree for 16- and 17-year-old children if enhanced by a stated enhancing factor and down to felonies of the third degree for 13- and 14-year-olds if enhanced.

In combination, the proposed scope of limits to the court's discretion would also be very broad. Such a cookie-cutter approach ignores reality and is no substitute for a legitimate assessment of the risk of violent behavior by the child. Properly informed and trained custodians can manage many children who would be statutorily excluded as proposed in 2152.19(A). Judges need the discretion to consider these types of placements as they are appropriate in a given case.

Many private facilities have resources and expertise to help children with significant problems while protecting the community. The proposed statutory exclusion 2152.19(A) would prevent the common practice of placing children in PCSA custody for treatment in a specialized, private treatment facility. Moreover, the proposed statutory exclusion would prevent placement of a child in foster care, regardless of the absence of a suitable parent or relative, after the child has successfully completed a placement with DYS or a community rehabilitation center. Examples of situations where there is no suitable parent include a case where both parents died in a car accident while the child was in the custody of the Department of Youth Services, and a case in which one parent is incarcerated and the other parent is a drug addict and unable to care for the child. Recently enacted law at R.C. 2151.26 requires evaluation and disclosure of information regarding certain violent behaviors to a foster family where such a child will be placed.

## Gun Specifications

Senate Passed SB 179 limits judicial authority to apply gun specifications in a manner that is appropriate to the overall facts of the offense. This reduction of judicial discretion, as to imposition of additional time for "gun specs" could lead to unjust consequences.

*The Sentencing Commission had recommended ranges of additional "time" for offenses committed with gun specifications, increasing the potential time to be served for an offense with certain gun specifications to up to five years, increasing ultimate dispositional options which in certain situations would have allowed for longer gun specification time than permitted by current law. The Sentencing Commission recommendations provide for both judicial discretion and more possible significant sanctions than Senate Passed SB 179 proposes.*

## Once an "adult," always an "adult."

Senate Bill 179 clarifies that once a case is transferred to adult court, all subsequent charges, including for misdemeanor offenses, are automatically transferred to adult court. Processing subsequent misdemeanor bindovers is costly and a waste of juvenile court resources, and this change in the law will reduce costs and staff time expended.

Section	Line Start	Subject	Issue	Impact
2151.352 and 2151.28(F)	4,359 and 3,184	Right to Counsel and Right to counsel, summonses	<p>Specifies that the right to counsel does not apply to juvenile minor misdemeanor cases, consistent with the adult right.</p> <p>Currently, juveniles do have the right to counsel in Ohio.</p>	<p>Possible consequences of minor misdemeanor cases for juveniles, including delinquency cases, include placement outside of the home. Adult minor misdemeanants are not subject to a similar loss of liberty. Therefore children adjudicated for minor misdemeanors could be specifically denied a right afforded to adults.</p> <p>Without counsel for such juveniles, judges would not be afforded an effective dispositional option currently available for all delinquency cases, and would even be precluded from ordering a child into counseling.</p> <p>Because the dispositional alternatives scheme is totally different in juvenile court, right to counsel in these cases should also continue to differ.</p> <p>If enacted, such a change to juveniles' right to counsel would affect a substantive right to children.</p>

Section	Line Start	Subject	Issue	Impact
2152.01	5,411	Purposes of new ORC Chapter 2152 (list)	<p>The purpose of new 2152 are delineated as follows: "The overriding purposes for dispositions under this chapter are to protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services."</p> <p>Currently the purposes of juvenile court are as follows: "To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation." [R.C. 2151.01 (B).]</p>	<p>Putting "punishment" and "rehabilitation" on the same level requires that the issue of competency to stand trial be addressed. For the state to officially punish a child who is not competent to assist in the child's own defense most likely will be challenged under the Due Process clause of the United States Constitution. Therefore, along with the change of purpose, it is absolutely essential that this bill contain provisions that meet procedural due process requirements of competency.</p> <p>In addition, it is absolutely necessary that an incompetent child who requires institutional care be housed separately from those adjudicated and committed to a penal institution such as the Department of Youth Services.</p> <p>The Sentencing Commission recommends implementation of statutory competency provisions of juveniles. The Commission's proposed competency language is not included in SB 179, nor is competency language drafted by Governor Taft's administration.</p>
2152.11	5,741	Transfer to adult court, including mandatory transfer; consideration as a "Severe Youthful Offender" and discretionary transfer	Mandatory transfers same as current law for 16- and 17-year-olds charged with category offenses.	<p>The mandatory transfer to adult court language does not give the courts the opportunity to make decisions based on the overall facts of the case. It limits the benefits to society which come from the option to treat many of these youth as Severe Youthful Offenders.</p> <p>This decrease in judicial discretion means less work for juvenile courts, but will also increase opportunities for inappropriate case outcomes and unintended negative consequences.</p>
2152.12 (L) also see 2151.23 (I) at line 2868	6,543	Treatment of Persons apprehended at age 21 or over for acts committed as a juvenile	Requires cases in which offense and charge occurred before offender turned 18 but apprehension did not occur until after age 21, to be heard in adult court.	This provision clarifies a point of concern in current law and will allow processing of these cases in the most appropriate manner via a similar process.

Section	Line Start	Subject	Issue	Impact
2152.12 (M) (1)  also see 2945.67 (A) at line 15528	6,565	Interlocutory appeal of bindover decisions	Right of appeal granted only to prosecution	Interlocutory appeals create an added expense for the trial court, the appellate court, the prosecution, and the defense. They delay trial proceedings and ultimate disposition of the case.  To maintain a balance of justice, a similar right of appeal should be granted to defendants bound over to adult court.
2152.13	6,597	Jury trials for juveniles	Serious Youthful Offender (SYO) procedures, with their potential for blended juvenile/adult sentence as a disposition, will require juvenile court to develop jury trial capabilities that most do not currently have.	Because of the right to jury trial for juveniles in SYO cases, implementation of the SYO law will require creativity of juvenile courts, cooperation of general division courts, and possibly capital expenditures by some counties to provide all juvenile courts access to jury facilities. Similar cooperation will be required during the jury summoning process.  The juvenile court, however, has the necessary expertise to deal with juveniles. Juvenile judges both understand developmental needs of juveniles and know the array and effectiveness of available dispositions. Therefore, the juvenile court is the appropriate court to have jurisdiction over blended sentence or SYO cases.
2152.17	6,977	Gun/firearms specifications	Language in current law allowing for some judicial discretion in the application of gun specifications has been removed.	Limiting judicial discretion limits court's ability to tailor the penalty to the overall facts of the offense.
2152.19	7,236	Dispositions available for adjudicated delinquents	Dispositional options available to juvenile courts are limited to acts that would be a misdemeanor or felony if committed by an adult (R.C. 2152.19 (A)).  <i>Note: This may be an inadvertent limitation, but if enacted, it would be a significant substantive change to Ohio law.</i>	This limitation nullifies the courts' ability to make proper dispositions of a delinquent child who has not been adjudicated for committing an act that would be a misdemeanor or felony if committed by an adult. For example, the court would not have the option of placing a child in detention for assessment after the child's violation of a lawful court order.  Another example of the loss of dispositional authority would be the inability of the court to deal with the most serious of truancy cases via the use of detention afforded in recently enacted SB 181.

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Section	Line Start	Subject	Issue	Impact
2152.19(A) (1)	7244-7,253b	Limit on ability to commit certain children to temporary custody of a Public Children's Services Agency (PCSA)	Limits court authority to use of any order available under 2151.353 as follows: excludes ability to commit a child over 14 years old to PCSA if delinquent act would be an offense of violence if committed by an adult and the child is receiving a Serious Youthful Offender (SYO) dispositional sentence.	<p>The court's ability to place a child appropriately would be severely hindered. For example, there would be no place to send a child after successful treatment at DYS if the child's parents both died while the child was at DYS.</p> <p>Courts would be forced to duplicate services currently provided by PCSAs, at substantial costs to counties. This drain on overall resources would be detrimental to the PCSAs, as well.</p>
2152.19(A)(3)(I)	7,352	Direct disposition to detention	Under SB 179, juvenile judges will have specific statutory authority to place a child in detention for up to 60 days for a felony or up to 30 days for a misdemeanor level offense, in addition to the current option of placing a child in detention for up to 90 days for assessment. The total length of detention stay could not exceed 90 days.	<p>Detention centers are under control of juvenile courts. Therefore an impact on detention operations will impact juvenile courts.</p> <p>This additional tool for judges will increase pressure on detention in terms of capacity and availability; the provision potentially will require an increase in the level of service to those placed in detention as a disposition.</p> <p>However, the ability to treat the child locally in detention facilities enhances the court's ability to make the disposition fit the offense and should be maintained.</p>
2929.01 (D) and 2152.17 (F)	14,578 -14,621 and 7,075 - 7,088	Definition of "Repeat Violent Offender"	<p>Under current law and under Sentencing Commission recommendations, the juvenile court is required to have made a specific finding that an adjudication of a listed offense should be considered a conviction for purposes of the repeat violent offender law.</p> <p>Under the Senate passed bill, there merely has to be an adjudication on the listed offense, which will automatically be considered a conviction for purposes of the repeat violent offender law.</p>	<p>This change limits judicial discretion to apply disposition to fit total circumstances of the offender/offense/victim.</p> <p>This change has no impact on the time to process cases; its impact will be to limit tools available to the judge.</p>



# Senate Bill 179

Section	Line Start	Subject	Issue	Impact
3730.99 and 3730.07	16,390	Tattooing/piercing	<p>Deletes language mandating that child under age 18 have parental consent prior to obtaining or attempting to obtain piercing or tattooing, and deletes language prohibiting a child under age 18 from knowingly giving or showing false information in order to obtain piercing</p> <p>Although the 3730.07 deletion was not in SB 179 as introduced or in the Sentencing Commission plan dated Fall 1999, the 2152.02 definition of delinquent child deleted reference 3730.07 and proposed 3730.99 deleted reference to violations of 3730.07 in the Sentencing Commission proposal.</p>	<p>SB 179 As Passed by the Senate deletes current law prohibiting juveniles from obtaining tattoos or piercing or providing false information for the purposes of obtaining tattooing or piercing without parental consent.</p> <p>This change could encourage the child to lie in order to get piercing or tattooing without parental consent. Yet businesses will still be held accountable for providing tattooing/piercing to juveniles without parental consent. Therefore, the number of cases heard in adult court may increase.</p>
5139.05(A) in conjunction with 2152.11	17,080 And 5,741	Minimum DYS commitment age reduced to 10 years old	<p>Current minimum age for commitment to Department of Youth Services is 12. With mandatory Serious Youthful Offender treatment for 10-14-year-olds, a child as young as 10 years old could end up committed to the Department of Rehabilitation and Correction.</p>	<p>For the rare cases of serious violent offenses by children as young as 10 years of age, specialized secure residential treatment must be available to courts as a dispositional option. The Department of Youth Services' expertise is in working with adolescents. It does not have staff trained to work with 10- and 11-year-old pre-adolescent children, nor does it have facilities to house these children separate from older, more sophisticated youth as old as 18 or even 21.</p> <p>The cost to train staff and provide separate secure facilities will be great.</p> <p>With the additional responsibility to DYS for treatment, education, and caring for 10- and 11-year-old children must come resources with which to effectively meet the needs of these children. Only with adequate additional resources can DYS effectively treat and guide these children.</p>

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Section	Line Start	Subject	Issue	Impact
5139.41	18,256	RECLAIM Ohio "hold harmless" provision	<p>The bill makes clear that, for FY 2002 and FY 2003 only, the total beds available to counties as "public safety beds" (i.e., DYS beds not charged back to counties when a court orders a child to DYS custody) and related county allocations shall not fall below the levels used by all counties during FY 2000 funded by Care and Custody Chargebacks (Line Item 401) and as public safety beds.</p>	<p>Through RECLAIM Ohio, juvenile courts throughout the state fund numerous local dispositional programs.</p> <p>It is important that RECLAIM Ohio funding be maintained and "held harmless." If it is not, local programs will be cut due to lack of resources and the result will be a great increase in the number of commitments to the Department of Youth Services, enough to require the construction of two or more facilities to house and treat these children currently being handled locally with RECLAIM dollars.</p>